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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11259/2017 & CM Appl. No. 9556/2019

LAKHI DEVI

..... Petitioner

Through

Mr. Akhilesh Kumar Singh &
Mr. Saroj Kumar, Advocates

versus

LAND ACQUISITION COLLECTOR & ORS.

..... Respondents

Through

Mr. Sanjay Kumar Pathak, Mrs. K.
Kaomudi Kiran Pathak, Mr. Sunil
Kumar Jha, Mr. M.S. Akhtar
Advocates for Respondent/LAC/
L & B
Ms. Shobhna Takiar, Ms. Shivani Jain
for Respondent/DDA

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

27.02.2019

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1. With consent of the learned counsel for the parties, the petition is taken up for final hearing.

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

“a) Pay the compensation to the petitioner under Section 31 of the Right to Fair Compensation and transparency Land Acquisition, Rehabilitation and Resettlement Act, 2013 within stipulated period or

b) set aside the impugned award i.e. 10/2008-2009 (SW) passed by the Office of the ADM/LAC(SW) Room No. 12, Old Terminal Tax Building, Kapashera, New Delhi-110037.

c) further directions to the Respondents to initiate a fresh land acquisition proceedings as per the new enactment.

d) Further directions to grant compensation as per the new law by consideration of the market value of the land by setting-aside the prior award which was passed under the old Act.

e) pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice.”

3. The background facts are that land in question i.e. Plot No. 28-29 in Khasra No. 140/8 (150 Sq. yards) located in the revenue estate of Dichaun Kalan, Najafgarh, Delhi was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 7th April, 2006. This was followed by declaration under Section 6 of LAA on 4th April, 2007 that the land was required for the public purpose of “construction of 100 metres in under planned development of Delhi”. The Land Acquisition Collector (LAC) passed the impugned Award No. 10/2008-2009(SW) on 30th December, 2008. It is mentioned that the Petitioner was unable to raise objection under Section 5A of the LAA and that “impliedly the possession was taken by the Respondent for the construction of 100 Mtrs. Road under planned development of Delhi.”

4. The Petitioner is stated to be “the owner of the property/plot No. 28-29 area measuring 150 sq.yards of Khasra No. 140/8 in the area of Village Dichaun Kalan, Delhi “in the abadi now known as Laxmi Nagar, Najafgarh, New Delhi”. According to the Petitioner, she purchased the property from one Didar Singh in the year 2004.

5. It appears that the Petitioner, having full knowledge of the status of the land in question, and without taking permission from the competent authority, in terms of the Delhi Land (Restriction of Transfer) Act, 1972 entered into the said transaction. There is merit in the contention of the LAC that the said transaction is void and does not bind the Government in any manner. The original recorded owner, who obviously is not the Petitioner, has not challenged the land acquisition proceedings.

6. In para 4 of the writ petition, the Petitioner states that in May, 2009 the officials of the Land and Building (L&B) Department informed her that the land had been acquired and compensation for the same was being paid to the recorded owners. According to the Petitioner she submitted an application to the LAC regarding the payment of compensation. In the said application, it was purportedly disclosed that she is not the recorded owner and has purchased the plot through the GPA, and subsequently built a house on the land. She then claimed compensation for the structure. The Petitioner claims that after passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'), she is entitled to the relief under Section 24 (2) thereof since no compensation has been paid to her and the physical possession of the land in question remains with her.

7. The LAC in the counter affidavit states that physical possession of Khasra No. 140/8 of the land was taken over and handed over to the Delhi Development Authority (DDA) on 10th February, 2012. It is stated that the "remaining land could not be taken due to built up." It is stated that "As per

record, the recorded owner of land comprised in (1) Kh No.140//8(1-0) 1/2 are Share Swami Ishwar Dass Chela Sant Dass ji and 1/2 Share Swami Santa Nand ji Chela Sant Dass ji (2) Kh No.140//8(1-4) Shiv Kumar S/O Mandan Lai and (3) Kh No.140//8(2-12) U/S 81 is Gram Sabha. The petitioner is not recorded owner.” On the aspect of compensation, it is stated that a compensation amount of Rs. 4,75,76,597/- has been deposited in the court of the Additional District Judge under Section 31(2) of the LAA vide cheque no. 847117 dated 27th December 2013. No rejoinder has been filed by the Petitioner to the counter affidavit of the LAC.

8. According to the Petitioner herself, the property in question is located in Laxmi Nagar which 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. Laxmi Nagar figures at S.No.912 in that list. Clearly, therefore, the property in question forms part of the unauthorized colony.

9. 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. For the same reason no relief of grant of compensation under Section 31 of the 2013 Act can be granted either. The legal position has been summarized by the Court in a decision dated 17th January, 2019 in W.P.(C) No.4528/2015 (*Mool Chand v. Union*

of India) 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.”

10. 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.

11. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 18th December, 2017 as confirmed on 29th November 2018 is hereby vacated. The application is disposed of.

12. The next date of hearing i.e. 22nd October 2019 stands cancelled.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 27, 2019

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