

(2019) 02 DEL CK 0350

In the Delhi High Court

Case No : Civil Writ Petition No. 7348 Of 2016 & Civil Miscellaneous Application
No. 6186 Of 2019

Satpal Singh

APPELLANT

Vs

Land Acquisition Collector & Ors

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

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

Citation : (2019) 02 DEL CK 0350

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

Bench : Division Bench

Advocate : Akhilesh Kumar Singh, Saroj Kumar, Yeeshu Jain, Jyoti Tyagi, Ajay
Verma, Vaibhav Agnihotri, Vinayak Harshwardhan

Judgement

Dr. S. Muralidhar, J

1. The prayers in the present petition read as under:

"a) set aside the impugned award i.e. 10/2008-2009 (SW) passed by the Office of the ADM/LAC(SW) Room No. 12, Old Terminal Tax Building, Kapashera, New Delhi-110037.

b) further directions to the Respondents to initiate fresh land acquisition proceedings as per the new enactment.

c) Further directions to grant compensation as per the new law by consideration of the market value of the land by setting-aside the prior award which was passed under the old Act.

d) pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The background facts are that land in question i.e. Khasra No. 140/8 (206 Sq.

yards) located in the revenue estate of Village Dichaon Kalan was notified under Section 4 of the Land Acquisition Act (LAA), 1894 on 7th April, 2006.

3. This was followed by declaration under Section 6 of LAA on 4th April, 2007 that the land was required for the public purpose of "construction of 100 metres in under planned development of Delhi". The Land Acquisition Collector (LAC) passed the impugned Award No. 10/2008-2009 on 30th December, 2008. It is mentioned that the Petitioner was unable to raise objection under Section 5A of the LAA and that "impliedly the possession was taken by the Respondent for the construction of 100 Mtrs. Road under planned development of Delhi."

4. According to the LAC, physical possession of 4 bighas and 6 biswas of the land was taken over and handed over to the Delhi Development Authority (DDA) on 10th February, 2012. It is stated that the "remaining land could not be taken due to built up." The compensation amount is stated to have been deposited in the Court of the learned Additional District Judge, (ADJ) in terms of the order dated 30th December, 2013 passed by this Court in CM(M) No. 1419/2013. It is also stated that the Petitioner is not the recorded owner of the land and has not placed any document on record to show that the land in question has been purchased from the recorded owner.

5. As far as the Petitioner is concerned, it is stated in the petition that he is "the owner of the property/plot Nos. 26 & 27 area measuring 206 sq.yards of Khasra No. 140/8 in the area of Village Dichaon Kalan, Delhi "in the abadi now known as Laxmi Nagar, Najafgarh, New Delhi". According to the Petitioner, he purchased the property from one Sh. J.P. Chhikara in the year 2012 i.e. nearly three years after the land acquisition award was passed.

6. Enclosed as Annexure P-2 collectively are "the sale documents". A close scrutiny of the document shows that the property in question purportedly was purchased through a General Power of Attorney (GPA) on 12th May, 2011. Apart from this not being a valid interest instrument for transfer of title, it appears that the Petitioner, having full knowledge of the status of the land in question, and without taking permission from the competent authority, in terms of the Delhi Land (Restriction of Transfer) Act, 1972 entered into the said transaction. There is merit in the contention of the LAC that the said transaction is void and does not bind the Government in any manner. The original recorded owner, who obviously is not the Petitioner, has not challenged the land acquisition proceedings.

7. In para 3 of the writ petition, the Petitioner states that in May, 2009 the officials of the Land and Building (L&B) Department informed him that the land had been acquired and compensation for the same was being paid to the recorded owners. According to the Petitioner he submitted an application first on 10th January, 2012 and the later on 1st March, 2016 to the LAC regarding the payment of compensation. In the said application, it is purportedly disclosed that he is not the recorded owner and has purchased the plot through the GPA, and

subsequently built a house on the land. He then claimed compensation for the structure. The Petitioner claims that after passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act"), he is entitled to the relief under Section 24 (2) thereof since no compensation has been paid to him and the physical possession of the land in question remains with him. Further, the date of passing of the Award is more than five years prior to 1st January, 2014 i.e. the date of the 2013 Act coming into force.

8. In the counter affidavit filed by the LAC, it is pointed out that the Petitioner lacks the locus standi to seek the reliefs prayed for, as admittedly, he has occupied the property in question through documents which do not have any legal sanctity.

9. A separate counter affidavit has been filed by the DDA confirming that physical possession of a portion of the property was taken on 10th February, 2012.

10. In the rejoinder filed by the Petitioner, it is pointed out that the original recorded owners executed registered GPA in favour of one Shri Shiv Kumar and Shri Tek Ram through GPA dated 28th March, 1988. In turn, the said Shiv Kumar and Tek Ram executed registered GPA in favour of Shri Ram Kumar. The said Ram Kumar executed another GPA in favour of Shri Virender Kumar and Shri Mukesh Kumar who executed the GPA in favour of Shri Samunder Singh. The said Samunder Singh executed a GPA in favour of one Shri Chikara. Finally, Shri Chikara executed a GPA in favour of the present Petitioner.

11. From the rejoinder, therefore, it is plain that there were a series of GPAs, none of which was a legally valid document as regards ownership and title, which form the basis of the Petitioner's claim of "ownership" of the property in question. The Petitioner relies on the decision in GNCTD v. Manav Dharam Trust (2017) 6 SCC 751 to claim that he is entitled for reliefs under Section 24 (2) of the 2013 Act.

12. In the course of the hearing, it transpired that Laxmi Nagar in Village Dichaon Kalan is one of the unauthorized colonies in respect of which a provisional regularization certificate has been issued. On the website of the Department of Urban Development of the GNCTD, the complete list of unauthorized colonies in respect of which tentative application forms and tentative layout plans had been submitted and which are awaiting regularization has been put up. Laxmi Nagar is one of those unauthorized colonies, which figures at S.No.912. Clearly, therefore, the property in question forms part of the unauthorized colony. This situation was not envisaged in the decision in GNCTD v. Manav Dharam Trust (supra), which, therefore, is of no assistance to the Petitioner.

13. 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 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) 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."

14. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (Krishna Devi v. Union of India). As clarified in those orders, the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.

15. Consequently, the reliefs prayed for in the petition cannot be granted.

The writ petition is dismissed. The interim order dated 22nd August, 2016 as confirmed on 12th February, 2018 is hereby vacated. The applications are also disposed of.

16. The next date i.e. 1st April, 2019, already fixed in the matter, stands cancelled.