

(2019) 02 DEL CK 0353

In the Delhi High Court

Case No : Civil Writ Petition No. 4612 Of 2014, Civil Miscellaneous Application
No. 9177 Of 2014

Raj Singh & Ors

APPELLANT

Vs

Lt. Governor Of Delhi & Ors

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 7, 17
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24(2)

Citation : (2019) 02 DEL CK 0353

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Esha Mazumdar, Setu Viket, Ajay Verma, Sumit Mishra, Yeeshu Jain,
Jyoti Tyagi

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. The prayers in the petition as amended pursuant to the permission granted by this Court by an order dated 21st February, 2015 read as under:

"a. writ of Certiorari or any other appropriate writ, order or direction in the nature thereof, thereby quashing the notification no. F.10(29)/96/L&B/LA/19599 u/s 6 of the Land Acquisition Act 1894 dated 20/03/2013 and in consequence thereof quashing notification no. 10 (29)/96/L & B/ LA 11394, dated 27/10/1999 under section 4 of the said act.

(bb) writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to denotify the lands of the Petitioners i.e., khasra no.s 16/17 (4-16), 16/18 (4-16), 15/16 (4- 12), 15/7 (3-00); 35/1 (1-5); 38/8/2 (0-04), 38/13 (3-6); 22/23 (2-00), 39/3(3-08), 39/8/1 (0-19), 39/8/2(2-12), 39/9/2(1-19), 39/9/3(0-19), 39/12/1 (0-12), 12/2

(2-16); 26/21/2/2(2-18), 22/2(4-04), 35/1/2/1(0-01), 35/2/1(0-12), 35/1/2/2(0-08), 35/1/2/2 (2-15); 26/18 (2-04), 26/23(4-11); 24/16(4-14), 14/2 (1- 14), 37/5(0-12), 25/19/2(4-16), 25/20(4-10), 25/21 (4-09), 25/22/1/2(4-12), 24/17(3-18), 24/24(4-09), 24/25 (4-16), 37/1/2(2-19), 37/2(4-16), 37 /5(4-16), 25/26(0-04), 25/24/1 (4-00), 25/24/2(0-11), 25/25/1 (3- 11), 25/25/2(1-06), 37/3/1(1-08), 37/3/2(2-17), 37/4(4-16), 37/6/2 (2- 06) in Vill. Shahbad Daulatpur, Delhi;

c. Issue a writ of prohibition restraining the Respondents from dispossessing the Petitioners from their lands;

d. Award appropriate costs in the facts and circumstances of the case."

2. There are six Petitioners before the Court. Barring Petitioner No.2 whose address is given as Aurangabad in Maharashtra and Petitioner No.3 who is a resident of Printer Apartment, Sector-13, Rohini, the other Petitioners i.e. Petitioner Nos.1, 4, 5 and 6 are stated to be residents of Village and Post Office, Shahbad Daulatpur, Delhi-42.

3. It is stated in the petition that the Petitioners are "the owners and in possession" of the aforementioned land of the Khasra Numbers indicated which form part of "Shahabad Extension, Shahbad Part-II Colony, Delhi."

In para 13, it is stated that the lands of the Petitioners "form part of Village Shahbad Daulatpur, which is a part of the development area no. 175/RZ, which the Respondents have not only decided to regularize but also decided to denotify." It is stated in para 14 that the notification under Section 4 of the Land Acquisition Act, 1894 ("LAA") in respect of acquisition of the aforementioned land was issued on 27th October, 1999 for the public purpose of the Rohini Residential Scheme. This was followed by declaration under Section 6 read with Section 7 and 17 of the LAA on 3rd April, 2000.

4. It is stated that the predecessors-in-interest of the Petitioners No.1, 3, 4 & 5 filed WP (C) 2570/2000 (Mohinder Pal Singh v. Union of India) while predecessor-in-interest of Petitioner No.2 filed WP(C) No. 2327/2000 (Surendra Kumar Garg v. Union of India) and predecessor-in-interest of Petitioner No.6 filed WP(C) No. 2835/2000 (Rakhi Rughwani v. Union of India). Interim orders were initially granted in these petitions on various dates in May 2000. However, ultimately all these writ petitions were dismissed by this Court on 9th July, 2007.

5. The said Writ Petitioners then filed Special Leave Petitions in the Supreme Court which were converted into civil appeals in which the Supreme Court was pleased to direct interim stay of the order of the High Court.

6. In para 18 of the petition, it is stated that thereafter the Respondents decided to regularise the colony of the Petitioners. The RWA of the colony of the Petitioners applied for regularisation and submitted a survey plan. It is stated that the survey plan was prepared by a registered architect and filed in the concerned department.

7. In para 19 of the petition it is stated as under:

"19. That the colony of the Petitioners has already been issued a Provisional Certificate of regularization dated 17/09/2008 by the Lt. Governor of NCT of Delhi. The said colony of the Petitioners has been assigned 1304 as its number."

8. A copy of the provisional certificate of the regularisation has been enclosed as Annexure P-3 with the petition. It is stated that the name of the colony of the Petitioners figures in the list of the Provisional Regularization Certificates distributed to various unauthorised colonies which was published online by the Urban Development Department, Govt. of NCT of Delhi (GNCTD).

9. It is stated in para 23-A of the petition that despite a joint survey conducted by two teams comprising the Sub-Divisional Magistrate ("SDM") and officials of Respondents No.2 and 3 i.e. the Delhi Development Authority ("DDA") and the Land and Building Department (L&B), which identified the aforementioned land as "built up", the Respondents chose to proceed with the acquisition of the land.

10. It is stated that by a judgment dated 21st March, 2012 in the appeals filed by the predecessors-in-interest of the Petitioners, the Supreme Court quashed the declaration dated 3rd April, 2000 issued under Section 6 read with Section 17 of the LAA. The Supreme Court permitted the Respondents to invite objections under Section 5A of the LAA.

11. Thereafter, public notice dated 20th December, 2012 was issued by the Land Acquisition Collector (North) (LAC- North) inviting objections under Section 5 A of the LAA. The Petitioners filed their objections both individually and through the RWA. It is claimed that the said objections were never considered.

12. A final declaration under Section 6 of the LAA was issued on 27th March, 2013. It is contended that inasmuch as this was issued after a lapse of one year in terms of the LAA after excluding the period during which there was an interim stay and also excluding the Court proceedings, the said declaration was illegal. It is further contended that even if the statutory period of one year is to be computed from the date of the order dated 21st March 2012 of the Supreme Court wherein the original Section 6 declaration was quashed, there was still a delay of seven days in issuing the declaration dated 27th March, 2013 under Section 6 LAA.

13. When the petition was first listed on 25th July, 2014 while directing notice to be issued to the Respondents, an interim order was passed by this Court requiring the parties to maintain status-quo with regard to nature, title and possession of the land in question.

14. A counter affidavit has been filed by the DDA raising preliminary objections as to the maintainability of the petition. It is first submitted that the Petitioners have not placed any documents by which they are claiming right, title and interest over the land in question. It is pointed out that the mere filing of a copy of Khataoni to establish the right and title over land is misconceived and that in

any event it raises disputed questions of fact. It is also pointed out that the Petitioners are allegedly owners of different parcels of land and are not related to each other and therefore each has a separate cause of action and cannot maintain a common petition. It is further stated that none of these Petitioners were themselves parties to the cases earlier before this Court or the Supreme Court and therefore they do not have the locus standi to challenge the fresh declaration dated 20th March, 2013 issued under Section 6 of the LAA. The DDA's counter affidavit also states that in para 4 (ix) that the issue of regularisation of the unauthorised colony is within the jurisdiction of the Government of NCT of Delhi (GNCTD) and that the said unauthorised colony is yet to be regularised.

15. A separate counter affidavit has been filed by the LAC in which it is stated that the Respondents have taken possession of one Khasra No. i.e. 15//10(4-15) and that compensation in respect of the same thereof was also paid to its recorded owner. It must be mentioned herein that in the amended writ petition, the Petitioners have given up their claim to this Khasra Number.

16. The LAC also states that the Petitioners have not placed on record any documents of their respective ownerships or entitlement to the property in question, or to show how they have come to be in possession of the land in question. They have not filed copies of the original sale deeds or title deeds and have not placed on record copies of the Khataoni to establish that they are the recorded owners of the land under reference. The LAC submits that the benefit of earlier judgments will be available only to the parties to those petitions and not to anyone else.

17. A rejoinder has been filed by the Petitioners in which reliance has been placed on the decision dated 29th April, 2014 of this Court in WP(C) No. 3049/2013 (Sunil Goel v. State) where in respect of lands adjoining the lands in question which formed the subject matter of the present petition this Court, following the decision of the Supreme Court in Padma Sundara Rao (Dead) v. State of T.N. (2002) 3 SCC 533 and other decisions, quashed the declaration dated 20th March, 2013 under Section 6 of the LAA. The case of the Petitioners is that their case is no different from the Petitioners in the aforementioned decision in Sunil Goel v. State (supra).

18. Ms. Esha Mazumdar, learned counsel for the Petitioners, referred to the decision in Sunil Goel v. State and submitted that the facts there were identical to the case on hand. Further she pointed out that the SLP filed against the decision in Sunil Goel v. State (supra) was dismissed by the Supreme Court in limine on 26th September, 2014. She accordingly submitted that the Petitioners are entitled to the same relief as the Petitioners in Sunil Goel v. State (supra).

19. In the course of the submissions today, it transpired that not all the Petitioners before the Court are claiming reliefs individually. In other words, some of the Petitioners are actually represented by their Powers of Attorney. It

transpired that as far as Petitioner No.2 is concerned, he is the son of Shri Madan Mohan Arora who is the General Power of Attorney (GPA) holder of Shri Kulwant Singh Rana, son of late Shri Devender Singh Rana. A copy of the GPA dated 21st October, 1995 attested by a Notary Public has been enclosed as Annexure A-1. A careful perusal of the said GPA reveals that Shri Kulwant Singh Rana was himself a GPA holder of one Shri Mangal Sen Sethi and was in turn appointing Shri Madan Mohan Arora as his GPA. This is in respect of the land measuring 300 sq.yards in Khasra No.35/1/1 min situated at Village Sahibabad Daulatpur, Delhi-110042. Unfortunately, nowhere in the writ petition is this fact of Petitioner No.2 being a GPA holder, mentioned. There is no reference to Annexure A-1 anywhere in the petition.

20. It transpires that Petitioner No.1 is also likewise a GPA holder, the details of which have not been set out in the petition. Counsel for the Petitioner has sought to explain this as an oversight. However, the Court is constrained to take serious note of the non-mention of these vital facts in the present petition considering the reliefs sought for.

21. The first major hurdle as far as Petitioners are concerned is that it is not clear how many of the Petitioners are themselves the "original owners" of the land in question. Learned counsel for the Petitioners in response to the query posed by the Court referred to copies of the Khataoni in respect of some of the land in question for the year 1989-90. Even the entries in these Khataonis do not bear the names of any of the Petitioners. None of the Petitioners' names have been mutated in the Khataoni. Clearly therefore these documents do not establish the right or title of any of the Petitioners to the lands in question.

22. The fact that the lands form part of an unauthorised colony in respect of which a provisional regularisation certificate has been issued is mentioned by the Petitioners themselves. This Court has, in a series of orders following the decision in *Akhil Sibal v. GNCTD* (order dated 10th January, 2019 in WP(C) No. 363/2018), been declining any relief concerning land acquisition proceedings where the lands in question form part of an unauthorised colony. The rationale behind this decision was explained in the decision dated 17th January, 2018 of this Court in WP (C) No. 4528/2015 (*Mool Chand v. Union of India*) 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) negated 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."

23. While in the aforementioned cases, relief has been sought in the form of a declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act"), the relief in the present case has been sought qua the declaration issued under Section 6 of the LAA vis-a-vis lands that form part of the unauthorised colony. The same logic would apply in the present case as well. The Petitioners consciously took a decision to go along with the Residents Welfare Association (RWA) that was formed for the purposes of applying for regularisation of the unauthorised colony. They joined in the application for regularisation and were party to the series of steps resulting in the issuance of the provisional regularisation certificate. As explained in Akhil Sibal v. GNCTD (supra) and Mool Chand v. Union of India (supra), the major premise on which a policy decision was taken to regularise these colonies is that the persons dwelling therein do not have any legal right or title. The dwellers in the colony proceeded on the basis that the colony constituted an encroachment on either public or private land.

24. Learned counsel for the Petitioner submitted that in the present petition no relief is being claimed regarding the regularisation of the authorised colony. She submitted that some of the Petitioners before the Court should themselves be recognised as "owners" of the land in question and therefore they cannot be said to have encroached upon their own lands.

25. Apart from the fact that the Court is not convinced about the right and title of even these Petitioners that the counsel for the Petitioners is referring to, for the reasons already noted hereinbefore, it cannot be denied that even such Petitioners joined the RWA in seeking regularisation. Thus, implicitly, the

Petitioners concede that without such regularisation, their occupation of the land in question would be "unauthorised". Although in the present petition the relief being sought is in regard to the legality of the declaration under Section 6 LAA, the fact remains that the Petitioners are also pursuing with the GNCTD their plea for regularisation of the unauthorised colony, the basic premise of which is that they do not have any valid legal title or interest qua the land in question. As pointed out in Akhil Sibal (supra), the claims are mutually contradictory and legally untenable.

26. The Court finds that in many such petitions where relief of declaring the land acquisition proceedings, or any of the steps therein to be illegal is sought in respect of lands that form part of the unauthorised colony, it is simply not possible to grant such relief since the very premise or the basis on which the Government is considering regularisation of such unauthorised colonies would be defeated. In other words, it is not possible that some portion of the land which forms part of an unauthorised colony is released from land acquisition and yet the application for regularisation proceeds in accordance with law. It will throw the entire regularisation process into chaos. This is not an outcome that has been envisaged in the decision in Sunil Goel v. State (supra). Indeed, the Court finds that nowhere in the decision in Sunil Goel v. State (supra), is there any discussion as to the effect that the relief sought by the Petitioners will have on the process of regularisation of the unauthorised colony.

27. Consequently, the Court is unable to grant the relief prayed for in the present petition. The dismissal of the present petition will not come in the way of the Petitioners pursuing the relief of regularisation of the unauthorised colony in question.

28. The petition is accordingly dismissed. The interim order dated 25th July 2014 is vacated. The application is dismissed.