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

+ **W.P. (C) 8193/2018 & CM APPL. 31411/2018**

ASHOK KUMAR MUDGIL THROUGH ITS ATTORNEY SUSHIL KUMAR

..... Petitioner

Through: Mr. Mahesh Prasad with Mr. Alok K. Prasad, Advocates.

versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Mr. Anil Dabas with Mr. Praveen Kumar, Advocates for UOI.
Ms. Sangita Rai with Mr. Pradeep Singh, Advocates for Govt. of NCT of Delhi
Mr. Ajay Verma, CGSC with Mr. G.S. Oberoi and Mr. Aman Verma for DDA.
Mr. Sanjay Kumar Pathak with Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advocates for LAC/L&B.

**CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH**

ORDER
09.08.2019

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Dr. S. Muralidhar, J.:

1. With the consent of the learned counsel for the parties, the matter is taken up for final hearing today.

2. The prayers in this petition read as under:

“a) Issue writ of declaration declaring the acquisition proceedings together with the impugned notifications and award (If any) to be illegal, unconstitutional and null and void and issue writ of Certiorari to quash Notification No. F.11(17)/91-L&B/LA/6518 dated 28.04.1995 issued Under Section 4 of the Land Acquisition Act, 1894 (herein referred as to the 'Act') and the subsequent declaration of Notification No. F.11(17)/91/L&B/LA/1285 dated 26.04.2013 issued Under Section 6 of the Land Acquisition Act, 1894; and all acquisition proceedings there under including award (if passed) vis-a-vis the land Khasra No. 301, area 01 Bigha, in the revenue estate of village Shahbad Daulatpur, Delhi has lapsed due to the failure on the part of the respondents in not issuing the notification under Section 6 of the Land Acquisition Act within the stipulated time of one year from the date of Judgment dated 21.03.2012 of the Hon'ble Supreme Court of India;

b) Writ, order or direction in the nature of prohibition thereby restraining the respondents, their officers, agents or their representatives or anybody claiming through them from dispossessing the petitioner from her settled possession over the land in dispute as found mentioned in writ petition and changing the nature, title and character of land in dispute falling in the revenue estate of Village- Shahbad Daulatpur, Delhi.

c) Award costs of the writ petition in favour of the petitioner.”

3. The narration in the petition reveals that on 28th April 1995 a notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued for the purposes of the ‘Rohini Residential Scheme’. This was followed by declaration under Section 6 LAA issued on 28th April 1996. Thereafter, a new declaration under Section 6 was issued on 26th April 2013. It is stated that the Land Acquisition Collector North West (LAC NW) passed the impugned Award No.1/1998-99 on 26th April 1998.

4. It is stated in the petition that “the petitioner is citizen of India and is the owner and in possession of the Land in Khasra No. 301 (01 Bigha) situated in the Revenue Estate of Village Shahbad Daulatpur, Delhi.” It is stated in Para 5(v) of the petition that the land in question forms part of “Prahlad Vihar, Near Sector-25, Rohini, New Delhi.” It is also submitted in Para 5 (viii) of the petition that on 27th October 2005, that an application for regularization was submitted and a fresh application was also invited by the Government of NCT along with certain documents in 2007.

5. It is stated that a petition was filed by the Prahlad Vihar RWA in this court being W.P.(C) No. 3938/1996 assailing the notification under Section 4 of the LAA and stating that the objections under Section 5A were not taken which was dismissed on 9th July 2007. The RWA then filed a Civil Appeal No. 3022-3023/2012 in the Supreme Court where while allowing the appeals on 21st March 2012 and quashing the declaration under Section 6 of the LAA, the Supreme Court held as under:

"2, Although the notifications under challenge are different but the controversy with regard to the invocation of urgency clause in Section 17 of the Land Acquisition Act, 1894 (for short "the Act") and dispensation of enquiry under Section 5A of the Act for the public purpose namely; "Rohini Residential Scheme" is same. Therefore, for the reasons given by us in our judgment delivered today (March 21, 2012) in Civil Appeal No. 3813 of 2007 - Ram Dhari Jindal Memorial Trust vs. Union of India and others which arises from the very judgment which is impugned in the present appeals, these appeals are allowed to the extent immediately following.

3. The clause in the Notification dated April 28, 1995 to the effect "Lt. Governor, Delhi is also satisfied that the land falls

under sub-section 1 of Section 17 of the said land and is also mentioned that section 5K does not come under the purview of sub-section 4 of the said sub-section of Section 17" is quashed in respect of the appellants' land. The declaration dated April 26, 1996 issued and published under Section 6 of the Act concerning the subject property is also quashed. The Competent Authority may now invite objections under Section 5A of the Act pursuant to the Notification dated April 28, 1995 and proceed with the matter in accordance with law. No order as to costs.

4. In view of the above, LA. Nos. 9-10 of 2010 for recalling of order dated October 9, 2009 and LA. Nos. 15-16 for direction do not survived and stand disposed of accordingly."

6. It is stated that pursuant to the judgment of the Supreme Court, the LAC invited objections under Section 5A of the LAA. On 16th November 2012; the land owners filed their objection, inter-alia for exempting their land being heavily built up and 70% construction already made over the acquired land. It is stated that till today the Petitioner has not received any hearing under Section 5A. It is also stated that the LAC by its order dated 31st January 2013 rejected all the objections filed under Section 5A and issued a fresh declaration on 26th April 2013 under Section 6 of the LAA. It is contended by the Petitioner that since the Supreme Court quashed the earlier declaration by judgment dated 21st March 2012, the LAC was required to issue a fresh Section 6 declaration within one year and since the declaration was passed on 26th April 2014, which is 2 years after the quashing of the earlier declaration, the same is illegal and void.

7. It is stated that the RWA filed W.P. (C) No. 3103/2014 in which The

RWA confined its challenge to 77 acres of land. It is admitted in Para 5 (xxxv) that the Petitioner was not a party to any of the court proceedings with respect to acquisition proceedings under impugned Award No. 1/1998-99. It is stated that the Petitioner was under the bonafide impression that the RWA's challenge included the Petitioner's land and therefore the Petitioner did not initiate separate proceedings. It is stated that the Petitioner came to know that his land was not included in the RWA's challenge, only on 21st February 2015 after dismissal of W.P. (C) 3103/2014.

8. In the counter affidavit filed by the LAC, it is stated that the petition is barred by delay and laches. It is stated that, it is an admitted fact that the Petitioner has never challenged the acquisition proceedings before and was not a party to any of the earlier rounds of litigation with respect to the said acquisition proceedings. The land of the petitioner herein comprised in Khasra No. 301(1-00) has not been part of any of the petitions filed. It is submitted that the Petitioner has never been party to the earlier round of litigation proceedings and hence the judgment of the Supreme Court in the ***Prahlad Vihar Residents Welfare Association*** (CA No. 3022-3023/2012) case does not apply in respect of the Petitioner. It is further stated that the Petitioner's land forms part of an unauthorised colony.

9. In the counter affidavit of the Respondent No. 3 (Govt. of NCT of Delhi) it is stated that an amount of Rs.17,07,71,000/- was paid to LAC on 4th April 1996 as compensation against the said award. It is stated that the Petitioner did not approach the court for compensation. It is stated that the present petition is liable to be dismissed in view of the judgment of the Supreme

Court in ***Indore Development Authority v. Shailendra (2018) 3 SCC 412***.

10. This court is not at all convinced to grant any relief to the present Petitioner for the following three reasons. Firstly, the present petition is barred by delay and laches. It is obvious that the Petitioner has approached the Court after an extraordinary delay which has not been satisfactorily explained. The Supreme Court in ***Indore Development Authority v. Shailendra (2018) 3 SCC 412*** emphasized that a declaration in terms of Section 24 (2) of the 2013 Act has to be sought within a reasonable time. This Court has in ***Mool Chand v. Union of India 2019 (173) DRJ 595 DB*** rejected the writ petitions seeking similar relief. The Petitioner himself has made no effort in the intervening period to challenge the acquisition proceedings.

11. Secondly, the land in question forms part of an unauthorised colony. 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. Prahlad Vihar Near-Sector-25 Rohini, Delhi is one of those unauthorized colonies, which figures at Sl. No. 1023. Clearly, therefore, the property in question forms part of the unauthorized colony.

12. 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* (*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.”

13. 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**). Even where the land stands mutated in favour of the Petitioners and they have put up structures, the fact that they have joined the other residents in making a joint application for regularisation of the unauthorised colony in question, would mean that they cannot now seek a declaration that the land acquisition proceedings have lapsed. Having elected to seek regularisation, they cannot reprobate and seek invalidation of the land acquisition proceedings. They must follow the remedy they have opted for earlier to the logical end.

14. The third and final reason that bars the Petitioner from seeking any relief is that the land in question has been acquired for the purposes of Rohini Residential Scheme. 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)

15. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The pending application is disposed of. The

interim order passed by this court on 6th August 2018 is hereby vacated.

16. As clarified in *Krishna Devi v. Union of India* (*supra*), 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.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 09, 2019

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