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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6651/2016

SYED ZULFIQAR HAIDER

..... Petitioner

Through

Mr. Rajiv Kumar Ghawana with Ms.
Akshita Chhatwal, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through

Mr. Hem Kumar for UOI.
Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for Respondent/LAC/
L & B
Mr. Dhanesh Relan for DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

12.07.2019

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1. The prayers in the present petition read as under:

“a) issue a writ, order or declaration declaring that the entire acquisition proceedings i.e. Section 4 notification dated 23.6.1989, Section 6 declaration is dated 22.6.1990 and the award no. 21/92-93 announced on 18.6.1992 in respect of the Petitioner's land comprised in Khasra no. 409 admeasuring 1085 sq. yards, situated in the Revenue Estate of Village Jasola, Tehsil Mehrauli, New Delhi have lapsed in view of sub-section 2 of section 24 of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013"; and

b) issue a writ of mandamus directing the Respondents not to in

any manner whatsoever; interfere with the peaceful enjoyment and possession of the said lands presently in possession and occupation of the Petitioner.”

2. It is stated in the petition that the Petitioner is “the owner and in possession of the land admeasuring 1085 sq. yds. forming part of Khasra No. 409 situated in Village Jasola, Tehsil Mehrauli, New Delhi.” It is also stated in the petition that 1000 sq. yds of the subject land was initially owned by Shri Om Prakash and was purchased by the Petitioner by virtue of five Agreements to Sell (ATS), General Powers of Attorney (GPAs) etc. dated 18th December 1995, 9th September 1996 and 8th April 1999. It is stated that the remaining 85 sq. yds were purchased from Shri Brahm Prakash by way of an ATS and GPA, dated 8th April 1999.

3. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 23rd June 1989, followed by declaration under Section 6 of the LAA on 22nd June 1990. The impugned Award No. 21/92-93 was passed on 18th June 1992.

4. The Petitioner further states that he is still in possession of the subject land and has not received any compensation. In para 3 of the petition, admittedly, the Petitioner states that the subject land forms part of an unauthorised colony, namely, Abu Fazal Enclave (Part II). It is stated that the said colony is awaiting regularisation. It is further stated that some of the land owners filed W.P. (C) 19246-56/2006 which was disposed of on 20th December 2006 and a status quo order was passed. It is stated that the LAC took paper possession of 14 Bighas 15 Biswas out of the total 54 Bighas 1

Biswa of land and subsequently a few of the built up structures were demolished against which contempt CCP No. 133/2008 was filed by the land owners, which is pending. Another Writ Petition, namely W.P.(C) 7420/2007 was filed in this court which is pending, whereby vide order dated 6th August 2008 this court directed status quo to be maintained.

5. In the counter affidavit filed by the LAC, it is stated that the petition is barred by delay and laches and that the original recorded owners never challenged the acquisition proceedings. It is stated that physical possession of Khasra No. 409 min (14-15) was taken and handed over to the DDA on 16th July 2007. It is stated that physical possession of Khasra No. 409 (min) (00-05) was not taken due to a religious structure being built on the said land.

6. In the counter affidavit filed by the DDA it is stated that the Petitioner has not filed any documents proving his ownership or title over the said lands, other than GPAs and ATS, which are not valid instruments for transfer of property. It is further stated that physical possession of the land bearing Khasra No. 409 min (14-15) was handed over to the DDA by the LAC on 16th July 2007. DDA states that it sent a cheque of Rs. 10,00,00,000/- in favour of the LAC towards compensation.

7. In the rejoinder filed by the Petitioner to the counter affidavit of the LAC it is stated that the Respondents have not actually taken possession even of a single inch of land forming part of Khasra No. 409. It is stated that only paper possession was taken. In the rejoinder to the counter affidavit of the

DDA, the Petitioner has not mentioned anything apart from reiterating the averments set out in the petition.

8. A perusal of the said documents reveals that they are unregistered and do not confer any valid right, title or interest in respect of the land in question in favour of the Petitioner. In this case, the Award was passed on 18th June 1992. The Petitioner having full knowledge about the status of the land in question and without taking permission from the competent authority as required under Delhi Land (Restriction of Transfer) Act, 1972 has entered into the above transactions in respect of the lands in question in 1995 and beyond. The validity of the above documents are, therefore, extremely doubtful. In the circumstances, the Court is not satisfied that the Petitioner has been able to even *prima facie* demonstrate its *locus standi* to file this petition and claim any relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

9. In the course of the hearing, it transpired that Abul Fazal Enclave Pt-II Shahin Bagh is one of the unauthorized colonies in respect of which a provisional regularization certificate has been issued. 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. Abul Fazal Enclave Part-II is one such colony which figures at S.No.983. Clearly, therefore, the property in question forms part of the unauthorized colony.

10. 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 2019(173) DRJ 595[DB]*** 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.”

11. 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.

12. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed.

13. The interim order passed by this court on 1st August 2016 which stood confirmed on 14th November 2017 stands vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 12, 2019

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