

Shivkumar And Anr vs Union Of India And Ors on 18 January, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

\$~29

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 92/2018 & CM Appl.No. 407/2018 (stay)

SHIVKUMAR AND ANR. Petitioners
Through: Mr. B.S.Mathur, Mr. Rajat Mathur,
Ms. Aditee Mathur & Mr. Divyank Tyagi,
Advocates

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Rishabh Sahu & Mr. Vipul
Aggarwal, Advocates for Respondent No.1/UOI
Mr. Rajneesh Sharma, Advocate for
Respondent/LAC/ L & B Deptt.
Mr. Ajay Verma, Sr. Standing counsel, Mr. Sumit
Mishra & Mr. L.S.Bindra, Advocates for
Respondent/DDA

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA
ORDER

% 18.01.2019

1. The prayer in the present petition reads as under:

"a) Issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition alongwith Award No. 04/2002-03/DC(NW) announced on 03.04.2002 with respect to the land of the Petitioners bearing Khasra Nos. 20//1 (4-12), 20//2/2 (3-13), 20//10 (4-16) total measuring 13 Bighas 01 Biswas situated in the revenue estate of Village Pansali, Delhi; having been lapsed."

2. The narration in the petition reveals that notification under Section 4 of the Land Acquisition Act, 1894 („LAA) was issued on 27th October, 1999 and the notification under Section 6 on 3rd April, 2000. Admittedly, the land was purchased after the aforementioned notification on 5 th July, 2001 by the Petitioners. Clearly, therefore, the purchase itself was illegal on the Petitioner s own

admission. Further, it is stated that after the Petitioners filed their claims/objections under Sections 9 and 10 of the LAA, an Award No. 4/2002-2003 was passed on 3rd April, 2002

3. It is averred in the petition that:

"However, despite the aforementioned award by the LAC, the Petitioners continued in actual physical possession of the aforesaid land as the same was a part of built-up unauthorized colony, namely "Deep Vihar, Pansali, Pooth Kalan, Delhi-110042."

4. It is stated that on 17th September, 2008 the aforementioned colony viz., Deep Vihar, Pansali, Pooth Kalan was provisionally regularised and a certificate was issued to that effect by the Government of NCT of Delhi. It is stated that development work has been undertaken by the GNCTD in the said colony.

5. The admitted illegality attached to the purchase of the land in question after the declaration was issued under Section 6 of the LAA renders the prayer in the petition incapable of being granted. The added difficulty as far as Petitioner is concerned is the admission that the property is part of a built up unauthorised colony in Deep Vihar, which purportedly has been ssued a certificate of regularisation on 17th September 2008.

6. In 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 in (Gurmeet Singh Grewal v. Union of India) this Court rejected the plea of the Petitioners in those cases who, despite admitting that the property was part of an unauthorised colony which was subject matter of regularisation, were also seeking the relief of deemed lapsing of land acquisition proceedings.

7. In its order dated 10th January, 2019 in WP(C) No. 3630/2018 (Akhil Sibal v. GNCTD) it was observed in this context by this Court 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 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 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."

8. This was reiterated in the order dated 17 th January, 2019 in WP(C) No. 4528/2015 (Mool Chand v. Union of India).

9. Consequently, the Court finds no merit in the present petition and it is dismissed as such. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 18, 2019 mw