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

+ **W.P.(C) 4760/2015**

KIRAN CHAUDHARY Petitioner
Through: Mr. M.P.Bhargava, Advocate

versus

UNION OF INDIA & ORS Respondents
Through: Ms. Mrinalini Sen & Mr. Tanmay
Yadav, Advocates for Respondent/
DDA
Mr. Yeeshu Jain & Ms. Shilphi
Chaudhary, Advocates for
Respondent/LAC/L & B

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
11.04.2019

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

“(i) Writ of Certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the notification no. F.10(29)/96/L&B/LA/19599 u/s 4 of the Land Acquisition Act 1894 dated 20/03/2013 and in consequence thereof quashing notification no. 10 (29)/96/L & B/ LA 11394, dated 27/10/1999 under section 4 of the said act.

(ii) 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 Petitioner i.e., khasra no.'s 24/6/2(1-4), 23/10(1-0), 11/1(2-16), 24/7/2(1-0), 14/2(0-16) 15 min. (8-16) and 16 min. (2-15) respectively, on the land of

village Pansali, Delhi

(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice.”

2. It is stated in the petition that the Petitioner is the owner and in peaceful possession of the aforementioned land in respect of which notification was issued on 27th October, 1999 under Section 4 of the Land Acquisition Act, 1894 (LAA) and declaration dated 20th March, 2013 under Section 6 of the LAA. The land was proposed to be acquired for the Rohini Residential Scheme.

3. It is averred in the petition that the land in question was built up prior to the issuance of the notification under Section 4 LAA. It is pointed out further that despite the judgment of the Supreme Court affirming the quashing of the earlier Section 6 declaration dated 3rd April, 2000 and granting leave to the Respondents to invite objections again under Section 5-A of the LAA, the aforementioned declaration under Section 6 of the LAA being beyond one year of the notices issued inviting objections under Section 5A of the LAA is contrary to the law laid down by the Constitution Bench in *Padma Sundara Rao (Dead) v. State of Tamil Nadu (2002) 3 SCC 533*. According to the Petitioner, the Respondents conducted the hearing under Section 5-A of the LAA in a mechanical manner.

4. A reference is made to the earlier Writ Petition (C) 7494/2012 filed by this very Petitioner which was dismissed by the Division Bench (DB) of this Court on 3rd December, 2012. The prayer in the said writ petition was

regarding non-release of the balance 20% compensation for 2 bighas and 4 biswas of the land.

5. While dismissing WP (C) No.7494/2012, the DB of this Court noted that physical possession of the land had been taken over on 12th May, 2000 and in September, 2001 part payment for 2 bighas and 4 biswas for Rs.5,33,866.00 was made to the Petitioner. Even an earlier Writ Petition No.4496/2002 filed by the same Petitioner showed that the compensation had been withheld because objections had been filed by one Mr. Sanvir Singh. Writ Petition No.4496/2002 was disposed of on 27th March, 2003 noting that the amount had been deposited in the Court of the learned Additional District Judge (ADJ).

6. The DB of this Court in its order dated 3rd December, 2012 in WP (C) No.7494/2012 noted that “there were two rival claims to the compensation which were referred for adjudication to the competent Civil Court and the award qua the compensation was made”. As regards the claim for release of the land under Section 48 of the LAA, the DB rejected this prayer after noting that “since possession has already been taken over a long time together this application itself will not be maintainable.”

7. The DB also negative the Petitioner’s plea that the benefit of the judgment dated 21st March, 2012 of the Supreme Court in Civil Appeal No. 3813/2007 (***Ram Dhari Jindal Memorial Trust v. Union of India***), which had been filed *qua* the same land by other entities, should be extended to her by treating it as a judgment *in rem*. The DB noted that the Petitioner “had not

laid challenge and the acquisition proceedings *qua* the Petitioner stands concluded”.

8. In W.P. (C) 7494/2012 the claim of the Petitioner that she was a member of the Deep Vihar Welfare Society which had preferred SLP (C) No. 13405/2007 in the Supreme Court. The DB held that the Petitioner could not benefit from the said judgment since there was no mention of it anywhere in the writ petition. The DB found the writ petition to be “completely devoid of merit”. It was dismissed with costs of Rs. 5000/- which was required to be deposited in the Delhi High Court Legal Services Committee within a period of 15 days. It appears that the above judgment dated 3rd December, 2012 was not further challenged by the Petitioner and became final.

9. The dismissal of the two consecutive writ petitions filed by her by this Court did not deter the Petitioner from filing a third writ petition being WP (C) No. 4586/2013. That writ petition was dismissed as withdrawn on 26th May, 2014. Thereafter when a notice dated 23rd February, 2015 came to be issued to her under Section 9 of the LAA, she filed the present writ petition on 11th May, 2015 seeking the above reliefs.

10. In the counter affidavit filed on behalf of the DDA, it is pointed out that the petition had been filed after a delay of more than 2-1/2 years after the issuance of the Section 6 of the LAA notification on 20th March, 2013. It is further pointed out that possession could not be handed over despite the Award No. 4/02-03 having been passed since the subject land/ site was ‘built up’. Nevertheless, before it was built up, physical possession was handed

over to the DDA by the LAC as per possession proceedings dated 12th May, 2000. It is pointed out that the acquisition was for the Rohini Residential Scheme.

11. This Court notices that in the petition itself a reference is being made by the Petitioner to the fact that the land in question was found forming part of an unauthorised colony. This is evident from paras 14, 15 and 16 of the writ petition which read as under:

“14. That thereafter the Respondents decided to regularize the colony of the Petitioner and called the RWA of the colony of the Petitioner to apply for regularization and submit a survey plan.

15. That the colony of the Petitioner has already been issued a Provisional Certificate of regularization dated 17/09/2008 by the Lt. Governor of NCT of Delhi. The said colony of the Petitioner has been assigned 1071 as its number. Copy of the certificate dated 17/09/2008 is attached herewith as Annexure P-4.

16. That thereafter a list of the Provisional Regularization Certificate distributed to various unauthorized colonies was published by the Urban Development Department Govt. of NCT. The name of the colony of the Petitioner is shown in the list.”

12. As far as the question of possession of lands acquired for the purposes of Rohini Residential Scheme is concerned, the order dated 18th October, 2016 of the Supreme Court in SLP(C) No. 16385-16388 of 2012 titled ***Rahul Gupta v. Delhi Development Authority*** makes it explicit that if actual physical possession of the lands acquired for Rohini Residential Scheme were not surrendered with the DDA within ten days thereafter, the DDA

would be deemed to be in physical possession thereof. Consequently, any assertion to the contrary in the present petition would be to no avail.

13. Secondly, with the Petitioner admitting that the property in question is part of an unauthorised colony which has been assigned as Sl. No. 1071 and in respect of which a Provisional Regularisation certificate has been issued on 17th September, 2008 (copy of which is enclosed as Annexure P4), the question of granting any relief whatsoever in the manner prayed for by the present Petitioner does not arise.

14. In the context of granting relief under Section 24 (2) of the 2013 Act in respect of land which forms part of an unauthorised colony, held as under in ***Mool Chand vs. Union of India 2019(173) DRJ 595[DB]***:

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.”

15. On the same reasoning, in the present case, with the admitted position being that the land in question forms part of an unauthorised colony, the question of granting any relief of quashing of the notification under Section 4 LAA or the declaration under Section 6 LAA does not arise. The same logic has to apply viz., that having opted for regularisation of the unauthorised colony the Petitioner must follow up on that remedy to its logical conclusion. In other words, the Petitioner cannot simultaneously pursue regularisation and also seek quashing of the land acquisition proceedings. Moreover, after three petitions of the Petitioner challenging the land acquisition proceedings have failed, entertaining a fourth petition on the same issue would be encouraging an obvious abuse of the process of law. the present case entertaining the present petition would be an abuse of

process of law.

16. It may be noted here that although an interim order was passed by this Court on 15th May, 2015 at the time of issuance of notice, it was subsequently recorded in the order dated 13th March, 2018 that the Petitioner did not press the application for interim relief in CM No. 8630/2015. The said application was accordingly dismissed as not pressed.

17. The same order records that a question arose whether in terms of the decision in *Sunil Goel v. Lt. Governor*, the delay in issuing declaration Section 6 of the LAA rendered it illegal? The submission of the Petitioner that she had earlier filed in WP(C) No. 2904/2000 which was dismissed in 2007 and against which a SLP was filed was required to be substantiated. Counsel for the Petitioner undertook to place on record documents to show that she was a party in both the proceedings and that her Khasra Numbers “were also part of the proceedings.” When even on 2nd July, 2018 those documents were not filed, further time was granted up to 6th September, 2018. For the second time the Court permitted the counsel for the Petitioner to produce those documents and adjourned the case on 7th December, 2018.

18. On 7th December, 2018 the following order was passed:

“1. Counsel for the Petitioner is granted a final opportunity to file the relevant documents within two weeks which show that the Khasra No.24/6/2(1-4), 23/10(1-0), 24/7/2(1-0), 14/2(0-16) 15 min. (0-16) and 16 min. (2-15) total admeasuring 7 Bigha and 11 Biswas respectively, on the land of village Pansali, Delhi in respect of which the Petitioner is seeking relief form part of the properties which were the subject matter of WP(C) No.

2904/2000 in this Court and SLP (C) No. 3003/2002 in this Court.

2. List on 10th April, 2019.”

19. It is seen that the Petitioner, despite all of the above opportunities has failed to file the documents as claimed by her. In any event, since the property forms part of an unauthorised colony the question of granting relief to the Petitioner in terms of the decision in *Sunil Goel v. Lt. Governor of Delhi (supra)* does not arise.

20. For all of the aforementioned reasons, there is no merit in the present petition and it is dismissed as such.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 11, 2019

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