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

+ **W.P. (C) 12030/2016**

MUKESH TIWARI & ORS.

..... Petitioners

Through

Ms. Pooja Wason for Mr. V.P. Rana,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through

Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for Respondent/LAC/
L & B
Mr. Arun Birbal, Mr. Ajay Birbal for
DDA
Ms. Mini Pushkarna, Standing
Counsel, NDMC

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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25.07.2019

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

“In view of the above mentioned facts and circumstances, it is, therefore, most respectfully and humbly prayed that this Hon'ble Court may graciously be pleased to:

(a) issue a writ/order/direction in the nature of certiorari calling for the records of the acquisition proceedings having Award No.816 dated 23.11.1956 in respect of land comprising in Khasra No.336 (1-1) and 306 (4-3) both situated at Village Bhalswa Jahangirpur, now colony known Guru Nanak Dev Colony at Bhalswa Jahangirpur, Delhi

belonging to the petitioners;

(b) issue appropriate write, order or direction declaring the acquisition proceedings in respect of land comprising in Khasra No.336 (1-1) and 306(4-3) both situated at Village Bhalswa Jahangirpur, now colony known Guru Nanak Dev Colony at Bhalswa Jahangirpur, Delhi having lapsed and have become inoperative after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013;

(c) award the cost of the present proceedings in favour of the petitioners.”

2. It is stated in the petition that one Shri Khacheru was the recorded owner of Khasra No. 306(4-16). On 23rd May 1996 he expired and his son Mr. Dharamvir sold the land in Khasra No. 306 (4-16) to Smt. Kamlesh Yadav on 29th November 1996. Smt. Kamlesh Yadav sold the subject land to Digamber Builders on 11th April 2008. Shri Rattan Singh, Shri Basanta and Shri Yad Ram were recorded owners of Khasra No. 336 (3-15) who sold the subject land to Digamber Builders via sale deed dated 20th February 2008. Thereafter, a series of General Powers of Attorney (GPAs) have been executed and the Petitioner is claiming ownership on the said lands through such GPAs and Agreements to Sell (ATS).

3. It is also stated that the land in question forms part of an unauthorised colony namely Guru Nanak Dev Colony which has attained provisional regularisation vide provisional certificate dated 17th September 2008 having registration number 778. It is also stated that physical possession of the subject lands remains with the Petitioners and no compensation has been paid till date.

4. The narration in the petition reveals that a notification under Section 4 of the Land Acquisition Act, 1894(LAA) was issued on 24th October 1953. This was followed by declaration under Section 6 of LAA on 13th May 1955. The Land Acquisition Collector (LAC) passed the impugned Award No. 816 on 23rd November 1956.

5. In the counter affidavit of the DDA, it is stated that the lands were sought to be acquired for the purpose of extension of the Badli Dumping Ground. It is stated that the physical possession of the land was not handed over to the DDA by the LAC. It is further stated that as regards the status of compensation to the recorded owners, the LAC could respond as the acquisition was not for the DDA.

6. In the counter affidavit of the North Delhi Municipal Corporation (North DMC) it is stated that the petition is devoid of any merits and is grossly barred by delay and laches. It is also stated in para 6 that the Award No. 816 dated 23rd November 1956 does not pertain to the Khasra Nos. mentioned in the Writ Petition.

7. No rejoinder has been filed by the Petitioner to the counter affidavit of the DDA or the North DMC.

8. On a careful perusal of the sale documents annexed by the Petitioners, it reveals that they are unregistered and do not confer any valid right, title or interest in respect of the lands in question in favour of the Petitioner. In this case, the Notification under Section 4 of LAA was passed on 24th October

1953 and the Award was passed on 23rd November 1956. The Petitioners having full knowledge about the status of the land in question and without taking permission from the competent authority as required under Delhi Land (Restriction of Transfer) Act, 1972 have entered into the above transactions in respect of the lands in question. The validity of the above documents are, therefore, extremely doubtful. In the circumstances, the Court is not satisfied that the Petitioner has been able to even *prima facie* demonstrate its locus standi to file this petition and claim any relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

9. In any event, the pleading of the Petitioners that they are in possession of the subject land holds no good as the petition is barred by delay and laches. The Award was passed in 1956 and the petition has been filed in 2016 which is six decades later.

10. The claim of the Petitioners weakens even further as the land in question forms part of an unauthorised colony. Guru Nanak Dev Colony in Bhalswa Jahangirpur, where the subject land is located, is one of the unauthorized colonies in respect of which a provisional regularization certificate has been issued. 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. Guru Nanak Dev Colony is one of those unauthorized colonies, which figures at Sl.No.722. 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*). As clarified in those orders, the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.

13. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order passed by this court on 9th January 2017 which stood confirmed on 25th October 2017 stands vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 25, 2019

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