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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 11617/2017

MOHD. WASEEM

.... Petitioner

Through: Mr. Arun Kumar
Kaushik, Advocate.

versus

UNION OF INDIA AND ORS.

.... Respondents

Through: Mr. Sanjay K.
Pathak, Mr. Sunil Kumar Jha,
Mr. M.S. Akhtar, Advocates
for Respondent Nos. 1 & 3.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

09.08.2019

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

“(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition proceedings with respect to land being 500 Sq. Yds. out of total land measuring 4 Bighas 06 Biswas, of Khasra No. 1081/509(04-06), situated in the revenue estate of Village Madanpur Khadar, Tehsil-Kalkaji, New Delhi, to the extent of his respective share, having lapsed and further quashing of the impugned Award No. 20/1992-93 with respect to land being 500 Sq. Yds. out of total land measuring 4 Bighas 06 Biswas, of Khasra No. 1081/509(04-06), situated in the revenue estate of Village Madanpur Khadar, Tehsil-Kalkaji, New Delhi, to the extent of his respective share, in the interest of justice and equity;

(ii) Further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land of the land being 500 Sq. Yds. out of total land measuring 4 Bighas 06 Biswas, of Khasra No. 1081/509(04-06), situated in the revenue estate of Village

Madanpur Khadar, Tehsil-Kalkaji, New Delhi, to the extent of his respective share, in the interest of justice.”

2. The background facts are that the land in question i.e. 4 *Bighas 6 Biswas* in Khasra No. 1081/509 situated in the Revenue Estate of Village Madanpur Khadar, Tehsil-Kalkaji, New Delhi (hereafter, ‘subject land’) was notified under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) on 23rd June, 1989. This was followed by a declaration under Section 6 and Section 17 of the LAA dated 22nd June, 1990. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 20/92-93 on 22nd June, 1990.

3. As far as the Petitioner is concerned, it is stated in the petition that the recorded owners of the subject land executed a General Power of Attorney (‘GPA’) dated 4th July, 1988 in favour of one Shri Yogender Kumar and that he in turn, executed a GPA in favour of the Petitioner on 31st May, 2011. A copy of the aforesaid GPA has been annexed with the petition. Apart from this not being a valid instrument for transfer of title, 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. Therefore, the Petitioner’s *locus* to file this petition is extremely doubtful.

4. It is stated in the petition that the possession of the subject land remains with the Petitioner and that he has not been paid or tendered any compensation. Thereafter, reference has been made straightaway made to Section 24 (2) of the Right to Fair Compensation and Transparency in Land

Acquisition, Resettlement and Rehabilitation Act, 2013 ('2013 Act') and the Petitioner's entitlement to a declaration of deemed lapsing under the said Section on the ground that both conditions of possession not having been taken and compensation not paid, have been met. In this context, the petition adverts to the decision of the Supreme Court in ***Pune Municipal Corporation v. Harakchand Misrimal Solanki (2014) 3 SCC 183.***

5. Counter affidavits have been filed by the LAC, DDA and the Delhi Metro Rail Corporation (DMRC). In the counter affidavit of the LAC it is stated that the petition is barred by considerable delay and laches. It is also stated that the Petitioner has not placed on record any document to prove any right, title or ownership over the subject land. In this regard, it is further stated that the Petitioner has merely placed on record GPAs which post-date the LAA Sections 4 and 6 notifications and that accordingly, the Petitioner cannot challenge the acquisition proceedings. Reference has been made here to the decision of the Supreme Court in ***Meera Sahni v. Lt. Governor of Delhi (2008) 9 SCC 177.***

6. As regards possession of the subject land, it is stated that the possession of Khasra Nos. 1081/509(6-03) was taken on 3rd December, 2012. It is stated that compensation for acquisition of the subject land was paid to the recorded owners and that this is evidenced by the *Naksha Muntazamin* with the LAC.

7. In the counter affidavit of the DDA, it is stated that possession of the subject land was taken on 3rd December, 2012 and that the compensation of

a sum of Rs.5457297/- was deposited in the Court of the ADJ by a cheque No. 767216 on 28th October, 2014.

8. In the counter affidavit of the DMRC, it is stated that the DDA by a letter dated 26th December, 2012 allotted the subject land to the DMRC for the construction of a workshop cum Maintenance Depot for Janakpuri-Botanical Garden Metro Corridor i.e. (Line 8) of MRTS Project, Phase-III. It is stated that out of the total 2,27,978.52 sq. mtrs of the land that was allotted to the DMRC, possession of 115820.19 sq. mtrs of the land could not be taken due to the stay that was granted by this Court in *Shram Vihar Resident Association v. Union of India*.

9. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC and the DDA, where the averments in the counter affidavit have been denied and the averments in the writ petition reiterated.

10. In the course of the hearing, it transpired that area in which the subject land is situated i.e. Shram Vihar Colony, Abul Fazal Enclave (Main), Kalindi Kunj Road Okhla is an unauthorized colony. On the website of the Department of Urban Development, GNCTD a list of unauthorized colonies awaiting regularization has been put up. Abul Fazal Enclave (Main), Kalindi Kunj Road, Okhla figures at Sl. No. 366 on that list. Therefore, there can be no doubt that the subject land forms part of an unauthorized colony. 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.

11. It must also be noted that in respect of the award impugned in the present petition, this Court has by a detailed order dated 11th February, 2019 in *Mrs. Rita Khanna v. Union of India* [W.P.(C) 71/2018] declined to grant the relief of a declaration of deemed lapsing as regards the instant colony.

12. 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.

13. 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.

14. For the aforementioned reasons, the reliefs sought in the petition cannot be granted. The interim order dated 22nd December, as confirmed on 2nd April, 2018, stands hereby vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 09, 2019

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