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

+ **W.P.(C) 5109/2016**

GAURAV KUMAR & ANR.

..... Petitioners

Through: Ms. Easha Mazumdar, Advocate

versus

LT. GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA.

Mr. Wajeeh Shafiq, Standing Counsel for the Delhi Waqf Board with Ms. Akanksha Raha and Ms. Swati Tomar, Advocates.

Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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25.03.2019

1. The prayer in the present petition read as under

“(A)Allow the present Writ Petition in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and in " consequence thereof quash Award bearing No.12/2005-2006 Declaration u/s 6 No. F.11(11)/2004/L&B/LA 28281 dated 19/03/2004 and Notification No. F.11(19)/2001/L&B/LA/20112 dated 21/03/2003 under section 4 of the Land Acquisition Act 1894 thereby declaring the acquisition to be deemed to have been lapsed;

(B)Writ of Certiorari or any other appropriate writ, order or direction in the nature thereof, declaring that the Notification No. F.11(19)/2001/L&B/LA/20112 dated 21/03/2003 u/s 4 of the Land Acquisition Act, 1894 and Declaration u/s 6 bearing No. F.11(11)/2004/L&B/LA 28281 of the said Act dated 19/03/2004 and the Award bearing no. 12/2005-06 is being deemed to have lapsed;

(C)writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to denotify the lands of the Petitioners as described in Annexure P-1 situated in the Revenue Estate of Village Barwala, Delhi; ,21-A

(D)Award appropriate costs in the facts and circumstances of the case;

(E)Any other or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be passed/ issued in favour of the Petitioners.”

2. The case of the Petitioners is that they are the owners and in physical possession of the subject land. Two facts are admitted by the Petitioners. In para 11 of the writ petition it is admitted that the predecessor of the Petitioners was paid compensation at the rate of Rs. 15,70,000/- per acre which was received by the Petitioner's grandfather who was the recorded owner.

3. The second admission is that that the Petitioners had challenged same land acquisition proceedings in respect of lands in the Revenue Estate of Village Barwala, in an earlier round of litigation by way of a batch of writ petitions where the lead matter was W.P. (C) 2501/2013 (***Naresh Kumar & Ors. v.***

Union of India), By a detailed judgment dated 17th April 2013, a Division Bench (DB) of this Court dismissed the writ petition *inter alia* holding as under:

“We, at the inception, put to learned senior counsel for the petitioners as to why and how can we permit a settled position to be unsettled after a decade. This is so as the petitioners chose to remain silent when the acquisition proceedings were initiated, accepted the same, took compensation and sought references for enhancement of compensation. The aforesaid facts have to be examined in the conspectus of the purpose for which the land was acquired which was planned development of Rohini Residential Scheme. In Delhi there has been large scale acquisition by the DDA which was originally the only authority which was engaged in development of land and meeting the housing needs of the people. No doubt in this process while large tracts of land were acquired, some land remain undeveloped and the DDA could not protect its land pool with the result encroachment took place. These encroachments have been on such a massive scale with practically no prevention that a large part of habitants of Delhi reside in these colonies. The Government has come up now with schemes of regularization of these colonies.

Rohini Residential Scheme like other schemes is in the nature of a mini township. Such a mini township will contain all the essential features, i.e. residential areas, commercial areas, institutional areas. Thus, while there will be development of residential plots, there would also be development of commercial areas to take care of the needs of residents. These may be shopping arcades or there may be hotel sites, etc. Similarly there would be institutional requirements like for purpose of schools, hospitals, community facilities, etc. If land is allotted for all these purposes it cannot be said that the purpose of acquisition has disappeared or there is mala fide exercise of the power of acquisition. The DDA would spend large amount of monies on development of the area and, thus, to have a transparency auction is often the method, adopted for allotment, at least, with

commercial areas while in case of residential areas there may be auction of plots or particular schemes under which plots and flats are allotted. It may be possible even to allot land to certain societies for their needs. Similarly hotel sites and commercial buildings are often auctioned.

We are, thus, of the view that the nature of allegations made in this writ petition cannot be said of such a nature as to suggest that there is a mala fide exercise of power or improper use of the land, which has been acquired.

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We are of the view that the petitioners cannot after such a long period seek to rake up the issue of acquisition merely on the basis of some recent pronouncements by the Hon'ble Supreme Court even when they accepted the compensation qua acquisition of the land by neither challenging the acquisition proceedings nor the award but on the other hand were only interested in enhancement of compensation for which they have sought a reference. They have also recovered the compensation and for them now to say that they are willing to return that compensation after number of years and should be permitted to assail the acquisition proceedings would not, in our view, be the appropriate direction to be passed.

In view of these facts and circumstances, we are not inclined to entertain the petition seeking to challenge the acquisition proceedings both on grounds of delay and laches as also on account of the acquiescence and conduct of the petitioners qua the acquisition proceedings.

Dismissed.”

4. On 3rd February 2015 the Supreme Court of India passed the following orders in SLP (C) No. 17121/2013 (*Naresh Kumar v. Union of India*) and a batch of special leave petitions (SLPs), of which the SLP filed by the Petitioners herein formed part, all of which were directed against the above

order dated 17th April 2013 of the DB of this Court in W.P. (C) 2501/2013 and batch. The order reads as under:

“SLP (C) Nos. 17121, 33188 of 2013 & SLP (C) 17482, 13358 of 2014

Shri T. N. Singh and Dr. Surat Singh, learned counsels for the Petitioners in respective matters on instructions, seek permission of this Court to withdraw these petitions.

Permission sought is granted.

The special leave petitions are disposed of as withdrawn.

Contempt Petition (S) No. 319 of 2013 in SLP (C) 17121 of 2013

In view of the withdrawal of the special leave petition, nothing survives for consideration and decision in this contempt petition. The contempt petition is dismissed in terms of the signed order.”

5. Thus no liberty was granted to the Petitioners in the above matters to challenge the land acquisition proceedings afresh. The order dated 17th April 2013 passed by the DB of this Court in ***Naresh Kumar*** (*supra*) rejecting the challenge to the land acquisition proceedings *qua* the lands in village Barwala for the Rohini Residential Scheme attained finality.

6. The stand of the LAC in the counter affidavit is that the possession of the subject land was duly taken on 6th October 2005 and it is admitted by the Petitioners that the compensation has been paid. A copy of the possession proceedings has also been attached along with the counter affidavit.

7. No rejoinder has been filed by the Petitioners to the counter affidavit of the LAC.

8. 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)

9. 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.

10. 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**).

11. This is not even a case where the receipt of compensation is disputed. It is an admitted fact that the predecessor-in-interest of the Petitioner was paid compensation by the LAC. Therefore, neither of the two essential conditions under Section 24 (2) of the 2013 Act are satisfied in the present case.

12. For the aforementioned reasons, none of the reliefs sought for in the present petition can be granted. The petition is accordingly dismissed. The interim order if any stands vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 25, 2019
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