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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 12326/2018 and C.M. No. 47789/2018 (stay)

SHAKINA

.... Petitioner

Through: Mr. Inderbir Singh,
Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

.... Respondents

Through: Ms. Mrinalini Sen,
Standing Counsel for Respondent
No. 1.

Mr. Sanjay Kumar Pathak, Mrs.
K. K. Kiran Pathak, Mr. Sunil
Kumar Jha, and Mr. M. S. Akhtar,
Advocates for Respondents No. 2
– 4.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

20.08.2019

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1. The prayer in the present petition reads as under:

“a. declare the acquisition proceedings qua the subject property/land of the petitioner i.e. in respect of property bearing # T-2, forming part of Khasra No. 110 measuring 2 *Bighas* 8 *Biswas* (forming part of old Khasra No. 222/68 min.) of Village Begumpur. New Delhi – 110017 as having lapsed in terms of Section 24(2) of the Act of 2013.”

2. The background facts are that the land in question i.e. Khasra No. 110 ('subject land') admeasuring 2 *Bighas* 8 *Biswas* situated in Village Begumpur, New Delhi was notified under Section 4 of the Land Acquisition Act, 1894 ('LAA') on 15th December, 1961 for the public purpose of "planned development of Delhi". This was followed by a declaration under Section 6 of the LAA dated 20th June, 1962. Thereafter, the Land Acquisition Collector ('LAC') made an Award No. 1409 ('the Award') dated 31st October, 1962 under Section 11 of the LAA.

3. The Petitioner claims to have become the owner of the subject land after the death of her father and predecessor-in-interest. It is stated by the Petitioner that the subject land consists of a private graveyard and residential quarters. It is submitted by the Petitioner that physical possession of the subject land has not been taken up. It is further stated by the Petitioner that no compensation has been paid in respect of the subject land.

4. It is stated by the Petitioner that the subject land was placed at the disposal of the Delhi Development Authority ('DDA') under Section 22(1) of the DDA Act on 3rd January, 1968, It is further stated by the Petitioner that the subject land was notified in the name of the Waqf Board on 10th December, 1969 and published in the Delhi Gazette on 16th April, 1970. It is stated by the Petitioner that the Waqf Board filed Civil Suit No. 653/94 before the Additional District Judge ('ADJ') to seek possession of the subject land, which was dismissed by way of an order dated 6th December, 2001.

5. It is further stated by the Petitioner that she filed Suit No. 809/97 before the Civil Court for declaration and injunction in respect of the suit property, which was dismissed as withdrawn by way of an order dated 22nd January, 2001. Thereafter, she filed W.P.(C) No. 7589/2000 before this Court to challenge the acquisition proceedings in respect of the subject land; said writ petition was dismissed by way of an order dated 13th November, 2002.

6. It is stated by the Petitioner that she filed Civil Suit No. 704/2009 before the Senior Civil Judge ('SCJ') to seek a permanent injunction against the DDA from interfering with the subject land and demolishing structures thereon, which was dismissed by way of an order dated 20th February, 2018. However, the aforesaid order was stayed by the ADJ, Saket Court, New Delhi in the ongoing appeal against it.

7. It is also stated by the Petitioner that she has been impleaded as a party in an ongoing Public Interest Litigation filed before this Court in respect of allegedly illegal construction on the subject land.

8. In the counter affidavit filed on behalf of the LAC and the Land & Building Department ('L&B'), it is contended that the writ petition is liable to be dismissed on the ground of delay and laches. It is stated by the Respondents that the Petitioner has not placed any document on record to prove her title and ownership in respect of the subject land. It is submitted by the Respondents that possession of the subject land has been taken on 23rd November, 1962.

9. Further, no rejoinder has been filed by the Petitioner in response to the counter-affidavit of the LAC and the L&B.

10. On the Petitioner's own showing, Village Begumpur, where the subject land is situated, was de-notified on 22nd June, 1987. Further, Provisional Certificate of Regularisation was issued to the residents of Village Begumpur on 17th September 2008. Village Begumpur figures at Sl. No. 1628 (Regn. No. 138 ELD) on the list of unauthorised colonies awaiting regularisation, available on the website of the Department of Urban Development, GNCTD.

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 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.”

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*). 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.

13. For the aforementioned reasons, the writ petition is dismissed. The application is hereby disposed of.

S.MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 20, 2019
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