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

+ **W.P.(C) 11715/2015**

SHEELA GARG

..... Petitioner

Through Mr. J.B. Ravi, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Sanjay Kumar Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar for LAC
Mr. Pawan Mathur for DDA

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

ORDER

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23.04.2019

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

“(a) Issue appropriate writ, order or direction declaring that the entire land acquisition proceedings initiated by Delhi Administration vide Notification No. F. 4(60) 84/L&B (ii) dated 27.1.84 under section 4 and Notification F. 4(60) 84/L&B (ii) dated & 18.9.84 under section 6 of the Land Acquisition Act, 1894 and further consequent proceedings in respect of a plot measuring 500 sq. Yds out of/part of Khasra No. 891 & 892 situated at revenue estate of village Nawada, Nazafgarh Road, Delhi, presently known as plot No. 4 Shantipark, Uttam Nagar, New Delhi-59, have lapsed under section 24(2) of THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 and order for consequent relief in respect of their above said land.

(b) Issue further writ of mandamus or any other appropriate writ order or directions to the Revenue authorities directing them to make appropriate and suitable amendments/modifications/corrections in the revenue records/entries by entering the aforesaid land/property a plot measuring 500 sq. Yds out of Khasra No. 891&892 situated at revenue estate of village Nawada, Nazafgarh Road, Delhi, presently known as plot No. 4 Shantipark, Uttam Nagar, New Delhi-59, in the name of the petitioner in accordance with law.”

2. The background facts are that land in question i.e. Khasra No. 891 and 892 (500 Sq. yards) located in the revenue estate of Village Newada, Nazafgarh Road was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 27th January 1984. This was followed by declaration under Section 6 of LAA on 18th September 1984 that the land was required for the public purpose of “planned development of Delhi”. The Land Acquisition Collector (LAC) passed the impugned Award No. 159/86-87 on 19th September 1986.

3. As far as the Petitioner is concerned, it is stated in the petition that she is “the absolute owner of the immoveable property, i.e. a plot of land measuring 500 sq. Yds out of Khasra No. 891& 892 situated at revenue estate of village Nawada, Nazafgarh Road, New Delhi-59, presently known as plot No. 4 Shantipark, Uttam Nagar, New Delhi-59.”. According to the Petitioner, she purchased the property from one Shri Rajinder in the year 1988 i.e. nearly two years after the land acquisition award was passed. It is stated in the Writ Petition that the petitioner filed a Suit No. 25/1998 for permanent injunction against DDA in which interim protection was granted to the Petitioner vide order dated 4th September 2000. It is stated that in another Suit No. 882/2006, on 25th May 2011 a decree was passed by the

trial court in favour of the Petitioner in view of issuance of provisional certificate of regularisation.

4. Enclosed as Annexures are ‘the sale documents’. A close scrutiny of the documents shows that the property in question purportedly was purchased through an Agreement to Sell (ATS) dated 26th March 1988 and General Power of Attorney (GPA) on 17th March 1988. 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. 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.

5. 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. Further, the date of passing of the Award is more than five years prior to 1st January, 2014 i.e. the date of the 2013 Act coming into force.

6. According to the LAC, physical possession of Khasra No. 891(2-09) and 982(2-00) was taken on 7th September 1991 by demolition proceedings and

handed over to the DDA on spot. It is stated that the remaining land admeasuring (1-11) in Khasra No. 892 could not be taken due to built up. The compensation amount is stated to have been deposited in the Reference Court under Section 30/31 of the LAA. It is also stated that the Petitioner is not the recorded owner of the land and has not placed any document on record to show that the land in question has been purchased from the recorded owner. It is also stated in Para 5 of the counter affidavit that the GPA executed in favour of Shri Rajender is invalid and that he does not hold a proper title with respect to the suit property. It is further pointed out that the Petitioner lacks the *locus standi* to seek the reliefs prayed for, as admittedly, she has occupied the property in question through documents which do not have any legal sanctity.

7. A separate counter affidavit has been filed by the DDA confirming that physical possession of the subject land was taken on 7th September 1991. It is stated that in Suit No. 882/2006 the trial court has passed a partial decree in favour of the Plaintiff on 25th May 2011 and the matter is fixed for plaintiff's evidence. On the aspect of compensation it is stated that, a sum of Rs. 2 Crores vide Cheque No. 0018462 and Rs. 5 Crores vide Cheque No. 0021239 was sent to the LAC by revolving fund.

8. In the rejoinder filed by the Petitioner, it is stated that the physical possession still remains with the Petitioner and the LAC has only taken symbolic possession. From the rejoinder, therefore, it is plain that there were a series of GPAs, none of which was a legally valid document as regards ownership and title, which form the basis of the Petitioner's claim of

‘ownership’ of the property in question.

9. In the course of the hearing, it transpired that Shanti Park in Village Newada, Nazafgarh Road 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. Shanti Park is one of those unauthorized colonies, which figures at S. No. 1392. Clearly, therefore, the property in question forms part of the unauthorized colony.

10. 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 ***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 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.”

11. 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 therein, 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.

12. Consequently, the reliefs prayed for in the petition cannot be granted. The writ petition is dismissed. The interim order dated 18th December 2015

which stood confirmed on 23rd November 2017 is hereby vacated. The applications are also disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 23, 2019

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