

Sanjay Jain vs Union Of India And Ors on 27 February, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 10199/2018, CM APPLs.39781/2018 & 6185/2019

SANJAY JAIN

..... Petitioner

Through: Mr. Gourav Gupta, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Chiranjeev Kumar, Advocate for
UOI.

Ms. Kanika Agnihotri, Ms Vidhi Agarwal

Mr Vinayak Harshvardhan, Advocates for
DDA

Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
LAC/L&B.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 27.02.2019

1. With the consent of the learned counsel for the parties, the petition is taken up for final hearing.
2. The prayers in this petition read as under:

"(i) Issue an appropriate writ in the nature of mandamus or any other appropriate writ, direction or order commanding/ directing the respondents to release the plots Bearing No. A-26, Land Area Measuring 200 Sq. Yds. Part of Khasra No. 83/11, Situated in the area of Village Karala, and Colony Known as Utsav Vihar, Delhi-110081 of the petitioner as the acquisition has lapsed;

(ii) Issue an appropriate writ in the nature of mandamus or any other appropriate writ, direction or order commanding/ directing the respondents Notification No. F11 (19) / 2001 / L&B / LA / 2012 dated 21.03.2003, invalid as lapsed as per section 24(2) of the Provisions of the Right to fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013;

(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The Petitioner has in para 2 of the petition given details of the „land/plots of the Petitioner as 200 sq.yds. of plot No. A-26 in Khasra No.83/11 in village Karala. It is submitted that since the Petitioner has not been dispossessed of the acquired land neither been paid compensation, the acquisition proceedings in respect of the same stand lapsed in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 („2013 Act). It is stated in para 5(iii) to 5(v) as under:

"(iii) In the year 1989-90 the several colonizers prepared a self drawn lay out plan and cubed out small plots measuring 50 yards to 500 yards on agricultural land measuring about 200 acres of land and gave this colony a name known as the Tirthankar Nagar Jain Colony, village Karala. Gradually the plots were sold and the buildings were constructed on these plots. At present about 2,500 houses have been constructed over the plots sold by the builders to different persons. The said colony is having several schools, hospitals/mobile hospitals which are being operated by the MCD and the Government of NCT of Delhi. The Government of NCT of Delhi has electrified the entire colony and has also constructed approach roads.

The MCD of Delhi has imposed property tax also and at present most of the residents is paying property tax.

(iv) Between the Year 1991 to 2000, Several Kashmiri migrants including Hindu Pandit who were forced to leave their home in Kashmir by the militants and migrated to various parts of India including Delhi, purchased plot Khasra No. 53/17 to 53/23, 53/24/1, 54/16 to 54/26 and 55/16 and 55/25, situated in Village Karala part of the aforesaid unauthorized colony and constructed their houses. They were also provided electric connections.

(v) In February, 2002 the Government of NCT conducted an Arial survey to ascertain the density of the built-up area of all unauthorized colonies including petitioner colony and it was found that 80% of all the colonies were built-up colony and people were residing there."

4. It is then stated that on 21st March 2003 a notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued seeking possession of land measuring 3265 bigha 13 biswas in village Karala for the purposes of the „Rohini Residential Scheme . This was followed by declaration under Section 6 LAA issued on 19th March 2004. It is stated that the Land Acquisition Collector North West (LAC NW) passed the impugned Award No.22/2005-06/ DC(NW) on 10th January 2006.

5. It is then stated in para 5(x) as under:

"(x) On 23.02.2007, the demolition squads of DDA along with huge local police force came in the petitioner colony and choose to demolish only 90 houses including 25 houses of the other land owners, however, on most of the plots, boundary

walls/foundations constructed by them besides other owners are still in existence. At the time when the houses were demolished, there were 6 green belts in existence. After demolishing the houses of the owners several builders who were hand in glove with the officials of DDA and local police encroached upon 3 green belts and constructed flats unauthorized. The DDA has condoned the encroachment and granted approval for the unauthorized constructed flats/houses over green belts. The Residents Welfare Association prepared a map to this effect to the office of Lt. Governor, DDA, Town Planner Delhi, however no action has been taken against these builders."

6. The Petitioner claims that even after the aforementioned demolition, he has remained in possession of the plot in question in respect of which he is claiming relief under Section 24 (2) of the 2013 Act. He further states that persons similarly situated had filed writ petitions in this Court in which orders have been passed on 18th January, 2nd May and 30th May 2016 granting relief under Section 24(2) of the 2013 Act. It is further stated that WP(C) 938 of 2015 had earlier been filed by some of the similarly situated persons seeking the same relief but by an order dated 22nd January 2018, it was permitted to be withdrawn on account of „factual errors with liberty granted to file a separate petition in respect of each Petitioner.

7. The Petitioner claims that he is in physical possession of his plots, and in furtherance of this claim, the „ownership documents as alleged by the Petitioner have been annexed to the petition as Annexure P-10 along with the site plans (Annexure P-11) and photographs (Annexure P-12). A close scrutiny of the said documents reveals that the so-called ownership documents comprise an agreement to sell and purchase dated 13th November 2006 executed by one Shri Devi Singh son of Shri Laxman Singh in favour of the present Petitioner (which is unregistered), an affidavit receipt of possession letter „Deed of Will , and an irrevocable General Power of Attorney (GPA). In other words, all of these documents have been executed subsequent to the passing of the Award dated 10th January 2006 and these have no legal sanctity whatsoever. They are also in the teeth of the Delhi Lands (Restrictions on Transfer) Act, 1972 and, therefore, confer no valid legal title or interest for the lands in question.

8. In the present petition a status quo order was passed by the Court on 26 th September 2018 which has continued till date. In the said order, this Court noted that the land in question is now a colony known as „Utsav Vihar .

9. CM No.6185 of 2019 has been filed by the DDA praying that the aforementioned status quo order dated 26th September 2018 be vacated. It is stated that the land in question is urgently required for the purpose of the Rohini Residential Scheme as part of Sector 38 as well as the Urban Extension Road-II (UER-II). It is pointed out that possession was taken on 21st February 2007 and was transferred to the DDA on 18 th July 2007 for the above purpose. It is pointed out that the UER-II is planned as the third ring road of Delhi along with western boundary connecting NH-1, NH-10 and NH-18 further connecting it to NH-2. Reference is also made to the orders passed by the Supreme Court in SLP(C) No. 16385-16388 of 2012 (Rahul Gupta v. Delhi Development Authority) and the orders passed therein i.e. 10th March 2015, 28th January 2016 and 18th October 2016. In the last

mentioned order, the Supreme Court has ordered that if possession is not handed over within 10 days of lands acquired for the Rohini Residential Scheme to the DDA, then the DDA would be deemed to be in possession thereof. A reference is also made to the decision of Indore Development Authority v. Shailendra (2018) 3 SCC 412 to urge that the petition is barred by laches and deserves dismissal. It is submitted that compensation in respect of the acquisition was paid to the L&B Department by cheque No.094622 dated 6th June 2006.

10. The narration in the petition itself reveals that the land/plot in question claimed by the Petitioner forms part of an unauthorized colony. The Court finds that the unauthorized colony is known as Utsav Vihar and figures at Sl.No.309 in the list of unauthorized colonies awaiting regularization as displayed on the website of the Department of Urban Development, GNCTD.

11. In respect of the lands that form part of unauthorized colony this Court has taken the consistent view that no relief under Section 24(2) of the 2013 Act can be granted. The legal position has been explained in decision dated 17th January 2019 in WP(C) 4258 of 2015 (Mool Chand v. Union of India) where it has been explained 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."

12. The second difficulty of course is that the land has been acquired for the public purpose of the Rohini Residential Scheme in respect of which the Supreme Court has passed orders in *Rahul Gupta v. Delhi Development Authority* (supra) referred to the application of the DDA. Consequently, DDA is deemed to be in possession of the land in question.

13. The Petitioner has failed to explain how he has the locus standi to claim relief under Section 24(2) of the 2013 Act on the basis of documents that have no legal sanctity whatsoever. He also fails to explain the delay in approaching the Court for relief since 10th January 2006, when the Award was passed. Consequently, in view of the decision in *Indore Development Authority v. Shailendra* (supra), he is not entitled to reliefs on this score as well.

14. For all of the afore-mentioned reasons the petition is dismissed. The interim order dated 26th September 2018 is vacated. The applications are disposed of.

15. The next date of hearing i.e. 19th March, 2019 fixed before the Registrar and 19th September, 2019, fixed before the Court, stand cancelled.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 27, 2019 mw