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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10805/2015**

LOVE KUMAR JAIN Petitioner
Through Mr. Preet Sokhol, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through Mr. Yeeshu Jain with Ms. Jyoti
Tyagi, Advocates for Respondent/LAC/L & B
Mr. Anil Kathuria, ASC for Respondent No.3/DDA
Ms. Arti Bansal, Advocate for Respondent/DDA

+ **W.P.(C) 10809/2015**

KAILASH JAIN Petitioner
Through Mr. Preet Sokhol, Advocate

versus

GOVT. OF NCT OF DELHI & ANR Respondents
Through Mr. Yeeshu Jain with Ms. Jyoti
Tyagi, Advocates for Respondent/LAC/L & B
Mr. Anil Kathuria, ASC for Respondent No.3/DDA
Ms. Arti Bansal, Advocate for Respondent/DDA

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER
24.01.2019

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1. These two petitions arising out of common set of facts and have been disposed of by a common judgment. However they have been heard separately.

2. The prayers in each of the petitions are as under:

“a) Issue a Writ order or direction in the nature of Certiorari thereby quashing and Declaring that entire acquisition proceedings including the award bearing No. 816 dated 23.11.1956 in respect of land of the Petitioner situated in the Revenue estate of Village Bhalswa, Jahangirpur, which is a fully built up area and now falling in provisionally regularised colony namely Guru Nanak Dev Colony, Delhi Tehsil North West, being void and of no legal effect having been lapsed on account of provisions of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as well as the various judgement of this Hon'ble Court in various similar Writ Petitions.

b) Mandamus directing the respondents, its agents, servants, assignees, representatives etc., not to in any manner whatsoever, interfere with the peaceful enjoyment and possession of the said lands presently in possession and occupation of the Petitioner and/or trying to demolish the structures built thereon.

c) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. The admitted facts are that the land in question stood acquired in terms of the Award No.816 dated 23rd November, 1956 under the Land Acquisition Act, 1894 ('LAA'). As far as WP(C) No.10809/2015 is concerned, it is stated that the Petitioner Shri Kailash Jain on 11th February, 2010 entered into an agreement to sell with Shri Inder Singh whereby he agreed to purchase ½ undivided share in agricultural land comprising Khasra No. 308 (admeasuring 4 bighas and 16 biswas) and Khasra No. 309 (again admeasuring 4 bighas and 16 biswas) situated in Village Bhalswa.

4. As far as WP(C) No. 10805/2015 is concerned, it is stated that Shri Kailash Jain entered into an agreement to sell dated 28th June, 2010 with one Smt. Laxmi Dev agreed to purchase 1150 sq. yds in Khasra No. 308 and 2420 sq. yds. in Khasra No. 309. It is claimed that the land in question in both petitions is falling in the provisionally regularised unauthorised colony named Guru Nanak Dev Colony.

5. As far as WP(C) No.10809/2015 is concerned, it is stated that Shri Kailash Jain filed a suit for specific performance being CS (OS) No.1577/2012 against Shri Inder Singh which got amicably settled on 23rd April, 2014 with the suit being decreed in terms of the settlement. It is stated that pursuant thereto Shri Kailash Jain paid the entire amount as agreed and Shri Inder Singh executed a General Power of Attorney ('GPA'), a Will and another documents in favour of Shri Kailash Jain. It is stated that the sale deed could not be executed since the colony i.e. Guru Nanak Dev Colony was an unauthorised colony and was under the process of being authorised. It is stated that Shri Kailash Jain got the property mutated in his favour and at that time i.e. 17th March, 2015 came to know that the land had been acquired under Award No. 816 dated 23rd November, 1956. He is supposed to have filed an RTI application on 19th March, 2015 & 20th April, 2015, to which he has received a reply confirming that the land in Khasra Nos. 308 & 309 of Village Bhalswa, Jahangirpur stands acquired under the Award No. 816 and as per the records available of the LAC, the Award is not traceable.

6. As far as WP (C) No. 10805/2015 is concerned, it is stated that on

account of the dispute between Shri Kailash Jain and Smt. Laxmi Devi, Shri Kailash Jain filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 against Smt. Laxmi Devi which was numbered as OMP No. 788/2012 which was amicably settled on 3rd September, 2012. It is stated that pursuant thereto Shri Kailash Jain paid the consideration to Smt. Laxmi Devi who executed a GPA, a Will and other documents in favour of his son Shri Love Kumar Jain. It is also stated that no sale deed could be executed since the property in question is not a part of an authorised colony, namely Guru Nanak Dev Colony. Here again it is stated that the property got mutated in the name of Shi Love Kumar Jain S/o Shri Kailash Jain and only later under the RTI Act he realised when a reply was received on 20th April, 2015 that the land stood acquired under Award No. 816.

7. The admitted position therefore in both petitions is that the property in question is subject matter of an unauthorised colony awaiting regularisation.

8. As far as the LAC is concerned, a reply was filed on 16th April, 2018 in WP(C) No. 10805/2015 confirming that compensation had been sent to the Revenue Deposit ('RD') and physical possession was taken way back on 15th May, 1997 and handed over to the beneficiaries i.e. DDA. It is stated that the GPA/Agreement to Sell was based on false, fabricated and motivated grounds. Likewise, an identical counter affidavit has been filed in WP(C) No. 10809/2015.

9. Since the admitted position in both petitions is that the property in question forms part of an unauthorised colony namely Guru Nanak Dev Colony, the question of the Court granting the relief of declaration of

deemed lapsing of land acquisition proceedings under Section 24(2) of the 2013 Act does not arise.

10. In its order dated *10th January, 2019 in WP(C) No. 3630/2018 ‘Akhil Sibal vs. GNCTD’* it was observed in this context by this Court as under:

“16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question – one is to seek regularization by contending that the building on the land in question is part of an unauthorized colony, the other is to invoke Section 24 (2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24 (2) of the 2013 Act is, in the circumstances, misconceived. Clearly, therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves.

17. Further, the manner in which the facts have been narrated, a relief under Section 24 (2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No.190/2016 *R. Bhagwan Batra v. Government of NCT of Delhi*, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land an unauthorized colony i.e. Guru Ramdass Nagar. The Court there has pointed out that the Petitioner should be pursuing their case for regularization.

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 tried 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.”

11. This was further reiterated by this Court in its order dated 17th January 2019 in WP(C) No. 4528/2015 (*Mool Chand v. Union of India*) where the Court has held as under:

“34. The question then arises whether only the points of difference between the decisions in *Pune Municipal Corporation (supra)* and *Indore Development Authority v. Shailendra (supra)* and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in *Indore Development Authority v. Shailendra (supra)*, it is only on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., *Pune Municipal Corporation (supra)* and *Indore Development Authority v. Shailendra (supra)*).

35. The other point of difference was that arising in *Yogesh Neema v. State of MP (supra)* where the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra)* as regards exclusion of the period covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in *Indore Development Authority v. Shailendra (supra)* unanimously overruled the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (supra)*. On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view qua Question III addressed in *Indore Development Authority v. Shailendra (supra)* i.e. “Whether section 24 of Act of 2013 revives barred and stale claims?” On this question there was no view (much less a contrary view) expressed in *Pune Municipal Corporation (supra)* or for that matter in any other subsequent decision of a

smaller, co-ordinate or even larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.

12. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to “all the aspects” being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra* (*supra*) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot revive old and stale claims.”

13. Consequently, both these petitions are without merit and are accordingly dismissed.

14. The interim order dated 23rd November, 2015 which was confirmed on 30th November, 2017 is hereby vacated.

S.MURALIDHAR, J

SANJEEV NARULA, J

JANUARY 24, 2019

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