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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 12127/2015 & CM APPL. 32225/2015

NARINDER LAL ANAND & ORS.

.... Petitioners

Through: Mr. N.L. Anand and
HL. Narula, Advocates.

versus

THE LT. GOVERNOR & ORS.

.... Respondents

Through: Mr. Yeeshu Jain,
Standing Counsel for
LAC/L&B along with Ms.
Jyoti Tyagi.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

07.08.2019

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Dr. S. Muralidhar, J.:

1. At the outset, Mr. Akhil Sachar, learned counsel appearing for the Petitioner sought discharge stating that the Petitioner No.1 would like to present the case himself. Accordingly Mr. Sachar was discharged as counsel. The Court has heard the submissions of Mr. N.L. Anand, the Petitioner No.1 who appears in person for himself and other Petitioners who are his family members. The Court has also heard the counsel for the Respondents.

2. 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

21.3.2003 being No. F11(19)/2G01/L&B/LA/20112 issued under Section 4 of the Land Acquisition Act, 1894 issued in respect of the land forming part of Village Prehladpur Bangar 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 19.3.2004 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 Award No. 06/2005-06/DC(N-W) dated 27.6.2005 (Annexure-C to the Writ Petition) quash and set aside the same

d) 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”

3. The background facts are that the land in question i.e. 14 *Bighas* 8 *Biswas* in Khasra No. 21/8 (2-13), 12/2(2-12), 13(4-8), 17(0-11) and 18 (4-4), situated in the area of Village Pehlادpur Bangar, National Capital Territory of Delhi (hereafter, ‘subject land’) was notified under Section 4 of the Land Acquisition, 1894 on 21st March, 2003 for the public purpose of the “Rohini Residential Scheme”. This was followed by a declaration under Section 6 dated 19th March, 2004. The Land Acquisition Collector (‘LAC’) passed an award being Award No. 06/2005-06/DC(N-W) dated 12th July, 2005.

4. As far as the Petitioners are concerned, it is stated that they are the recorded owners of the subject land. A copy of the *Khatauni* dated 19th August, 2004 has been annexed with the petition. The narration in the petition is that although the LAC in the impugned Award had recorded that a supplementary Award in respect of the trees situated on the land that was sought to be acquired will be passed. It is the case of the Petitioners that till date no such supplementary Award has been passed and that the Petitioners have not been paid any compensation as regards the Eucalyptus trees on the subject land.

5. It is averred that the Petitioners received partial compensation of a sum of Rs.74,29,920/- on 7th December, 2006 under protest. It is further averred that the Petitioners through their Power of Attorney holder had sent letters dated 27th September, 2005, 3rd November, 2007 and 9th August, 2010 to the LAC, requesting the LAC to pass a supplementary award in respect of the trees and pay compensation to the Petitioners. In para 5 (d) of the petition, it is stated that by a letter dated 11th September, 2007 issued by the L&B Department, the DDA has been informed of the decision of the Lt. Governor of Delhi. A copy of the aforesaid letter has been annexed to the petition.

6. It is further averred that possession of the subject land has been with the Petitioners continuously since August, 1986. It is averred that actual physical possession of the subject land has not been taken and possession proceedings, if any, were mere paper proceedings. Thereafter, the petition straightaway refers to the enactment of The Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation & Resettlement) Act,

2013 ('2013 Act') and the Petitioners' entitlement to a declaration of deemed lapsing under Section 24 (2) on the ground that possession of the subject land has not been taken and has remained with the Petitioners.

7. A counter affidavit has been filed on behalf of the DDA. It is averred therein that the land bearing the Khasra Nos. 21//13(4-08), 21//17 (0-11), 21//18 (4-04) in Village Pehladpur Bangar was handed over by the LAC to the DDA on 26th August, 2005 for the Rohini Residential Scheme (RPD-IV). It is averred that the compensation of a sum of Rs.80,40,76,004/- by way of cheque No.74064 dated 9th August, 2005 was handed over to the L&B Department for disbursement among the eligible persons.

8. A rejoinder has been filed by the Petitioner to the counter affidavit of the LAC, where the Petitioners have denied the averments of the DDA and reiterated the contents of the petition.

9. From the averments in the petition itself, it emerges that the subject land being situated in Village Prehladpur Bangar is part of an unauthorized colony and that the said colony has been granted a certificate of provisional regularization by the letter dated 11th September, 2007. 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 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.

10. From a perusal of the impugned Award pertaining to the subject land, it also emerges that the subject land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th October 2016 of the Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (*Rahul Gupta v. DDA*) even if on the date of the said order of the Supreme Court, actual physical possession 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 possession of the lands in question. Consequently the claim of the Petitioners that they continue to remain in actual physical possession of the subject land is to no avail.

11. Mr. Anand appearing in person repeatedly urged that in the absence of any Supplementary Award for the trees standing on the subject land, it cannot be said that there was in the first place any Award at all for acquisition of the subject land. He referred to the definition of the word 'land' in the LAA, the 2013 Act and other statutes to urge that trees were very much part of the land.

12. While as a general proposition there can be no dispute that land would including the trees growing thereupon, but in the present case since the acquisition is for the public purpose of the Rohini Residential Scheme and the question of possession is governed entirely by the orders of the Supreme

Court in *DDA v. Rahul Gupta (supra)*, this argument is of no help to the Petitioners. Therefore, even on the Petitioner's own showing, the factual position regarding possession is not clear.

13. Mr. Anand does not dispute that compensation has been paid in terms of the Award. The submission in para 5 (c) of the petition that "the Petitioners are ready and willing to refund the partial compensation received along with Interest" is in fact an admission that the Petitioners did receive compensation in terms of the Award. The submission that the impugned Award it is not the final Award and therefore not an Award in terms of the LAA contradicts prayer (c) in the petition which seeks the quashing of the impugned Award. There is in fact no prayer for a direction to the Respondents to pass a 'final' or supplementary Award.

14. In the circumstances, it is not possible to grant the Petitioner the relief of declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the 2013 Act.

15. Consequently, the Court finds no merit in this writ petition and it is dismissed as such. The interim order dated 23rd December, 2015 stands hereby vacated. The application for stay is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 7, 2019/abc