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

% Judgment delivered on: 15.02.2024

+ W.P.(C) 8375/2023

M S KHATU DHAM RESIDENCY PVT LTD Petitioner

versus

GNCTD AND ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Parvinder Chauhan, Mr. Abhilash Vashisth, Ms. Aakriti Garg, Mr. Sagar Gill and Mr. Neeraj Vats, Advocates

For the Respondent : Mr. Prashant Manchanda, ASC with Ms. Nancy Shah, Ms. Arani Mukherjee and Ms. H. Medha Dilip, Advocates

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India, 1950, *inter alia* seeking the following reliefs:-

“(a) Issue a writ, order or direction in the nature of certiorari thereby calling forth the records of the Respondent No. 1 in respect of the Application No. 90580000006463 from the office of the Respondent No. 1.

(b) After perusal of the records so called forth, issue a



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writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 24.02.2023 being without jurisdiction;

(c) Issue a writ, order or direction in the nature of Mandamus thereby directing the Respondent No. 1 to issue the NOC/Permission to the Petitioner Company.”

2. The petitioner was constrained to approach this Court with the instant writ petition aggrieved of the impugned order dated 24.02.2023 passed by respondent no.1-Additional District Magistrate (South-West) Delhi, whereby the No Objection Certificate (in short “NOC”) sought *vide* application no. 90580000006463 dated 08.12.2022 *qua* sale of the 1/3rd share of the land falling in Khasra No. 119//17 min (4-10), 18 min (0-7) 27 (0-4) total admeasuring 5 Bigha and 1 Biswa situated within the revenue estate of Village Bijwasan, had been rejected on the ground that it violates Section 33 of the Delhi Land Reforms Act, 1954 (in short “DLR Act”). The said rejection was predicated on the recommendation of the Patwari, Tehsildar and Naib Tehsildar of the district South-West, New Delhi.

3. The case of the petitioner is that by the Notification dated 24.10.1994, the Central Government had issued a notification in exercise of powers conferred by Section 507(a) of Delhi Municipal Corporation Act, 1957 (in short “DMC Act”), declaring the Village Bijwasan as an urbanized village.

4. It is also the petitioner’s case that the petitioner had purchased the subject land, as mentioned hereinabove, by virtue of a registered Sale Deed on 09.08.2011. The Sale Deed was registered in the name of the petitioner after obtaining the requisite NOC. Learned counsel submits



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that subsequently on 18.06.2013, the Central Government had issued a Gazette Notification bearing No. 1744 under Section 11-A Delhi Development Act, 1957 thereby the villages as “Low Density Residential Area” (in short “LDRA”). Subsequently, the petitioner sought to further put up the subject land for sale and had accordingly applied for the NOC with the respondent no.1 on 08.12.2022 in terms of Section 5 of The Delhi (Restriction of Transfer of Land) Act, 1972 for the sale of 1/3rd share in the subject land.

5. It is the case of the petitioner that on 10.02.2023, on a purportedly false report of the Patwari, forwarded by Tehsildar, on the ground that Village Bijwasan is still a rural Village and covered by the provisions of DLR Act, issuance of such no objection would violate the conditions of Section 33 of the DLR Act. The said report was forwarded further through proper channel and by way of the impugned order dated 24.02.2023, respondent no.1-ADM had declined the request for NOC and rejected the application. The petitioner thereafter had filed the present application.

6. Mr. Parvinder Chauhan, learned counsel appearing for the petitioner submits that once the Village Bijwasan was notified as an Urbanized Area by the Central Government under Section 507(a) of the DMC Act, 1957 in the year 1994, the applicability of the Act of DLR Act, 1954 is out of question. That apart, according to learned counsel, the repartition of the consolidated lands having already taken place, the ratio in the judgment learned Division Bench of this Court, titled ***Government of NCT of Delhi vs. Uppal Housing Private Limited & Others*** in LPA 573/2023 rendered on 02.08.2023, would have to be



made applicable to the present case. Inasmuch as, this Court has already held that once the repartition of the consolidated land has already taken place, the restriction of transfer of land under The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (in short “The East Punjab Holdings Act”) would not apply.

7. He relies upon para 16 to 18 of the judgment rendered by the Coordinate Bench of this Court in W.P.(C)10670/2021 titled ***Uppal Housing Private Limited vs. Government of NCT of Delhi & Others*** rendered on 17.11.2021 and the resulting appeal bearing LPA No. 573/2023.

8. In view of the aforesaid, it is contended that, the rejection of the application seeking NOC for the process of registering the Sale Deed *qua* the subject land would be contrary to the aforesaid judgments. He submits that in any case once the Village has been urbanized by virtue of exercise of powers under Section 507(a) of DMC Act, 1957 and the Village being Urbanized, the NOC cannot be declined.

9. Ms. Nancy Shah, learned counsel appearing for the respondent submits that the submissions made by Mr. Chauhan in respect of the position in law may not be disputed. However, she submits that there is no doubt that there is a violation of Section 33 of DLR Act, as the NOC from the Consolidation Officer, as required under Section 30 of The East Punjab Holdings Act, 1948, has also not been obtained.

10. Ms. Shah also refers to para 5 of the affidavit filed on behalf of the respondent to submit that the proceedings of consolidation are pending with respect to the Village Bijwasan on the basis that the process of consignment of new records is pending as also that there are



pending disputes pertaining to Consolidation still pending adjudication before the Consolidation Officer and as such it would be mandatory for any tenant or landowner, under Section 30 of The East Punjab Holdings Act, 1948 to obtain a permission from the Consolidation Officer before any intending sale can take place.

11. In rejoinder Mr. Chauhan submits that so far as subject land is concerned, there is no dispute pending and as such non grant of NOC in respect thereto is violative of his fundamental rights.

12. This Court has considered the arguments of learned counsel for the parties, perused the records as also the pleadings on record.

13. The initial point for consideration would be if the objection of the respondent is to be taken at its face value, the purchase of the subject land by the petitioner on 09.08.2011 by registered Sale Deed after obtaining NOC from the very same authority, would not have been possible.

14. This Court has also considered the document annexed to the rejoinder, as Annexure P-10, which is the NOC dated 03.08.2011, by virtue whereof, it is clear that the NOC by the Tehsildar, who is the competent authority, was issued to the seller from whom the present petitioner has purchased the subject land. There is no explanation given by the respondent as to under what process and what procedure of law, the said NOC/LSR was issued way back in the year 2011 and the same is now being denied in respect of the same subject land.

15. That apart, even on law, it is also not denied that in the year 1994, the Village Bijwasan was declared as Urbanized Area under Section 507(a) of DMC Act, 1957. This coupled with the ratio laid down by the



Supreme Court in ***Mohinder Singh Through LRs vs. Narain Singh*** reported in **2023 SCC OnLine SC 261**, makes it apparently clear that so far as the Village Bijwasan is concerned, the DLR Act, 1954 would not be applicable. Once the law has settled in that context, the restrictions etc, on the basis of provisions of Section 33 of DLR Act, 1954 cannot also be read to be an impediment to obtaining of such NOC.

16. The Coordinate Bench of this Court in ***Uppal Housing*** (Supra) had its judgment, particularly para 16 to 18 held as under:-

“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.”

17. In view of the aforesaid judgment, the statement of the respondent that certain disputes are pending will also pale into insignificance. According to Mr. Chauhan, learned counsel for the petitioner, the repartition of the consolidated lands has already taken place and the petitioner was put into possession on the basis of a new Khasra numbers. Moreover, the respondent has failed to place on record any document to show that disputes are pending.

18. This Court is in complete agreement with the learned counsel for the petitioner and applying the ratio laid down in ***Uppal Housing*** (Supra), this Court is also of the considered opinion that the effect of The East Punjab Holdings Act would not create any impediment in the



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petitioner seeking NOC from the concerned authority.

19. Keeping in view the aforesaid, there does not seem to be any legal or factual impediment in the right of the petitioner for seeking NOC from the concerned competent authority.

20. In view of the aforesaid as also the provisions of law and the judgment in the case of *Uppal Housing* (supra), the impugned rejection order dated 24.02.2023 is quashed.

21. As a consequence, the respondent no.1 is directed to issue NOC to the petitioner within three weeks from today, for the process of registration of Sale Deed pursuant to the application no. 90580000006463 dated 08.12.2022 placed at page 56 of the present petition.

22. With the aforesaid directions, the petition stands disposed of.

TUSHAR RAO GEDELA, J.

FEBRUARY 15, 2024

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