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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11409/2016 and C.M. No. 44695/2016 (stay)

JAMSHED KHAN

.... Petitioner

Through: Mr. Ghanshyam Mishra,
Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

.... Respondents

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

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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07.08.2019

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

“a. issue a writ, order or declaration declaring entire acquisition proceedings i.e. Section 4 notification dated 23.6.1989, section 6 declaration dated 22.6.1990 and Award No. 19/92-93 announced on 19.6.1992 in respect of the Petitioner land comprised in Khasra Nos. 418/260 and 419/260 admeasuring 1000 sq. yards, situated in the Revenue Estate of village Jogabai, Delhi have lapsed in view of sub-section 2 of the section 24 of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and

b. issue a writ of mandamus directing the respondents not to in any manner whatsoever interfere with the peaceful enjoyment and possession of the said lands presently in possession and occupation of the Petitioner.”

2. The background facts are that the land in question i.e. Khasra Nos. 418/260 and 419/260 (‘subject land’) admeasuring 1000 sq. yards situated in the Revenue Estate of Village Jogabai, Delhi was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd June, 1989 for the public purpose of “planned development of Delhi”. This was followed by a declaration under Section 6 of the LAA dated 22nd June, 1990. Thereafter, the Land Acquisition Collector (‘LAC’) made an Award No. 19/92-93 (‘the Award’) dated 19th June, 1992 under Section 11 of the LAA.

3. As far as the Petitioner is concerned, it is averred that the Petitioner purchased the subject land from a Shakeel Ahmed, who came upon the land upon the passing of his father and predecessor-in-interest, by way of General Power of Attorney (‘GPA’), Agreement to Sell (‘ATS’), letter of possession, and receipt of payment, copies of which have been annexed to the petition. Act, 2013 (‘2013 Act’). It is further averred that although the Award was made 24 years ago, the Petitioner continues to be in actual physical possession of the subject land. It is also averred that no compensation has been paid or tendered to the Petitioner.

4. A counter affidavit has been filed on behalf of the Delhi Development Authority ('DDA'). In the counter affidavit of the DDA, it is averred that the writ petition is liable to be dismissed on the ground that the aforesaid GPA, ATS, letter of possession, and receipt of payment did not confer any right, title, or interest in the subject land in favour of the Petitioner. It is also averred that the Petitioner or his predecessors-in-interest are not the recorded owners of the subject land. It is further averred that the subject land was purchased by the Petitioner in contravention of Section 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972. Therefore, it is averred that the Petitioner does not have locus standi in the instant petition.

5. It is averred by the DDA that physical possession of the subject land was taken by the LAC and handed over to the DDA by way of Possession Proceedings dated 22nd November 2012, a copy of which has been annexed to the counter-affidavit. It is further averred that compensation of a sum of Rs. 10 crores was released by way of Cheque No. 887574 dated 28th August 1990. It is also averred that the writ petition is liable to be dismissed on the grounds of delays and laches.

6. No rejoinder has been filed by the Petitioner in response to the counter-affidavit of the DDA.

7. From the averments in the writ petition itself, it emerges that the subject land forms a part of Village Jogabai. On the website of the Department of Urban

Development, GNCTD, a list of unauthorised colonies awaiting regularisation has been put up. Jogabai Zakir Nagar (Okhla) is one such unauthorized colony, which figures at Sl. No. 897 (Regn. No. 974) in the aforesaid list.

8. 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 (*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.”

9. 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.

10. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 2nd December, 2016 and confirmed on 21st November, 2017 is hereby vacated. The application is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 07, 2019

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