

(2019) 10 DEL CK 0437

In the Delhi High Court

Case No : Civil Writ Petition No. 11196 Of 2019

Ram Dhruv & Ors

APPELLANT

Vs

Land Acquisition Collector/ADM & Ors

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 4, 11(4), 24, 24(2)
Land Acquisition Act, 1894 — Section 4, 6
Registration Act, 1908 — Section 17, 49

Citation : (2019) 10 AD(Delhi) 184

Hon'ble Judges : Vipin Sanghi, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Reahul Pandey, S.C. Dhawan, Yeeshu Jain, Jyoti Tyagi, Awadhesh Kumar Singh, Arjun Pant

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. Petitioners have filed the present petition under Article 226 of the Constitution of India, seeking declaration under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter as "the 2013 Act") that, the acquisition proceedings in respect to land of the petitioners comprised in Khasra Nos. 636, 628/2, 634/2, 624, 625, 632 situated in the revenue estate of Village Roshanpura, (hereinafter "the subject land"), acquired vide Award bearing No. 08/2008-09/SW dated 14th November 2008, are deemed to have lapsed.

2. The subject land was acquired for the purpose of Construction of 100 Mtr. Road under Planned Development of Delhi. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter 'the LAA'), was issued on 7th April 2006 and declaration under Section 6 of the LAA on 4th April 2007.

Subsequently, an Award dated 14th November 2008, bearing no. 08/2008-09/SW was passed in respect of the land situated in revenue estate of Village Roshanpura, Delhi.

3. Petitioners have based their challenge to the acquisition proceedings under Section 24 (2) of the Act on the ground that even after expiry of five years since the date of passing of the Award, the authorities have failed to take possession of the subject land and they continue to be in possession till date. Moreover, neither the Petitioners nor the recorded land owners of the subject land have been paid compensation.

4. Petitioners in para 3(iii) of the petition claim ownership through unregistered power of attorney, Agreement to sell, purchase receipts, Will etc. It is also averred in para 3(ii) of the petition that the subject property is situated in an unauthorized colony named Roshanpura and petitioners are deemed to be the owners in possession thereof on the basis of the aforementioned documents.

5. On perusal of the documents (GPAs) annexed to the petition, the date of acquisition of title / possession of the subject land qua each of the Petitioners is as under:

Petitioner No.

Petitioner

Plot Reference Details

Date of SalePurchase

1

Ram Dhruv

Z-55 & 57 /Khasra.636

21/12/2000

2

Dev Singh

16 B/ Khasra 628/2

04/01/2001

3

Radha Bahukhandi

24 & 25 /Khasra 634/2

20/09/1999

4

Guddi Negi

39 /Khasra 624 & 625

09/07/1999

5

Poonam Srivastava

24 /Khasra 632

28/12/2011

6

Bablu Tiwari

52 /Khasra 636

30/08/1999

7

Amit Kumar

88A/ Khasra 636

13/02/2012

8

Kanti Parshad

Z-30/ Khasra 632

09/04/2018

9

Mohan Singh

16A /Khasra 628/2

04/01/2001

10

Padma Arya

58 /Khasra 632

03/09/1997

11

Deepak Verma

56 /Khasra 636

20/01/2015

6. In the present case, Section 4 notification as noted in the foregoing paragraph was issued on 7th April 2006. From the aforesaid table, it is apparent that Petitioner Nos. 5, 7, 8 and 11, entered into transactions for the sale-purchase post issuance of Section 4 notification. Recently, Supreme Court in Shiv Kumar v. Union of India, 2019 SCC OnLine SC 1339, has held that purchasers of land post issuance of Section 4 notification, do not acquire a proper title, such transactions are void ab initio and subsequent purchasers have not right to challenge the acquisition proceedings under Section 24(2) of the 2013 Act. The relevant portion of the aforesaid decision reads as under:

"14. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the Policy.

15. When we ponder as to beneficial provisions of the Act of 2013, they also intend to benefit landowners mentioned in the notification under Section 4, not for the benefit of such purchasers who purchase the land after it has been vested in the State.

16. Sub-section 4 of Section 11 of the Act of 2013, which is akin to section 4 of the Act of 1894, contains a prohibition that no person shall make any transaction or cause any transaction of land or create any encumbrance on land from the date of publication of such notification. Section 11(4) is extracted hereunder:

"11. Publication of preliminary notification and power of officers thereupon.-

x x x x x

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this subsection:

Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector."

17. Without seeking exemption from the Collector, there is a total prohibition on any transaction of land. Whereas the legal position under the Act of 1894 was that a transaction effected after section 4 notification was illegal and void.

27. Even otherwise, proviso to Section 24(2) does not recognize a purchaser after Section 4 notification inasmuch as it provides that where an award has been made, and the compensation in respect of a majority of land holdings has

not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the Act of 1894, shall be entitled to compensation under the provisions of the Act of 2013. The proviso makes it clear that in case of compensation concerning the majority of landholding has not been deposited, then recorded owner(s) at the time of issuance of notification under section 4 of the Act of 1894 shall have the right to receive the compensation. Purchasers after section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the act of 2013.

28. The Act of 2013 presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after section 4 notification as sale deed is void under the Act of 1894, cannot claim rehabilitation and resettlement as per policy envisaged under the Act of 2013, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to section 24(2) under the Act of 2013. An original landowner cannot be deprived of higher value under the Act of 2013, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under proviso to Section 24(2) on recorded owners under Act of 1894. We have come across instances in which after notifications under section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the Act of 2013 as it is to be given to the owner as mentioned in the notification.

29. Given that, the transaction of sale, effected after section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim 'possession' and challenge the acquisition as having lapsed under section 24 by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

30. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought under section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not

capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

33. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed under Section 24(2).

35. No right can be claimed based on a transfer made by way of execution of Power of Attorney, Will, etc., as it does not create any interest in immovable property."

(emphasis supplied)

7. Thus, Petitioner Nos. 5, 7, 8 and 11 being subsequent purchasers are not entitled to reap benefits of the beneficial provisions under the 2013 Act. The transactions entered by Petitioner Nos. 5, 7, 8 and 11 are void ab initio, and do not confer any right or title upon these subsequent purchasers to claim rehabilitation, enhanced compensation or a declaration under Section 24(2) of the 2013 Act. Hence the claims raised by Petitioner Nos. 5, 7, 8 and 11 are not maintainable and are liable to be dismissed in limine on this ground alone.

8. Even otherwise, on a careful perusal of the petition, it emerges that none of the Petitioners have annexed title documents with the petition. The only documents placed on record are GPA(s) conferring petitioners the right to manage, supervise and sell the subject land on behalf of the purported owners. The averment that the subject land/ property has been purchased on the basis of agreement to sell, Will, GPA, purchase receipts and possession letters is thus not supported with any documentary evidence. The Petitioners thus do not have lawful ownership over the subject land to seek the relief sought in the present petition and the same is liable to be dismissed on this ground aswell, qua all the petitioners.

9. The Supreme Court in Shiv Kumar (supra), inter alia also made observations qua the legality of the title claimed on the basis of Agreement to sell, Will, GPA, purchase receipts, etc. which is evident from the following extract:

"39. Concerning the illegal colony, averments have been made that the colony is an unauthorized and provisional order was passed to regularise it. The plea taken is contradictory and shows the falsity of the claim raised by the purchasers. That, apart predecessors of the purchaser obtained the land-based on Power of Attorney, Agreement to Sell, and Will on 9.12.1982. As per averments made in the writ application, Bijender Singh, who was owning ½ share, sold the share to Satya Narain by the documents like Agreement to Sell, Power of Attorney, or

Will. It has also been averred that Om Prakash sold the remaining ½ share to Satya Narain on 11.3.1984 by way of Agreement to Sale, Power of Attorney, or Will. The purchase made through Agreement to Sale, Power of Attorney, or Will by Satya Narain did not confer a title upon him to transfer it to the purchasers apart from the fact that it was void in view of purchase after Section 4. Based on purchase made from such owners whose title was not perfect, purchasers had no derivative title in the eye of law. There was no legally recognized title deed in favor of Satya Narain."

(emphasis supplied)

10. There is yet another reason why the present petition is not maintainable. As per para 3 (ii) of the petition, the Roshanpura colony which has come up on the subject land is pending regularization. On the one hand Petitioners seek to justify their occupation and title on the ground that the colony has been provisionally regularized. On the other hand they stake claim of ownership, on the basis of GPA, agreement to sell, Will, etc., contrary to the mandate of Section 17 and 49 of the Registration Act, 1908, on the ground that subject land is part of an unauthorized colony. The above stand is therefore contradictory. Petitioners cannot be allowed to approbate and reprobate at the same time. Be that as it may, this court has not permitted occupants of unauthorized colonies to invoke Section 24(2) of the 2013 Act. Similar petitions filed by occupants of unauthorised colonies have been dismissed by this Court. Reference may be made to the case of Akhil Sibal v. Govt. of NCT of Delhi, 2019 SCC OnLine Del 6508, the relevant portion of which reads as under:

"16. It appears that the Petitioners are pursuing parallel proceedings and seeking different reliefs in respect of the same lands in question - one is to seek regularization by contending that the building on the land in question is part of an unauthorized colony, the other is to invoke Section 24(2) of the 2013 Act, to seek lapsing of the land acquisition proceedings. In the considered view of the Court, the attempt at invoking Section 24(2) of the 2013 Act is, in the circumstances, misconceived. Clearly, therefore, the present petitions are an abuse of the process of the Court where the facts speak for themselves.

17. Further, the manner in which the facts have been narrated, a relief under Section 24(2) of the 2013 Act, is not even capable of being granted in either of the petitions. In similar circumstances, this Court had in its order dated 19th December, 2018 in W.P.(C) No. 190/2016 R. Bhagwan Batra v. Government of NCT of Delhi, rejected the prayers of the Petitioners where they were seeking a similar relief in respect of the land an unauthorized colony i.e. Guru Ramdass Nagar. The Court there has pointed out that the Petitioner should be pursuing their case for regularization.

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 premises on which such a 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 tried 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.

19. For the above reasons, the reliefs sought in the present two writ petitions cannot be granted. There is no merit in either of the petitions and they are dismissed as such."

(emphasis supplied)

11. Challenge against the aforesaid decision was dismissed by the Supreme Court in SLP(C) No.11100/2019 vide order dated 7th May 2019. Following Akhil Sibal (supra), several other petitions have been dismissed, such as Satpal Singh v. Land Acquisition Collector and Others, 2019 SCC OnLine Del 7386, Krishna Devi v. Union of India, 2019 SCC OnLine Del 6725, Desh Raj Arya v. Govt. of NCT of Delhi, 2019 SCC OnLine Del 6946.

12. Thus, in view of the aforementioned decision(s) and foregoing discussion, the present petition is dismissed qua all the Petitioners, with no orders as to cost.