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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7504/2017

NIYAMAT ALI & ANR.

.... Petitioner

Through: Ms. Maldeep Sidhu,
Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

.... Respondents

Through: Mr. Yeeshu Jain and
Ms. Jyoti Tyagi, Advocates for
LAC/L&B.

Mr. Dhanesh Relan, Advocate for
DDA.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

19.08.2019

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

“a. issue a writ of certiorari or any other appropriate writ, order or direction, declaring that the Land Acquisition proceedings initiated by Notification No. F.4 (2) L&H dated 23.01.1965 under Section 4 and Declaration No. F.4(2) 65 L&H dated 13.01.1969 under Section 6 of the Land Acquisition Act, 1894 qua the petitioners’ land bearing Khasra No. 325/2 (2-10), Khasra No. 326 (2-0), Khasra No. 333 (4-16), and Khasra No.

336 (4-16), 310/2 (69-11), 311 (120-0), 315 (145-13), 318 (1-4) in Village Pul Pehlad, New Delhi, resulting in Award No. 63/1982-83, as having lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

b. further, to direct the respondents to place the petitioners in physical possess of their land bearing Khasra No. 325/2 (2-10), Khasra No. 326 (2-0), Khasra No. 333 (4-16), and Khasra No. 336 (4-16), 310/2 (69-11), 311 (120-0), 315 (145-13), 318 (1-4) in Village Pul Pehlad, New Delhi, resulting in Award No. 63/1982-83, without any cloud in their title or possession and alternatively, since no compensation has been paid to the petitioners/their forefathers, in respect of this entire land, till date. In case the respondents wish to acquire the said land they are to do so, under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

c. costs of this petition may be allowed in favour the petitioners and against the respondents.”

2. The background facts are that the land in question i.e. Khasra Nos. 325/2 (2-10), 326 (2-0), 333 (4-16), 336 (4-16), 310/2 (69-11), 311 (120-0), 315 (145-13), 318 (1-4) (‘subject land’) situated in the Revenue Estate of Village Pul Pehladpur, Delhi was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd January, 1965 for the public purpose of “planned development of Delhi”. This was followed by a declaration under Section 6 of the LAA dated 13th January, 1969. Thereafter, the Land Acquisition Collector (‘LAC’) made an Award No. 63/1982-83 (‘the Award’) dated 31st January, 1983 under Section 11 of the LAA.

3. The Petitioners claim to be co-owners of the subject land through inheritance from their forefathers and predecessors-in-interest. It is stated by Petitioner No.1 that the other co-owners of the subject land have executed a Power of Attorney ('POA') in his favour to file the instant writ petition on their behalf. It is submitted by the Petitioners that physical possession of the subject land has not been taken over by the Respondents. It is further stated that no compensation has been paid either to the Petitioners or their predecessors-in-interest.

4. The Petitioners state that they previously filed W.P.(C) No. 1558/2015, in this Court. The said petition was by order dated 16th May, 2017 of this Court dismissed as withdrawn with liberty to the Petitioners to file a fresh petition in respect of Khasra Nos. 310/2 (69-11) and 311 (120-0). The Petitioners also filed W.P.(C) No. 5096/2015 in respect of Khasra Nos. 325/2 (2-10), 326 (2-0), 333 (4-16), and 336 (4-16). It is averred by the Petitioners that this Court dismissed the latter writ petition by way of an order dated 16th May, 2017, wherein the Respondents' stand that the Petitioners are not the recorded owners of the subject land and compensation has been duly paid to the recorded owners was accepted by this Court. It is stated by the Petitioners that the Respondents' aforesaid averments were false and this Court was misled into dismissing the said writ petition by its order dated 16th May, 2017.

5. In the counter-affidavit has been filed on behalf of the Delhi Development Authority ('DDA'), it is contended that the writ petition is liable to be

dismissed on the ground of “misjoinder of causes of action”, since the subject land is owned by several persons, each of whom “is claiming separate cause of action.” It is stated by the DDA that the writ petition is liable to be dismissed in view of this Court’s prior dismissals in W.P. (C) No. 1558/2015 and W.P.(C) No. 5096/2015. It is submitted by the DDA that the Petitioners have not placed any document on record to validly claim right and title over the subject land.

6. The DDA states that physical possession of the subject land was taken by the LAC and handed over to the DDA by way of *Kabza Karvahi* dated 4th March, 1983. It is stated by the DDA that the subject land was thereafter placed at its disposal by a notification dated 30th March, 1983 issued under Section 22 (1) of the DDA Act, 1957. The DDA states that a sum of Rs.88,49,065/- was released by way of Cheque No. 541822 dated 1st January, 1983 to the LAC for further disbursement. Further, according to a statement received from the LAC, compensation in respect of Khasra Nos. 310/2 (69-11), 311 (120-0), and 315 (145-13) has been deposited in the court of the Additional District Judge (‘ADJ’), and compensation in respect of Khasra Nos. 325/2 (2-10), 326 (2-0), 333 (4-16), 336 (4-16), and 318 (1-4) has been paid to the recorded owners on 19th April, 1983 and 24th October, 1990.

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

8. At the outset, it requires to be noted that the subject land forms a part of Village Pul Pehladpur. On the website of the Department of Urban Development, GNCTD, a list of unauthorised colonies awaiting regularisation has been put up. Pul Pehladpur is one such unauthorized colony, which figures at Sl. No. 1420 (Regn. No. 1604) in the aforesaid list. 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 in the said decision, the dismissal of this petition will not come in the way of the Petitioners pursuing their case for regularisation of the unauthorised colony in question.

10. The additional difficulty for the Petitioners is that this is the second round of litigation on the same issue viz., deemed lapsing of the land acquisition proceedings under Section 24 (2) of the 2013 Act. In the first round, two

petitions were filed by these very Petitioners. The first was W.P. (C) No. 1558/2015, which was dismissed by this Court as withdrawn by order dated 16th May, 2017 with liberty to file a fresh petition. This petition was in respect of land in Khasra Nos. 310/2 (69-11) and 311 (120-0).

11. The second petition by these Petitioners seeking the same relief was W.P. (C) No. 5096/2015. This was in respect of Khasra Nos. 325/2 (2-10), 326 (2-0), 333 (4-16), and 336 (4-16). This petition was dismissed by this Court on merits by an order also passed on 16th May 2017. This Court in the said order referred to the counter affidavit of the LAC which stated that compensation for the acquisition of the subject land was already paid to the recorded owners. No liberty was granted to the Petitioners to file a fresh petition. The said order has attained finality. The Petitioners, without challenging the said order, cannot possibly file another petition seeking identical relief in respect of the lands in Khasra Nos. 325/2 (2-10), 326 (2-0), 333 (4-16), and 336 (4-16). The petition as regards the said land is barred on the principle analogous to the principle of *res judicata*.

12. The third difficulty is that till the filing of the above petitions in 2015, the Petitioners did nothing to challenge the validity of the land acquisition proceedings that culminated in an Award dated 31st January 1983. The petition at hand is clearly barred by laches. In this context reference may be made to the following observations in the judgment of the three Judge Bench of the

Supreme Court in ***Indore Development Authority v. Shailendra* (2018) 3 SCC 412**:

“130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negated, neither do they revive those rights which have become barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in *Pune Municipal Corporation* (*supra*), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts.”

13. It may be noted here that the reference made by a Constitution Bench in ***Indore Development Authority v. Shyam Verma* (2018) 4 SCC 405** regarding the correctness of the aforesaid decision in ***Indore Development Authority v. Shailendra* (*supra*)** is only as regards the extent to which it differs from the earlier view of the Supreme Court in ***Pune Municipal Corporation v. Harakchand Misrimal Solanki* (*supra*)** regarding the tendering of compensation, and on certain other issues but not on the question of petitions seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in ***Mool Chand v. Union of India* 2019 (173) DRJ 595 DB**

14. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 9th January, 2018 as confirmed on 11th April, 2018 is hereby vacated. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 19, 2019

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