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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4604/2016**

C.P. GUPTA

..... Petitioner

Through: Mr. Akhil Sachar and Ms Sunanda,
Advocates.

versus

LT GOVERNOR NCT OF DELHI AND ORS Respondents

Through: Mr Yeeshu Jain and Ms Jyoti Tyagi,
Advocates for LAC/L&B.
Mr Ajay Verma, Advcoate for DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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25.03.2019

1. The prayers in this petition read as under:

“a) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Notification dated 21.3.2003 being No. F11(19)/2001/L&B/LA/20112 Issued under Section 4 of the Land Acquisition Act, 1894 issued in respect of the land forming part of Village Barwala quash and set aside the same;

b) Issue a Writ of Certiorari and/or a Writ, order or direction n the nature of Certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 19.3.2004 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

c) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Award no. 12/2005-06 dated 15.7.2005 published on 5.8.2005 (Annexure-C to the Writ Petition) quash and set aside the same;

d) Issue a Writ, Order or direction In the nature of Mandamus and/or a Writ, order or direction In the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct

the Respondents not to Interfere/dispossess the Petitioner from their land forming part of Khasra Numbers as indicated In the Schedule-A;

e) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The main relief sought is for a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘the 2013 Act’). The declaration is sought in respect of land situated in the Revenue Estate of Village Barwala in Delhi. The acquisition is by means of notification dated 21st March 2003 issued under Section 4 of the Land Acquisition Act, 1894 (LAA) followed by a declaration dated 19th March 2004 under Section 6 LAA and an Award No. 12/2005-06/DC (NW) dated 5th August 2005. The public purpose of the acquisition was for the Rohini Residential Scheme.

3. The challenge to the above acquisition proceedings was rejected by this Court by its judgment dated 17th April 2013 in W.P. (C)2501/2013 (*Naresh Kumar v. Union of India*) and affirmed by the Supreme Court by the order dated 3rd February 2015 in SLP(C) No. 17121/2013.

4. According to the LAC, physical possession of the subject land was taken over between 28th September 2005 to 6th October 2005 with the help of a demolition squad and police force which was then handed over to the DDA. On the aspect of compensation it is stated that the compensation has not been paid to the recorded owners as none approached the LAC to claim compensation and the same is lying with the LAC.

5. As far as the Petitioner is concerned, the Petitioner claims that he is the recorded owner of a piece of land admeasuring 11 Biswas out of Khasra No.

38/6 min (0-04), 7 min (0-07), situated in the area of Village Barwala, National Capital Territory of Delhi. He states that the said property was duly mutated in the revenue records. However, no documents in support of the claim of ownership have been enclosed with the petition.

6. It is stated that after the declaration was issued under Section 4 of the LAA, the Petitioners filed objections under Section 5A of LAA but received no response. Instead, a declaration was issued under Section 6 of the LAA and an award was passed on 5th August 2005.

7. In the counter affidavit filed by the LAC, it is pointed out that the Petitioner lacks the *locus standi* to seek the reliefs prayed for, as admittedly, he has occupied the property in question through documents which do not have any legal sanctity.

8. This court is not persuaded to grant the relief prayed for by the Petitioner for three broad reasons as elaborated hereafter.

9. The first issue is that, inasmuch as the lands were acquired for the Rohini Residential Scheme, on the question of actual physical possession, a reference needs to be made to the orders passed by the Supreme Court on 10th March 2015, 28th January 2016 and 18th October 2016 in SLP (C) Nos. 16385-88/2012 (***Rahul Gupta v. Delhi Development Authority***) and in the interlocutory applications ('I.As') in the said SLPs. Although, in the order dated 10th March 2015, the Supreme Court referred to the acquisition of land for the Rohini Residential Scheme in Sectors 34, 35, 36 and 37, in the subsequent order dated 18th October 2016, it was made clear that the effect of the said order of the Supreme Court was to be applied to all the lands acquired for the Rohini

Residential Scheme. In the order dated 18th October 2016 while disposing of various I.As in the aforementioned SLPs, the Supreme Court directed as under:

“Heard Mr. V. Giri, learned Senior Counsel appearing for the applicants and perused the interlocutory applications.

In view of the order dated 10.03.2015, passed by this Court in SLP (C) Nos. 16385-16388 of 2012, and a subsequent order dated 28.01.2016, passed in the same special leave petitions, the interim order passed by the High Court of Delhi on 04.3.2015 in W.P.(C) No. 1915/2015 (Annexure A-4 in the instant interlocutory applications), is liable to be vacated, and is accordingly vacated.

We grant liberty to the Delhi Development Authority to produce a copy of this order **in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme**, pending before the High Court, for vacation of similar interim directions.

It is made clear that in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over its possession forthwith to the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.

With the aforesaid directions, these interlocutory applications stand disposed of.” (emphasis supplied)

10. These directions were repeated in the remaining I.As which were disposed of on the same date i.e. 18th October 2016. In effect therefore, the position is

that if anyone still in possession of lands acquired for the Rohini Residential Scheme had not surrendered possession thereof to the DDA within ten days of the order dated 18th October 2016, then the possession thereof was deemed to be with the DDA. It would no longer be open to such persons to contend that actual physical possession of the lands in question remains with them.

11. This legal position has been clarified by this Court in its order dated 22nd November 2018 in W.P. (C) 51118/2016 (**Jawahar Singh v. Lt. Governor**) and reiterated in the order dated 25th January 2019 in W.P. (C) 3438/2015 (**Krishna Devi v. Union of India**). For the above reasons, in the present case, it is not open to the Petitioner to contend that actual physical possession of the land in question remains with him.

12. The second issue that the Petitioner faces is the delay in filing the present petition. As regards the claim for compensation, the fact remains that the Petitioner has no explanation to offer for the inordinate delay in approaching the Court for the relief. The claim for compensation is being made with reference to an Award that was passed on 5th August 2005. In **Indore Development Authority v. Shailendra (2018) 3 SCC 412** the Supreme Court observed as under:

“128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or

constructive res judicata. As either the plea raised is negated or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negated, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in *Pune Municipal Corporation (supra)*, and this Court never, even for a moment, intended that such cases would be received or entertained by the courts.”

13. It may be noted here that the reference made by a Constitution Bench in *Indore Development Authority v. Shyam Verma (2018) 4 SCC 405* regarding the correctness of the aforesaid decision in *Indore Development Authority v. Shailendra (supra)* is only as regards the extent to which it differs from the earlier view of the Supreme Court in *Pune Municipal Corporation v. Harakchand Misrimal Solanki (supra)* regarding the tendering of

compensation, and not on the question of the petition seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in its decision in *Mool Chand v. Union of India 2019 (173) DRJ 595 DB*. Thus the claim for compensation, apart from being a disputed question, is also barred by laches.

14. The third reason for rejecting the petition is as follows., In Para 6(c) of the writ petition it is stated as under:

“That by a letter dated 11.9.2007 bearing No. F.11(37)/07/L&B/LA issued by the Land and Building Department of Government of NCT of Delhi, the DDA has been informed of the decision of the Hon'ble L.G. of Delhi to exempt the taking over of lands falling within the boundaries of unauthorized colonies which have been granted provisional regularization.”

15. This gives rise to the third issue as it implies that the land in question is part of an unauthorised colony although the exact name of such unauthorised colony is not indicated. On the website of the Department of Urban Development of the GNCTD, the complete list of unauthorized colonies in respect of which tentative application forms and tentative layout plans had been submitted and which are awaiting regularization has been put up. There are four colonies that figure as unauthorised colonies in village Barwala at SI. Nos.242, 769, 1597 and 1618.

16. This Court has in a series of orders, consistently held that where the property in question is part of an unauthorized colony, no relief under Section 24 (2) of the 2013 Act can be granted. The legal position has been summarized by the Court in (*Mool Chand v. Union of India*) (*supra*) where it was held in paragraphs 48, 49 and 50 as under:

“48. The third aspect of the case is that the Petitioner admits that the land in question is part of an unauthorised colony. The very basis for seeking regularisation of an unauthorised

colony is that it is located on land which belongs either to the public or to some other private parties. The Petitioners would therefore not have the locus standi to seek a declaration in terms of Section 24 (2) of the 2013 Act in such cases since the very fact that they have sought regularisation on the basis that they are in unauthorised colony would be an admission that they do not otherwise have any valid right, title or interest in the land in question.

49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (*Harbhagwan Batra v. Govt. of NCT of Delhi*) and order dated 8th January 2019 in WP(C) No.10201/2015 (*Gurmeet Singh Grewal v. Union of India*) negatived similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

50. In a decision dated 10th January 2019 in W.P. (C) 3623 of 2018 (*Akhil Sibal v. Govt. of NCT of Delhi*) this Court observed in this context as under:

“18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them try to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable.”

17. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (*Krishna Devi v. Union of India*). As clarified in those orders, the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.

18. Consequently, the reliefs prayed for in the petition cannot be granted due to the reasons given above. The writ petition is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 25, 2019

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