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

+ **W.P.(C) 12064/2015**

UJWAL KAPOOR Petitioner
Through Mr. N.L.Anand & Mr. Akhil Sachar,
Advocates
versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ORS Respondents
Through Mr.Yeeshu Jain, Standing counsel
with Ms. Jyoti Tyagi, Advocates for
L& B/LAC.
Mr. Dhanesh Relan, Standing counsel
with Mr. Rajeev Jha & Ms. Komal
Sorout, Advocates for
Respondent/DDA

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **29.07.2019**

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

“a) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Notification dated 28.04.1995 being Notification No. F.11(17)/91/L&B/LA/6518 issued under Section 4 of the Land Acquisition Act, 1894 issued in respect of the land forming part of Village Shahbad Daulatpur quash and set aside the same;

b) Issue a Writ of Certiorari and/or a Writ, order or direction in the

nature of Certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 26.4.1996 being No.F.10(29)/96/L&B/LA/20 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

c) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the declaration dated 26.4.2013 being F.11(17)/91/L&B/LA/1285 under Section 6 of the Land Acquisition Act, 1894 quash and set aside the same;

d) Issue a Writ of Certiorari and/or a Writ, order or direction in the nature of Certiorari calling for the records of the case and after examining the legality and validity of the Award No. 1/98-99 dated 24.4.1998 quash, and set aside the same;

e) Issue a Writ, Order or direction in the nature of Mandamus and/or a Writ, order or direction in the nature of Mandamus calling for the records of the case and after examining the legality and validity of the same direct, the Respondents not to interfere/dispossess the Petitioners from their land forming part of Khasra Numbers as indicated in the Schedule-A;

f) Issue a Declaration that the acquisition proceedings with respect to the land of the Petitioner as indicated in Schedule-A be deemed to have lapsed.”

2. Notice was issued to the Respondents on 22nd December, 2015, on which date this Court had directed the parties to maintain status-quo. Subsequently, on 21st January, 2019 the following order was passed:

“1. The counsel for the Petitioner confines his relief to prayer C where he is questioning the validity of the subsequent declaration dated 26th April 2013 issued under Section 6 of the Land Acquisition Act, 1894. He seeks to rely upon the decision in *Sunil Goel v. State (2014) 211 DLT 382*.

2. The scope of the present petition is, therefore, confined only to the above prayer C. None of the other prayers can be entertained.

3. In view of the orders passed by the Supreme Court in ***Rahul Gupta v. DDA***, the interim order dated 22nd December 2015 passed by the Court which was continued thereafter is hereby vacated. CM Appl. 32028/2015 is dismissed.

4. The limited aspect of the above prayer C will be dealt with on the next date. List for hearing on 29th July 2019.”

3. Specific to Prayer ‘C’, the averment by the Petitioner is that the declaration under Section 6 of the Land Acquisition Act, 1894 (‘LAA’) issued on 26th April, 2013 is belated and that the judgment of this Court in ***Sunil Goel v. State*** (*supra*), which has subsequently been affirmed by the Supreme Court by the dismissal of the special leave petition filed by the Respondents therein, where in similar circumstances the said notification was held to be bad in law, would squarely apply.

4. The DDA has enclosed the possession proceedings dated 13th January, 1997 which shows that physical possession of the land in the relevant Khasra was indeed taken over. Copy of the said possession proceedings has been enclosed with Annexure R-1 to the counter affidavit.

5. To begin with, it requires to be noticed that the public purpose for which the land was acquired was the Rohini Residential Scheme. The Supreme Court has, by virtue of the orders dated 18th October 2016 of the Supreme Court in the IAs in SLP (C) 16385-88 of 2012 (***Rahul Gupta v. DDA***),

clarified that even if on the date of the said order of the Supreme Court, actual physical possession of lands acquired for the Rohini Residential Scheme was not with the DDA, if such physical possession was not handed over to the DDA within ten days thereafter, the DDA would be deemed to be in physical possession of the lands in question.

6. The second fact to be noted is that in para 3(i) of the petition, reliance is placed on the decision dated 21st February, 2015 in WP(C) No. 3103/2014 (*Prahlad Vihar Residents Welfare Association v. State*) which quashed the declaration dated 26th April, 2013 in so far as those Petitioners there were concerned. That was done by relying on the decision in *Sunil Goel v. State* (*supra*). In the abovementioned order dated 21st February 2015, the Court noted “we are satisfied that the Petitioners in this writ petition was before this Court in the earlier round as also before the Supreme Court either in its own name or representative through predecessors-in-interest.” However, in the present case the present Petitioner has not averred that he ever approached any Court earlier for any such relief to challenge to the land acquisition proceedings.

7. The third factor which requires to be noticed is that the Petitioner in the present case does not dispute that the land is located in Prahlad Vihar, which is an unauthorised colony. In fact, in the above context that the following averment of the DDA in para 15 of its counter affidavit is significant:

“15. With regard to the land in question allegedly being part of an unauthorized colony which are likely to be regularized. It is submitted that the issue of regularization of unauthorized

colony is within the jurisdiction of GNCTD. It is submitted that the land is required for and is an integral part of Rohini Residential Scheme.”

8. In the rejoinder affidavit, the Petitioner seeks to contend that there were only paper proceedings carried out and that the Petitioner continues to be in undisputed physical possession of the land in question. Interestingly even in the rejoinder affidavit, the Petitioner does not dispute that the land forms part of an unauthorised colony awaiting regularisation as has been averred in para 15 of the DDA’s counter affidavit. This is one aspect which was not considered by this Court in its decision in ***Sunil Goel***. Prahlad Vihar in Sector 25 Rohini figures in the list of unauthorised colonies awaiting regularisation put up on the website of the Department of Urban Development, GNCTD at Sl No. 1023.

9. As far as unauthorised colonies are concerned, this Court has consistently held that such land forming part of unauthorized colonies, whether or not awaiting regularization, would not be amenable to the relief under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘2013 Act’). The legal position has been explained in order dated 17th January, 2019 in ***Mool Chand vs. Union of India 2019 (173) DRJ 595 DB***, which held 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 legal position in this regard in light of a similar Section 6 LAA notification has been explained by this Court in *Shivi Talwar v. Govt. of NCT of Delhi 2019 (174) DRJ 390 (DB)*.

11. Therefore in the present case the relief in prayer 'C' for cannot be granted. The other prayers have already been rejected by this Court by the order dated 21st January 2019.

12. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 29, 2019

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