

\$~61

*

**IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 7971/2018 & CM APPL. 30542/2018**

MIHAR KHATOON

.... Petitioner

Through: Ms. Akshita Chhatwal,
Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS.

... Respondents

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

21.08.2019

%

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 in Khasra nos.409 min admeasuring 50 sq. yards situated in the Revenue Estate of Abul Fazal Enclave Part-II, Village Jasola New Delhi-110025 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. The background facts are that the land in question i.e. 50 sq.yards comprised in Khasra No. 409 situated in Abul Fazal Enclave Part-II, Village Jasola (hereafter, ‘subject land’), was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd June, 1989 for the public purpose of “planned development of Delhi”. This was followed by a declaration under Section 6 of the LAA dated 22nd June, 1990. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 21/92-93 on 18th June, 1992.

3. The Petitioner states that the subject land was originally owned by one Harchand and that upon his death it devolved to his son Om Prakash. It submitted that Om Prakash sold the subject land to Ashok Kumar by way of a General Power of Attorney (GPA), Agreement to Sell (ATS) and affidavit, all dated 27th December, 2000. The Petitioner claims ownership over the subject land by way of a GPA, ATS and affidavit dated 13th February, 2006, executed by Om Prakash in her favour.

4. It is averred in the petition that the Petitioner has been in possession of the subject land and has even raised a construction on the subject land. It is further claimed that compensation has not been paid to the Petitioner till date. In para 3 of the petition, reference has been made to the regularization policy of the

Government of NCT of Delhi. It is stated that the subject land is part of an RWA, which had applied for regularization pursuant to the aforesaid policy of the Government. Thereafter, the petition refers to the enactment of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'). It is contended that the Petitioner is entitled to a declaration of deemed lapsing under Section 24 (2) of the 2013 Act as possession of the subject land has not been taken and compensation has also not been paid.

5. A short counter affidavit has been filed on behalf of the DDA in reply to the petition. It is stated therein that the Petitioner has no right, title or interest over the subject land and that, therefore, she has no *locus* to file the present petition. As regards compensation, it is stated that an amount of Rs.10 crores has been duly disbursed to the LAC/L&B Department by the DDA by cheque No. 887574 dated 28th August, 1990. Reference has been made to the judgment of the Supreme Court in ***Indore Development Authority v. Shailendra* (2018) 3 SCC 412** and the judgments of this Court in ***Mool Chand v. Union of India* (2019) 174 DRJ 595 (DB)**.

6. No rejoinder has been filed on behalf of the Petitioner. Be that as it may, the position that emerges from the averments in the writ petition itself is that the subject land is part of Village Jasola, Abul Fazal Enclave Part II and that the said area is an unauthorized colony. On the website of the Department of Urban Development, GNCTD, a complete list of unauthorized colonies has been put

W.P.(C) 7971/2018

up. Abul Fazal Enclave Part II is one of those unauthorized colonies, which figures at S.No. 983 on that list. The land is, therefore, undoubtedly situated in an unauthorized colony.

7. 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 unauthorized colony. The very basis for seeking regularization of an unauthorized 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 regularization on the basis that they are in unauthorized 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.

8. 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.

9. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 1st August, 2018 stands hereby vacated. The application is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 21, 2019/abc

W.P.(C) 7971/2018

Page 5 of 5