

\$~22

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

+ **W.P.(C) 567/2015**

OMWATI &ORS.

..... Petitioners

Through: Mr. J.C. Mahindroo and Mr.
Shubham Aggarwal, Advocates.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr.Chiranjeev Kumar, Advocate for
UOI.
Mr.Dhanesh Relan, Standing Counsel
with Mr. Rajeev Jha and Mr. Kamal
Sorout for DDA/R4.
Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
LAC/L&B.

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

ORDER
26.03.2019

%

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 a Writ of Certiorari and/or a writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Notification dated 21.03.2003 under Section 4 of the Land Acquisition Act issued in respect of the land in question forming part of Village

Prahladpur Bangar quash and set aside the same;

B. Issue a Writ of Certiorari and/or a writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the subsequent declaration dated 19.03.2004 under Section 6 of the Land Acquisition Act issue⁴ in respect of the land in question forming part of Village Prahladpur Bangar quash and set aside the same;

C. Issue a Writ of Certiorari and/or a writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Award No. 06/2005-06/DC(NW) dated 27.06.2005/12.07.2005 quash and set aside the same in respect of the land in question;

D; Issue a Writ, Order or direction in the nature of Mandamus and/or a writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct the Respondents not to[^] interfere/dispossess the Petitioners from their land and the Passage leading to their land situated in Khara No. 50/4, 6, 7, 8, 9, 11,12,13, 14, 15,25 and 49/8, 9, 10, ,11, 12, 13, 14 , 15, and 57/1 of Village Prahladpur Bangar, Delhi; and

E. Any other further order or relief which this Hon'ble Court deems fit and proper be also awarded to the Petitioner and against the Respondents in the peculiar facts and circumstances of this case.”

3. The Petitioners have in the petition given details of the ‘land/plots’ being Khara Nos. 50/4, 6, 7, 8, 9, 11,12,13, 14, 15,25 and 49/8, 9, 10, ,11, 12, 13, 14 , 15, and 57/1 of Village Pehladpur Bangar, Delhi. It is submitted that since the Petitioners have not been dispossessed of the acquired land neither has the compensation been paid, the acquisition proceedings in respect of

the same stand lapsed in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act')

4. It is then stated that on 21st March 2003 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 19th March 2004. It is stated that the Land Acquisition Collector North West (LAC NW) passed the impugned Award No.6/2005-06 on 27th June 2005.

5. According to the LAC, physical possession of the subject land was taken over on 26th May 2008 with the help of a demolition squad and handed over to the DDA. It is stated that the Possession of khasra 57//1 min (3-16), 50//4 min (1-3) 57 min (1-2), 8 (4-16), 9 min (3-16), 11/2 (2-7), 12 (4-16), 13 min (4-10), 14 min (4-0), 49//8 (4-16), 9/1 (1-2), 10/1 (3-4), 10/2 (1-2), 11(4-16), 12 min (4-6), 13 (4-16) has been taken but possession of the remaining awarded land has not been taken. On the aspect of compensation it is stated that the compensation has not been paid to the recorded owners and compensation as regards the present petitioner has been deposited in the ADJ Court under Section 30-31 of LAA on 21st January 2006.

6. As far as the Petitioner is concerned, it is stated in the petition that he is "That the Petitioners are the lawful owners of the land situated in the revenue estate of Village Pehladpur Bangar, Delhi". According to the Petitioners, they purchased the property via registered sale deeds from 1988-

2003. Enclosed as Annexures are the sale documents. A close scrutiny of the document shows that the property in question purportedly was purchased through registered sale deeds by the Petitioners. One of these sale deeds is after the date of the Section 4 notification and is, therefore, of doubtful validity.

7. The Petitioners fear that there is a threat of forcible dispossession by the LAC by seeking to construct a boundary wall in 2014. It is stated that after the declaration was issued under Section 4 of the LAA, the Petitioners filed objections under Section 5A of LAA but received no response. Instead, a declaration was issued under Section 6 of the LAA and an award was passed on 12th July 2005.

8. In the counter affidavit filed by the LAC, it is pointed out that the Petitioner lacks the *locus standi* to seek the reliefs prayed for, as admittedly, he has occupied the property in question through documents which do not have any legal sanctity.

9. It is also an admitted fact in Para 14 of the Writ Petition that the subject land of the Petitioners falls in Village Pehladpur Bangar which is an unauthorised colony. It is stated that:

“That by letter dated 11.09.2007 issued by the Land & Building Department of the Respondent No.1, the Respondent No.2 had been informed of the decision of the Hon'ble Lt. Governor of Delhi to exempt the taking over of land falling within the boundaries of unauthorized colonies which have been granted provisional regularization and the area of Village Pehladpur Bangar where the property owned by the Petitioners is situated are duly shown to be in the extended Lai Dora of the Village

Pehladpur Bangar, Delhi and the Provisional Regularization of this Village is mentioned at ELD 89 in the list Published by the Respondent No.1 and the copy of the said Extract is Annexure H to this Petition.”

10. 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. Pehladpur Bangar is one of those unauthorized colonies, which figures at S.No 8922. Clearly, therefore, the property in question forms part of the unauthorized colony.

11. 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 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.”

12. 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.

13. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 19th January 2015 as confirmed on 12th March, 2018 is hereby vacated.

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

S. MURALIDHAR, J.

I.S.MEHTA, J.

MARCH 26, 2019

mw