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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10882/2017 & C.M. APPL. 44546/2017 (stay)

DEEPAK MANSHARAMANI

.... Petitioner

Through: Mr. N.S. Chechi, Advocate.

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Kamal Kant Jha, Senior Panel Counsel, Government of India and Mr. Siddharth Jha, Advocate for Union of India. Mr. Dhanesh Relan, Standing Counsel for DDA with Gauri Chaturvedi, Advocate. Mr. Yeeshu Jain with Ms. Jyoti Tyagi, Advocates for LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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05.08.2019

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

“a. issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the land comprised in Khasra Nos. 490/421 (1-12) and 548/492/421 (2-7) admeasuring 3 Bigha 19 Biswas situated in revenue Estate of Village Jasola, NCT of Delhi having lapsed qua his share area of 1 Bigha 8 Biswas and further quashing the impugned notification No. F.-9(1)/89/L & B/ (i) dated 23.06.1989 issued under Section 4 of the Land Acquisition

Act, 1894, Notification No. F. -9(1)/89/L and B/ (ii) dated 22.06.1990 issued under Section 6 of the Land Acquisition Act, 1894 and the relevant extract of the Award No. 21/92-93 Jasola with respect to the land comprised in Khasra Nos. 490/421 (1-12) and 548/492/421 (2-7) qua petitioner share of 1 Bigha 8 Biswas situated in revenue Estate of Village Jasola, NCT of Delhi; and

b. issue a writ of mandamus and/or any other writ, order or direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 1 Bigha 8 Biswas out of the land comprised in Khasra Nos. 490/421 (1-12) and 548/492/421 (2-7) situated in the revenue Estate of Village Jasola, NCT of Delhi.”

2. The background facts are that the land in question i.e. 3 *Bighas* 19 *Biswas* comprised in Khasra Nos. 490/421 (1-12) and 548/492/421 (2-17) situated in the revenue estate of Village Jasola, NCT of Delhi was notified for acquisition under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd June, 1989 for the public purpose of “planned development of Delhi”. This was followed by a declaration under Section 6 dated 22nd June, 1990. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 21/92-92 on 18th June, 1992.

3. As far as the Petitioners are concerned, it is stated that the Petitioner purchased 1 *Bigha* 8 *Biswas* (‘subject land’) out of the aforementioned 3 *Bighas* 19 *Biswas* comprised in Khasra Nos. 490/421 (1-12) and 548/492/421 (2-17) from persons whose names have been recorded in the relevant *Khasra Girdawari* and *Khatauni* by way of duly registered General Power of Attorney

(‘GPA’), Agreement to Sell (‘ATS’), and receipts, all dated 16th October, 2002. Copies of the aforesaid documents have been annexed with the petition. Apart from these not being valid instruments for transfer of title, it appear that the Petitioners, 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 long after the aforementioned notifications were issued. Thus, the *locus* of the Petitioners is extremely doubtful.

4. It is averred by the petitioners that he has since constructed quarters on the subject land, for the residence of his employees and servants, and for rental purposes. It is further averred by the petitioner that while a possession report was prepared on 19 January, 2006, it was not prepared on site, and possession of the land was never taken. It is further averred that compensation in respect of the subject land has also not be paid.

5. It is averred by the petitioner that he had earlier filed W.P.(C) 8825/2016 (‘earlier suit’), titled ***Deepak Mansharamani v. Union of India***, before this Court, which had been dismissed as withdrawn with the liberty to file it afresh.

6. Counter affidavits have been filed on behalf of the LAC and the DDA. In the counter affidavit of the LAC dated 7th March, 2018, it is averred that possession of the subject land was taken on the spot and handed over to the DDA on 19th January, 2006. It is further averred that the petitioner is not the recorded owner,

and that compensation has been paid to majority of the recorded owners, though the exact status of payment of compensation cannot be ascertained by reason of there being no entry regarding payment in the *Naksha Muntazamin*. It is also averred that the present petition is liable to be dismissed as being barred by *Res Judicata* in view Court's decision in the earlier suit. In the counter affidavit of the DDA dated 30th July 2018, it is averred that possession has been taken by Possession Proceedings conducted on 19th January, 2006, a copy of which has been annexed to the counter affidavit. It is further averred that compensation of a sum of Rs.10,00,00,000/- has been released through a cheque [cheque No. 887574] dated 28th August, 1990. It is also averred that this Court in its dismissal order in the earlier suit had observed that the copy of the GPA placed on record does not state that the subject land is part of the impugned acquisition proceedings. It is further averred that the petitioner has no right, title, or interest over the subject land.

7. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC, wherein the averments of the LAC have been denied. Further, the petitioner admits that the GPA and ATS furnished during the proceedings in the earlier were found to be incomplete, because of which the earlier suit was withdrawn with the liberty to file it afresh.

8. During the course of the hearing it transpired that the subject land forms part of Village Jasola, which is an unauthorized colony and is being considered for regularization. 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 have been submitted and which are awaiting regularization has been put up. Village Jasola is one of those unauthorized colonies which figures at SL No. 1243 (Regn No. 1381). Clearly, therefore, the property in question forms part of an 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. 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 W.P. (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. For the aforementioned reasons, the writ petition is dismissed. The interim order dated 8th December, 2017 is hereby vacated. The application for stay is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 05, 2019
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