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

% **Date of decision: 17th November, 2021**

+ **W.P.(C) 10670/2021 & CM APPL.32904/2021**

UPPAL HOUSING PRIVATE LIMITED Petitioner

Through: Mr. Manish Vashisht, Sr. Adv. With
Mr. Manashwy Jha, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Dhruv Rohtagi, Adv. for
respondent Nos. 1 to 4 with SDM
Ajit Singh, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. This petition has been preferred questioning the validity of an order dated 04th September, 2021 passed by the respondent No.2. The order invoking the provisions made under Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act 1948 [hereinafter to be referred to as the "EPH Act"], proceeds to record that various irregularities and anomalies had come to the notice of the respondents in what was described to be "an ongoing consolidation process" pertaining to village Chandanhula, Tehsil Mehrauli New Delhi. In view of the aforesaid, the respondent No.2 has proceeded to restrain the petitioners herein from registering any deeds or documents or undertaking any further steps for sale or purchase of land in the concerned village.

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2. From the record, this much is evident that the process of consolidation in respect of village Chandanhula is stated to have commenced on or about 15th April, 1997. The petitioner obtained right and title over the property in question pursuant to sale deeds executed in its favour by individual landholders commencing from 07th October, 2005. Along with the writ petition, the petitioner has also placed on record the relevant abstracts of the Karyavahi Chakbandi register stated to have been drawn up in the course of consolidation on 26th April, 2003 in respect of its vendors. The sale deeds which ultimately came to be executed in favour of the petitioner record that the land in question fell within the extended *Abadi* of the village concerned. The sale deeds also undisputedly came to be executed in favour of the petitioners after permission had been accorded to the vendors in that respect by the ADM(LA).

3. Upon the execution of the sale deeds, the petitioner applied for requisite permissions for executing a Group Housing Project. The aforesaid project was proposed to be implemented over a total area admeasuring 19 bighas & 14 biswas. Before proceeding further, it would be pertinent to note that one of the issues which arose in the course of the consolidation of the land parcels over which the said group housing scheme was to be implemented related to an exchange which was proposed of a small portion of land comprised in Khasra No. 529 Min. That plot was exchanged with the Gram Sabha and in lieu thereof land located at Khasra Nos.100/4 & 101/2 came to be handed over to the petitioners in terms of an order of 17th May, 2007 passed by respondent No.4. The petitioner was also issued an extended *Abadi* certificate in respect of the plots comprised in the Group

Housing Project. The petitioner proceeded to obtain requisite permissions from various statutory authorities including the Municipal Corporation of Delhi, Airport Authority of India, and Archaeological Survey of India. These permissions for the project were accorded on 09th February, 2011; 18th July 2014; 12th June, 2019; & 21st May, 2015 respectively. The project was then accorded environmental clearance by SEIAA by its communications of 30th November, 2015 & 14th October, 2016. Pursuant to the aforesaid sanctions being obtained, the petitioner commenced construction work on the site in question in December, 2017.

4. In January 2018, one Farid Khan filed a petition under Section 21 of the Delhi Land Reforms Act, 1954 [hereinafter and for the sake of brevity to be referred to as “the DLR”] assailing the exchange of land between the petitioner and the Gram Sabha. The petition essentially questioned the order of the Consolidation Officer permitting an exchange as made in favour of the petitioner pertaining to Khasra Nos. 100/4 and 101/2 made on 17 May 2007. On this petition, which came to be registered as Case No. 15 of 2008, the Collector (South) passed an order of injunction on 25th September, 2019 restraining the petitioner from undertaking any further constructions on the aforementioned two plots.

5. In a related development and pertaining to these two plots alone, a writ petition came to be filed before this Court being W.P. (C) 1874/2018 with the petitioner there alleging that unauthorized constructions were being raised on the two plots noted above. Significantly on 30th July, 2018, the SDM, the respondent no.2 herein, submitted a status report in that writ petition disclosing therein that the subject land was part of the extended

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Abadi area of the village, the land was covered by MCD Byelaws and thus fell outside the purview of the Revenue Department.

6. In order to complete the narration of facts the Court also takes note of yet another order that came to be passed by the District Magistrate South on 25th September, 2019 restraining all construction activities on Khasra Nos.100/4 & 101/2. That order came to be challenged by the petitioner by way of W.P.(C) 6099/2020. On 24th September, 2020, that petition was withdrawn by the petitioners in light of a subsequent order which came to be passed by the Collector, South on 22nd September, 2020.

7. Dealing with the dispute which had been raised by Farid Khan in respect of the validity of exchange of the two plots aforementioned, the Collector, South while passing the aforesaid order proceeded to notice the order of status quo which operated on Case No. 15 of 2008 and consequently held that the order of restraint would apply only to the two plots forming subject matter of proceedings in that case. It was in the aforesaid backdrop that the petitioner had proceeded to withdraw the writ petition.

8. Parallely, Case No. 15 of 2008 which was progressing came to a close in terms of an order passed by the Collector, South on 22nd January, 2021 who held that since no proceedings as permissible in law against the order of exchange passed in 2007 had been initiated under the EPH Act, the proceedings were liable to be closed leaving it open to the aggrieved person to file an appeal. The Collector further noted that if it be assumed that consolidation proceedings had come to a close, the only remedy available

would be by way of a petition to the Financial Commissioner. He further proceeded to hold that proceedings under the DLR in any case would not be maintainable. Reserving the right of the petitioner there to initiate appropriate proceedings, the petition was disposed of.

9. Dealing with the issue of status of consolidation proceedings, the petitioner contends that once the extended Abadi certificates had come to be issued, the stand of the respondents that the same was ongoing cannot be sustained. The respondents have also placed reliance on a counter affidavit filed by the SDM, Mehrauli in W.P.(C) No.11601/2016 and brought on the record of this writ petition to highlight that as per the disclosures made therein, the respondents had clearly stated that the scheme of consolidation came to be confirmed by the Settlement Officer on 17th April, 2003. Referring further to the disclosures made in that affidavit, it was pointed out that as per the SDM, the final consolidation scheme was consigned to the records on 01st May, 2003. It is in the aforesaid backdrop that Mr. Vashisht, learned Senior Counsel contends that once the process of consolidation had come to a conclusion, the provisions of Section 30 of the EPH Act could not have possibly been invoked. Learned Senior Counsel has further contended that the order impugned here clearly flies in the teeth of the decision which was taken by the Collector, South on 22nd September, 2020.

10. Mr. Vashisht, learned Senior Counsel has submitted that the entire project is being implemented in an area which has become wholly urbanized and thus does not even fall within the ambit of the definition of land as employed under the DLR. Mr. Vashisht has in this regard drawn the attention of the Court to the principles enunciated by the Supreme Court in

Harpal Singh Vs. Ashok Kumar, (2018) 11 SCC 113 and the decision rendered by a learned Judge of this Court in **Shri Neelpadmaya Consumer Products Pvt. Ltd. Vs. Satyabir, 2016 SCC Online Del 761.**

11. In **Harpal Singh** dealing with the provisions made in the DLR Act and expounding on what would in fact constitute land as defined therein, the Supreme Court held thus:-

“5. Section 3(13) of the Delhi Land Reforms Act defines the expression “land” as follows:

“3. (13) “land” except in Sections 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes—

(a) buildings appurtenant thereto,

(b) village abadis,

(c) grovelands,

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation,

but does not include—

land occupied by buildings in belts of areas adjacent to Delhi town and New Delhi town, which the Chief Commissioner may by a notification in the Official Gazette declare as an acquisition thereto;”

The position of law which has been consistently followed is that where the land has not been used for any purpose contemplated under the Land Reforms Act and has been built upon, it would cease to be agricultural land. Once agricultural land loses its basic character and has been converted into authorised/unauthorised colonies by dividing it into plots, disputes of plot holders cannot be decided by the Revenue Authorities and would have to be resolved by the civil court.

The bar under Section 185 would not be attracted This position of law has not been controverted in the present proceedings.”

12. In **Neelpadmaya Consumer Products**, the learned Judge further explained the concept of land which may form subject matter of proceedings under the DLR and proceeded to hold that the factum of urbanization would be liable to be examined independent of the issuance of a notification under Section 507 of the Delhi Municipal Corporation Act, 1957. The learned Judge in **Neelpadmaya Consumer Products**, held that land which comes to be included within a master plan or a zonal plan as prepared for New Delhi would also cease to be governed by the provisions of the DLR. It would be relevant to extract the following observations as entered by the learned Judge in paragraph 23 of the report:-

“23. I agree with the argument which is urged on behalf of the plaintiff that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act. This later part of Section 3(13) of the Act does not talk of a notification only under Section 507 of the Delhi Municipal Corporation Act. The requirement of this later part of Section 3(13) of the Act is only that a notification is issued in the Official Gazette to make the land as part of the Delhi town and New Delhi town. Once a notification is issued applying a zonal plan issued pursuant to the master plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation, it has to be held that the lands cease to be the lands covered under the Act because of issuance of a notification in the Official Gazette results in the lands becoming part of the Delhi town. Additional reasoning on this aspect can be understood from the

object and the language found in Section 1 and Sections 3(5) and 3(15) of the Act and which Sections show that once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression land as defined in Section 3(13) of the Act. With humility, I am in complete agreement with the observations made by the learned Single Judge of this Court in the case of *Guru Pratap Singh* (supra) and which arrives at the same conclusion that once the land ceases to be agricultural, the land ceases to be the subject matter of the Act.”

13. It is in the aforesaid backdrop and in light of the reservation and use of the land in question under the Master Plan as published by the Delhi Development Authority on 23rd September, 2013 that Mr. Vashisht, learned Senior Counsel submits that the action initiated is wholly arbitrary and is liable to be set aside by this Court.

14. Countering the aforesaid submissions, Mr. Rohtagi, on the other hand, has placed reliance on the material brought on record by way of a counter affidavit filed by the respondents. Mr. Rohtagi, submits that during the course of investigation and enquiry, various irregularities had come to be noticed in the implementation of consolidation in the village in question. He has referred to certain internal reports and recommendations made to submit that further action is proposed and is under contemplation of the respondents and these factors clearly justified the passing of the impugned order.

15. The Court notes that although Mr. Rohtagi, learned counsel has contended that consolidation was ongoing, no cogent material has been

placed on the record in support of that contention nor was the attention of the Court drawn to any material existing on the record which may have even remotely established that consolidation proceedings were ongoing in the village in question. Mr. Rohtagi in this regard essentially relied upon certain observations appearing in the order dated 22nd January, 2021 passed by the Collector, South in Case No.15/2018 and more particularly the recitals appearing in paragraph 15 of that order to submit that the factum of an ongoing consolidation process was duly established. It becomes pertinent to note that the findings of the Collector, South in paragraph 15 of that order in this respect rest on a statement of the Tehsildar dated 07th January, 2021 and the fact that the “*khatauni paimaish*” had not been prepared.

16. The Court is constrained to observe that the fact of whether consolidation is ongoing or has come to a conclusion cannot rest on a mere bald certification of that fact by the Tehsildar. It is clearly not an issue which could be founded on mere *ipse dixit*. Despite repeated queries of the Court, the respondents failed to assert that a final consolidation scheme had not been published or that landholders had not been placed in possession of the plots earmarked and demarcated upon finalization of that scheme. The respondents do not allude to any factor or step in aid of conclusion of consolidation as contemplated in Sections 20 to 24 of the EPH Act which may have established that consolidation was ongoing.

17. Regard must be had to the fact that Section 24 of the EPH Act in unambiguous terms provides that the scheme shall be “*deemed to have come into force*” once landholders are inducted into possession and that

position shall remain undisturbed until a fresh scheme is brought into force or a change ordered pursuant to the provisions of Section 21 or orders passed under Sections 36 or 42 of the EPH Act. The Court in this regard takes into consideration the entry of the name of the vendors of the petitioner in the “*Register Karyawahi Chakbandi*” placed on the record as Annexures P-1 to P-9. It is also not the case of the respondents that the Government has invoked or initiated any action under Sections 36 or 42 of the EPH Act.

18. In fact, the record to the contrary reflects that upon completion of consolidation proceedings, the land holders were put into possession of the plots as a consequence of a final consolidation scheme coming to be enforced and it is only thereafter and consequent to all requisite statutory formalities being complied with that the sale deeds came to be executed in favour of the petitioner. Regard must be had to the fact that the provisions of Section 30 of the EPH Act operate only while consolidation proceedings are pending. The restraint operates upon a landowner or a tenant from transferring or otherwise dealing in any portion of the original holding only during the pendency of consolidation proceedings. The assumption on which the impugned order is based is clearly belied from the disclosures made in the various status reports and affidavits submitted by the respondents which have been referred to hereinabove. In the absence of any cogent material having been brought on record and which may have established that consolidation had not attained finality, the invocation of Section 30 of the EPH Act is clearly misplaced.

19. Regard must also be had to the fact that the respondent No.2 while proceeding to pass the impugned order has failed to advert to any valid circumstance which may have warranted a review of the position as taken by the Collector, South and embodied in the order of 22nd September, 2020 and which confined the dispute to the two plots which formed subject matter of the exchange sanctioned in 2007. Accordingly, and for all the aforesaid reasons, this Court finds itself unable to sustain the order impugned.

20. Before closing these proceedings, it must be stated that the present decision is not to be construed as either interdicting any enquiry that is contemplated by the Government or any further action that may be proposed in terms of the statutory powers so vested in the competent authorities under the EPH Act.

21. The writ petition is accordingly allowed. The impugned order dated 04th September, 2021 passed by the respondent no.2 shall consequently stand quashed and set aside.

22. The writ petition stands disposed of along with pending application.

YASHWANT VARMA, J.

NOVEMBER 17, 2021/neha