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

+ **W.P. (C) 7568/2014 & CM APPL. 17860/2014**

RAMESH KUMAR MALI Petitioner

Through: Mr. Prateek Kohli, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Yeeshu Jain along with
Ms. Jyoti Tyagi, Advocates for
LAC/L&B

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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17.07.2019

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

(a) pass a writ, order or direction in the nature of a writ of certiorari thereby quashing Section 4 Notification dated 27.10.1999 in respect of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delhi;

(b) further pass a writ, order or direction in the nature of a writ of declaration thereby quashing Section 6 Notification dated 20.03.2013 in respect of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delhi;

(c) further pass a writ, order or direction in the nature of a writ of declaration, declaring the acquisition proceedings initiated in respect of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delhi, as having lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(d) further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delh. “

2. The background facts are that the land in question i.e. House No. B-36, Gali No.2, part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delhi (hereinafter, ‘subject land’) was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) by invoking Section 17 of the said Act for the public purpose of the Rohini Residential Scheme. This was followed by a declaration under Section 6 of the LAA on 3rd April, 2000. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 4A/2002-03 on 3rd April, 2002.

3. As far as the Petitioner is concerned, it is stated that the he purchased the subject land from one Shri Suresh by way of a General Power of Attorney (‘GPA’) and an Agreement to Sell (‘ATS’), both dated 10th June, 2001. Apart from this not being a valid instrument for transfer of title, it appears that the Petitioner having full knowledge of the status of the land in

question, and without taking permission from the competent authority, in terms of the Delhi Land (Restriction of Transfer) Act, 1972 entered into the said transaction.

4. It is averred in the writ petition that the possession of the subject land has not been taken and continues to be with the Petitioner. It is averred that compensation for acquisition of the subject land was not paid to the Petitioner. It is further averred that the “various land owners challenged the acquisition proceedings before this Hon’ble Court” and that “the challenge to the acquisition proceedings was rejected by this Hon'ble Court and thereafter Civil Appeals viz., *Ramdhari Jindal Memorial Trust v. Union of India and Ors.* and *Sunil Goel v. Union of India Ors.* were filed before Hon'ble Supreme Court”. It is stated that the Supreme Court quashed the declaration under Section 6 of the LAA dated 3rd April, 2000 and that thereafter, a fresh Section 6 declaration was issued on 20th March, 2013.

5. It is averred that the fresh Section 6 declaration was beyond the period of one year stipulated in Section 6 (1) of the LAA, and that therefore, the land acquisition proceedings stand lapsed. It is also contended that the declaration “was barred inasmuch as neither the Petitioner had filed any writ petition before this Hon'ble Court, seeking the stay of the acquisition proceedings nor there was any stay in favour of the Petitioner in respect of the acquisition proceedings.” The petition then straightaway refers to the passage of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’) and the Petitioner’s entitlement to a declaration of lapsing of land acquisition

proceedings under Section 24 (2) of the said Act on the ground that the Petitioner was in possession of the subject land and that compensation had not been paid to him.

6. In the counter affidavit filed on behalf of the LAC it is averred that possession of the subject land was taken on 12th May, 2000. It is averred that compensation was paid to the recorded owners namely, Surender Singh, Kawal Jit Singh and Harbans Singh. It is also averred that the Petitioner has filed unregistered documents and that such documents do not prove ownership in the eyes of law.

7. In the counter affidavit of the DDA, it is averred that possession was taken and handed over to the DDA on 12th May, 2000. A copy of the possession proceedings has been annexed with the counter affidavit. It is further stated that compensation was remitted to the L&B Department by way of cheques Nos. 033657 and 282364 dated 3rd December, 1999 and cheque No. 086821 dated 24th March, 2003. It is also stated that the Petitioner has admitted the dismissal of his civil suit by the Addl. District Judge, Rohini and that the land acquisition proceedings have now been completed.

8. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC where the in the said counter affidavit have been vehemently denied and the contents of the petition have been reiterated.

9. From the averments in the writ petition itself, it emerges that the subject land forms a part of Kaliash Vihar, in Village Pehladpur Bangar, which is an unauthorized colony and has been granted provisional regularization by a letter of the L&B Department dated 11th September, 2007. It figures at Sl. No. 706 (Regn No.761) in the list of unauthorised colonies awaiting regularisation put up on the website of the Department of Urban Development, GNCTD. 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 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 (*AkhilSibal 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.

10. 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*). However, as clarified therein, the dismissal of the present petition will not come in the way of the Petitioners pursuing the claim for regularisation of the unauthorised colony in question.

11. There is yet another aspect to the matter. From a perusal of the impugned Award pertaining to the subject land and the counter affidavits of the LAC/L&B Department and the DDA, it also emerges that the subject land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th

October 2016 of the Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (***Rahul Gupta v. DDA***) even if on the date of the said order of the Supreme Court, actual physical possession was not with the DDA, if such physical possession was not handed over to the DDA within ten days thereafter, the DDA would be deemed to be in possession of the lands in question. Therefore, even on the Petitioners' own showing, the possession cannot be said to be with them. In the circumstances, it is not possible to grant the Petitioners relief under Section 24(2) of the 2013 Act.

12. Consequently, the Court finds no merit in this writ petition and it is dismissed as such. The interim order dated 3rd November, 2014 stands hereby vacated. The pending application is disposed of.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 17, 2019
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