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

+ **W.P.(C) 5230/2015 & CM APPL. 7311/2019**

PRADEEP CHHIKARA

..... Petitioner

Through: Mr. Sharad Malhotra, Advocate.

versus

LAND ACQUISITION COLLECTOR / A.D.M. & ORS. Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.
Mr. Arun Birbal and Mr. Ajay Birbal,
Advocates for DDA.
Ms. Shiva Lakshmi, CGSC with
Mr. Siddharth Singh, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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27.02.2019

1. With consent of the parties, the writ petition is taken up for final hearing.

2. The prayers in the writ petition read as under:

a) Issue a writ of certiorari or any other similar writ, order or direction thereby quashing the acquisition proceedings initiated under the Land Acquisition Act, 1894 w.r.t. land bearing Khasra No.'s 8//16/1(0-18), 9//11/2(1-1) and 9//20(2-13) measuring 4 Bighas and 12 Biswas of Village Goela Khurd, Delhi Najafgarh, New Delhi; and

In the alternative

Issue a writ of mandamus or any other similar writ, order or direction requiring the respondents to initiate fresh acquisition proceedings under The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 Of 2013) and determine the compensation and rehabilitation package in accordance therewith; and

b) Pass such other and /further orders as deemed fit and proper in facts of the present case, in favour of the petitioner.

3. The narration in the petition is that the land in question was recorded in the Bhoomidari of Shri Randhir Singh and Ors. who had carved out residential plots on the said land “i.e. in an unauthorized colony”. It is then stated that the said plots form “part of the layout of unauthorized colony namely Shyam Vihar, Phase-II, A-Block, Najafgarh, New Delhi”. It is further stated that Randhir Singh and Ors. sold the said plots situated in the aforementioned colony in favour of the Petitioner by way of four sets of GPA, Agreement to Sell, Receipt, Possession Letter etc. dated 29th July 2003. It is stated that some of the plots on these lands were returned by the Petitioner to the original land owners by way of document dated 25th February 2004.

4. In respect of the acquisition of the land in question, a notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 7th April 2006 followed by a declaration dated 4th April 2007 under Section 6 of the LAA. An Award was passed by the Land Acquisition Collector (LAC) on 14th November 2006.

5. In para 2 (v) of the writ petition, it is stated as under:

“v) That though the said lands were situated In an unauthorized colony and enjoyed the protection of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009 (No. 40 of 2009), which prohibited the respondents from taking over possession of acquired lands situated in the un-authorized colonies, but the respondents prepared possession proceedings on 27.7.2010 allegedly depicting as if the persons in possession were dispossessed and possession taken over by the respondent no. 1 and delivered simultaneously to the officials of Delhi Development Authority. The copy of the possession proceedings dated 27.7.2010 is annexed as **Annexure P-5.**”

6. The case of the Petitioner is that only the paper possession was taken where as the Petitioner continues to remain in physical possession and that he was never actually dispossessed by removal of structures. Claiming that the conditions stipulated in Section 24 (2) of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘the 2013 Act’) stand fulfilled viz., that physical possession still remains with the Petitioner and the Award was passed more than five years prior to 1st January 2014, the date of coming into force of the 2013 Act, the Petitioner is seeking the reliefs prayed for.

7. The Petitioner states the compensation amount lies deposited in the Reference Court but has not been withdrawn by the Petitioner despite the disposal of the reference in terms of a settlement arrived at the Mediation Centre. It is claimed that the deposit of compensation by the LAC in the Reference Court is not a tender of the compensation to the Petitioner.

8. In para 5 of the counter affidavit filed by the LAC on 22nd September

2018, the details of the compensation amount payable to the recorded owners being deposited in the Reference Court has been set out. It is further pointed out that possession was duly taken on 27th July 2010. The possession of the Petitioners is therefore termed as illegal.

9. A separate counter affidavit is being filed by the DDA confirming that physical possession of the land in question was taken by the LAC and handed over to the DDA on 27th July 2010. It was in turn given to the Engineering Department of the DDA on 21st August 2012.

10. An additional affidavit has been filed by the LAC on 29th May 2018 enclosing the possession proceedings prepared on the spot. It is also pointed out that the name of the Petitioner is reflected in the memorandum of dispute placed before the Reference Court under Section 30-31 of the LAA on 26th August 2008. The parties went before the Mediation Centre on 11th September 2014 and on the basis of the settlement arrived there, the Reference passed an award dated 10th November 2014. According to the settlement, the Petitioner was found entitled to compensation in respect of land measuring 2255.8 sq. yds. Compensation for the rest of the land measuring 2381 sq. yds was payable to the recorded owners. It is submitted that the Petitioner cannot rescind from the said settlement entered into by him of his own freewill.

11. CM APPL. 7311/2019 has been filed by the LAC seeking vacation of the status quo orders passed by the Court on 25th May 2018. The LAC states that the land is required for the UER-II project for construction of a 100 metre

wide road, which is absolutely essential for decongestion of the traffic in Delhi. The road is to be developed by the National Highway Authority of India (NHAI) which itself is in the process of acquisition of portions of land under the National Highways Act, 1956 ('NH Act'). The road is slated to cater to the Rohini Residential Scheme.

12. The above submissions have been considered. With the Petitioner admitting that the lands in question form part of an unauthorized colony, the reliefs prayed for in the present petition under Section 24 (2) of the 2013 Act cannot possibly be granted. This is the consistent view taken by the Court in several recent decisions. The position stands summarized in the decision dated 17th January 2019 of this Court in W.P. (C) 4528 of 2015 (***Mool Chand v. Union of India***) where the rationale has been explained with the following paragraphs:

“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 view has been reiterated in the order dated 25th January 2017 in W.P.(C) 3438/2015 (***Krishna Devi v. Union of India***).

14. Even otherwise in view of the disputed questions of fact regarding taking over of the possession of the land in question and the issue of payment of compensation having been settled by way of a mediation resulting in an order of the Reference Court in terms thereof, the question of granting any relief as prayed for by the Petitioner does not arise.

15. For all the aforementioned reasons, the writ petition is dismissed. The interim order dated 25th May 2015 confirmed on 26th February 2018 stands

vacated. The application is disposed of.

16. The next date of hearing i.e. 6th May 2019 stands cancelled.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 27, 2019

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