

# Madhulika Gupta vs Union Of India And Ors on 11 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) 10279/2018

MADHULIKA GUPTA

..... Petitioner

Through: Mr.Bahar U Barqi, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through:

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

Mr.Arjun Pant, Advocate for DDA.

Mr.Pushkar Sood, Advocate for R3/DMRC.

Ms.Somya Suman, Asst. Legal Manager for DMRC.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 11.02.2019

1. This is an application seeking recall of the order dated 21 st January 2019 passed by this Court which reads as under:

"1. This petition relates to the acquisition of land on which an entire unauthorized colony is located.

2. Admittedly, the provisional certificate of regularization for the said unauthorized colony has been issued. Copy of the said certificate has also been enclosed with the petition.

3. Apart from the fact that the Petitioner is seeking quashing of the land acquisition proceedings in which the Award was passed way back in 19th June 1992, which prayer is obviously barred by laches. The prayer is any way not tenable in view of the decision dated 10th January, 2018 in W.P. (C) 3623/2018 (Akhil Sibal v. Govt. of NCT of Delhi) and the decision dated 17th January, 2019 in (Mool Chand v. Union of

India).

4. At this stage, learned counsel for the Petitioner, on instructions, seeks leave to withdraw the petition.

5. The writ petition is accordingly dismissed as withdrawn. The pending application is also dismissed.

6. The dismissal of the writ petition will not come in the way of the Petitioner pursuing her case for regularization of the unauthorized colony in question."

2. According to Mr. Bahar U Barqi, learned counsel appearing for the Review Petitioner/Petitioner, on 21st January 2019 it was only a proxy counsel who appeared on his behalf in this matter and, therefore, there was no occasion for the proxy counsel to withdraw the petition.

3. The Court notes that on 21st January 2019, there were as many as 114 cases listed for hearing. The Court recollects that Mr. Barqi, Advocate, in fact himself appeared in certain other cases as well where he sought leave to withdraw those petitions. This fact is not denied by Mr. Barqi. This petition was listed as Item 77 on the above date. Therefore, Mr. Barqi's assertion today that when this particular petition was listed he did not appear or did not make a statement seeking leave to withdraw the petition is not possible to be verified at this stage by the Court. The Court has recorded in its order what transpired. In any event, since Mr. Barqi is today asserting that he did not have any instructions to withdraw the petition, the Court has decided to hear his submissions on the merits of the petition.

4. The case of the Petitioner is that she purchased the land in question from one Mrs. Afshan Qureshi, by way of registered General Power of Attorney (GPA) dated 15th December 1987 and that the Petitioner has confined her claim to her share of Land No. F-14/1, measuring 100 sq. yards in the said land. It is stated that Mrs Qureshi herself purchased the land from the recorded owners by way of a registered sale deed dated 21st December 1987. Admittedly a notification under Section 4 of the Land Acquisition Act, 1894 („LAA ") was issued for acquisition of the land in question on 23 rd June 1989 followed by declaration under Section 6 LAA on 22nd June 1990 and Award No.20/92-93. The basic contention in the present petition is that since the possession of the land in question still remains with the Petitioner and no compensation has been paid, the Petitioner is entitled to a declaration of deemed lapsing of land acquisition proceedings in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 („2013 Act ").

5. It is the assertion of the Petitioner in the writ petition itself that in 1991, she constructed a residential tenement and was using the same till 3rd December 2012 "which was brutally demolished by the Delhi Development authority and the concerned area of Police which has also demolished numerous residential tenements situate at Khasra No.460-535 Madanpur Khadar though the Petitioner is still in possession of the demolished plot of land."

6. According to the Petitioner, all these areas were "constructed/semi constructed turned into formation of a colony which was also named as Shram Vihar Abul Fazal Enclave. The residents then started endeavouring for having the colony regularized.

7. In paras 2 d, e, h, k, l and o it is averred as under:

"(d) The residents have also formed a society i.e. Residential Welfare Society (Regd.) registered under Societies Act which bears registration No. 25428 of 1994.

The copy of certificate issued from the Registrar of Societies is also annexed herewith as Annexure P-3.

(e) In furtherance of their endeavour for having the colony regularized, the residents started approaching influential persons of Delhi. Local MLA has also approached to the Chief Minister of Delhi by writing a letter dated 29.1.1994 requesting the Chief Minister to include the name of the colony in the list of the colonies going to be regularized.

Copy of the letter dated 29.1.1994 is annexed herewith as Annexure P-4.

(h)The residents started their existence in the form of an unauthorized colony namely Shram Vihar Abul Fazal Enclave.

(k) Consequently, the Secretary of the Society Dr. Jag Mohan Sehgal, the father of the Petitioner also submitted an Application for regularization of the unauthorized colony which was also acknowledged by Urban Development of NCT of Delhi vide dated 31.12.2007.

The copy of the letter dated 31.12.2007 is annexed herewith as Annexure P-8.

(l) Ultimately, the colony of the Petitioner included in the list of colonies listed for regularization which got place at SN-391-B thereof.

(o) Fortunately, the name of the colony was appeared at SN- 391-B amongst in the list of 1639 unauthorized colonies of Delhi as the colony has already built up more than 50% as required under the byelaw for regularization of the colony. It can easily be confirmed from the letter dated 14.7.2011 bearing No. F.391/UC/UD/1432/7253-7257 issued by Mr. Vijay Singh, Special Secretary UD/GNCT which reads as under:

(i) RWA Abul Fazal Enclave Main (S/14068/83), RWA Bhaskar Compound (S/53163/05) and RWA Sharam Vihar Abul Fazal Enclave (S/25428/94) have submitted their layout plans for regularization of unauthorized colonies named A, B, C respectively registered at the Registration No. 391. Since the Multiple RWAs had submitted layout plan against the single registration number the office bearers of RWAs were required to represent their membership claims etc before the Special Secretary (UD).

(ii) The RWA Abul Fazal Enclave Main (S/14068/83), RWA Bhaskar Compound (S/53163/05) and RWA Sharam Vihar Abul Fazal Enclave (S/25428/94) are being recognized as RWA for above said colony respectively for interaction on official issues as per Clause 4.1 of the Notified Regulation dated 24.3.2008 while finalizing the boundary of the colony, the action as per the notified regulations dated 24.3.2008 and approved Guidelines vide order No. F.MRWA/5615-18 dated will be adhered to".

8. The above averments in the writ petition leave no manner of doubt that the said land forms part of an unauthorized colony and the residents thereof have actively pursued their plea for regularization of the unauthorized colony.

9. Mr. Barqi, faced with the above averments, repeatedly urging before this Court that the prayer in the present petition was not for regularization of the unauthorized colony but rather for seeking a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 („2013 Act ).

10. It is plain that the petition does not seek the relief of regularization of the unauthorized colony. It seeks relief under Section 24 (2) of the 2013 Act. This Court has consistently held in a series of orders including the orders dated 10th January 2019 in W.P. (C) 3623/2018 (Akhil Sibal v. Govt. of NCT of Delhi) and 17th January, 2019 in W.P. (C) 4528/2015 (Mool Chand v. Union of India) that where the land in question in respect of which the relief is being sought under Section 24 (2) of the 2013 Act is part of an unauthorized colony, such relief cannot be granted. The following observations in Mool Chand v. Union of India (supra) explain the rationale behind this conclusion:

"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."

11. The Petitioner has enclosed along with the petition a copy of the order of this Court dated 23rd October 2017 passed in W.P(C) No.1234/2014 (Shram Vihar Abul Fazal Enclave Resident Welfare Association v. Union of India) whereby the order extending the status quo with regard to the land in question was passed. However, it is noted by the Court that the said writ petition subsequently stood disposed of and the interim order granting stay was also vacated.

12. On the issue of compensation also, Mr. Barqi relies on interim orders passed in Shram Vihar Abul Fazal Enclave RWA (supra) without mentioning that the said writ petition stands disposed of. These orders by themselves do not support his contention that in the present case, compensation has not been tendered to the recorded owners in respect of the land in question.

13. Be that as it may, there is no attempt made in the writ petition to explain the inordinate delay in approaching the Court for the reliefs in terms of Section 24 (3) of the 2013 Act. On the aspect of laches in Indore Development Authority vs. Shailendra (2018) 3 SCC 412 the Supreme Court observed as under:

"128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or constructive res judicata. As either the plea raised is negated or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill- advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negated, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in Pune Municipal Corporation (supra), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts."

14. Consequently, the main petition is devoid of merit and is also barred by laches. Therefore, the conclusion reached earlier in the order dated 21 st January 2019 that the petition deserves to be dismissed remains unchanged. There are, therefore, no grounds to recall the said order.

15. Accordingly this application is dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 11, 2019 tr