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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9406/2017 & CM APPL. 38310/2017**

DINESH ANTIL

..... Petitioner

Through: Mr. Prashant Chandra and Mr.
Ashutosh Kr. Pandey, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Tara Narula with Ms. Nupur,
Advocates for R-2.
Mr.Dhanesh Relan, Standing
Counsel with Ms. Gauri
Chaturvedi, Advocates for DDA.
Mr.Yeeshu Jain, Standing
Counsel with Ms. Jyoti Tyagi,
Advocates for LAC/L&B.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
25.07.2019

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

“a) Issue a writ, order or direction in the nature of certiorari thereby calling the records from the respondents pertaining to the present case and declare the acquisition proceedings as *ultra vires* under the Land Acquisition Act and Article 300-A read with Article 14 of the Constitution of India and further quash the land acquisition proceedings including Notification No. F. 11 (17)/91/L&B/LA/6518 dated 28.04.1995 issued under section 4; Notification/Declaration No. F.11 (17)/91/L&B/LA/1285 dated 26.04.2013 issued under section 6 of the Land Acquisition Act, 1894 in respect of the property of the Petitioner i.e. Khasra No. 298 measuring 01 Bigha 04 Biswa falling in the revenue estate Village-Shahbad Daulatpur, NCT of Delhi as being illegal,

malafide and unconstitutional, vague and null and void;
and

b) Writ, order or direction in the nature of prohibition thereby restraining the respondents, their officers, agents or their representatives or anybody claiming through them from changing the nature, title or character of property in dispute falling in the revenue estate of Village Shahbad Daulatpur, NCT of Delhi.

c) To direct the Respondent No.03 to remove the wall and the board erected on the property.

d) Award costs of the writ petition in favour of the petitioner.”

2. At the outset, in para 3 of the petition, it is stated that one unauthorized colony came into existence in 1982 and spread/developed in about 77 acres of land falling in village Shahbad Daulatpur, Delhi comprising various pieces of land. The narration in the petition reveals that the father of the Petitioner purchased a piece of agricultural land measuring 1 Bigha 4 Biswa out of Khasra No.298 min, situated in the revenue estate of village Shahbad Daulatpur (hereafter ‘the subject land’) from one Ramesh Chand S/o Sh. Amar Singh by way of registered sale deed. Thereafter the land, which admittedly was in the vicinity of the unauthorized colony, was mutated in the name of the father of the Petitioner. Copies of the *Khatoni* for the year 1989-90 as well as the sale deed dated 10th December 1984 in the name of the father of the Petitioner have been enclosed along with the petition.

3. It is further averred that due to the large number of persons living in the said unauthorized colony, there was a request to the Town Planner Municipal Corporation of Delhi for regularization of the colony in 1993. Thereafter, notification under Section 4 of the Land Acquisition Act,

1894 ('LAA') was issued on 28th April 1995 for the public purpose of 'Planned Development of Delhi'. In the year 1996, an association named 'Pralhad Vihar Resident Welfare Association' (hereafter 'Association') was formed by the residents of the colony, who thereafter filed representations to various Departments and the Minister for Urban Development for de-notification/cancellation of the notification for acquisition. However, the said colony has not been de-notified till date. It is submitted that as per a survey report dated 18th May 1999, it is evident that at the time, the total area of the said colony was found to be 104.16 acres (500 Bighas) out of which an area of 350 Bighas was 'built up area'. It is stated that thereafter, the Petitioner learnt that on 27th October 2005, an application for regularization of the said colony was submitted, which was duly acknowledged and Registration No.01116 was allotted to the said colony. Thereafter, declaration under Section 6 LAA was issued on 26th April 2013.

4. It is stated that the father of the Petitioner has remained in possession of the land, and after his death in 2015, possession has remained with his LR's, including the present Petitioner. The petition then refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the '2013 Act'). Reliance is placed on the decision in ***Sunil Goel v. State* 211 (2014) DLT 382 (DB)** where in similar circumstances, the declaration under Section 24 (2) of the 2013 Act was granted by this Court. It is further submitted that by order dated 21st February 2015 in W.P(C) 3103/2014, this Court quashed the Section 4 LAA notification dated 28th April 1995 and the Section 6 LAA declaration dated 26th April 2013 in respect of the Petitioner's i.e 'Pralhad Vihar Residents Welfare W.P(C) 9406 of 2017

Association' lands. It is submitted that the Petitioner's predecessors in interest could not file a writ petition earlier in this Court "in view of the fact that the possession of the 'land' was with the Petitioners family."

5. In the counter affidavit filed on behalf of the DDA, it is submitted that the present petition is barred by delay and laches and is liable to be dismissed. As per the Land records available, land bearing Khasra No.298 (14-01) in village Shahbad Daulatpur was notified under Section 4 LAA on 28th April 1995, followed by declaration under Sections 6 and 17 LAA on 26th April 1996. Subsequently, the land in question was acquired by Award No.1/98-99. It is stated that possession proceedings were conducted on 13th January 1997, but that possession of the subject land "was not given by the LAC/L&B Deptt. to the DDA due to built up and jhuggies." It is stated that the said Award has attained finality and the land in question vests with the Government and the Petitioner has no valid right, title or interest in the same. As regards compensation, it is submitted that the DDA has already remitted that the payment of the same in lump sum to the LAC through the Land and Building Department in respect of the land acquired by Award No.1/98-99 by Cheque No.033657 in the sum of Rs.100,00,00,000/- (Rupees One Hundred Crore Only) and Cheque No.282364 in the sum of Rs.50,00,00,000/-(Rupees Fifty Crores Only), both dated 3rd December 1999. It is stated that the Petitioner has not placed on record any valid document to prove ownership of the land in question. It is further submitted that not only were the objections filed by the Petitioner duly considered, but after full and final consideration of the same, final notification/declaration under Sections 6 and 17 LAA were also issued in accordance with law, and the land vests with the Respondents free

from all encumbrances.

6. No rejoinder to the above counter affidavit has been filed on behalf of the Petitioner. Be that as it may, the narration in the petition itself reveals that the land in question falls within an unauthorized colony which has applied for regularisation and figures at Sl.No.116 in the list of 1639 unauthorized colonies awaiting regularization as displayed on the website of the Department of Urban Development, GNCTD.

7. In respect of the lands that form part of unauthorized colony this Court has taken the consistent view that no relief under Section 24(2) of the 2013 Act can be granted. The legal position has been explained in decision dated 17th January 2019 in ***Mool Chand v. Union of India (2019) 173 DRJ 595 (DB)*** where it has been explained 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***) negated 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.”

8. 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.

9. There is yet another aspect to the matter. From a perusal of the impugned notification dated 28th April 1995 under Section 4 LAA, it

also emerges that the subject land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th October 2016 of the Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (*Rahul Gupta v. DDA*), even if on the date of the said order of the Supreme Court, actual physical possession was not with the DDA, if such physical possession was not handed over to the DDA within ten days thereafter, the DDA would be deemed to be in possession of the lands in question. Therefore, even on the Petitioners' own showing, the possession cannot be said to be with them. In the circumstances, it is not possible to grant the Petitioners relief under Section 24 (2) of the 2013 Act.

10. Consequently, the Court finds no merit in this writ petition and it is dismissed as such. The pending application is also disposed of. 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 regularization of the unauthorized colony in question.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 25, 2019/abc