

Omwati & Ors vs Govt. Of Nct Of Delhi & Ors on 19 April, 2022

Author: Mukta Gupta

Bench: Mukta Gupta, Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 567/2015

OMWATI & ORS

Represented by:

.....
Mr.T.N. Singh and Mr.Vi
Singh, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Yeeshu Jain, Standing
Counsel (Civil) Govt. of NCT o
Delhi and Ms.Jyoti Tyagi,
Advocate for LAC and L& B
with Mr.Shailendra K. Singh,
ADM(North) in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 19.04.2022 CM APPL.44151/2019 (Modification of order dated 26th March, 2019)

1. This is an application filed by one Anil Kumar Jain who states that he along with Naresh Jain, Vimal Prakash Jain, Mohinder Pal Jain and Umesh Jain filed W.P. (C) No.1389/2014 before this Court inter- alia praying for declaring the acquisition proceedings including notification F-11 (19)/2001/L& B/L.A./20112 dated 21st March, 2003 issued under Section 4 of the Land Acquisition Act (in short the LA Act), declaration/ notification No. F-11 (15)/ 2004/L.&B./L.A./ 28227 issued under Section 6 of the LA Act dated 19th March, 2004 and the Award bearing No.6 /2005-06 dated 12th July, 2005 (Pehladpur Bangar) in respect of land as mentioned in para 4 of W.P.(C) No.1389/2014 of the petitioners situated in Revenue Estate of Village-Pehladpur Bangar, North-West, Delhi in N.C.T. of Delhi which suffer from malafide and are issued/made without application of mind and is abuse of authority and power, as being illegal, malafide, unconstitutional, vague, null and void.

2. Para-4 of W.P.(C) 1389/2014 noted that the petitioners, that is, Anil Kumar Jain and others are the owners of the land and property measuring total 5 Bighas falling in Khasra Nos.49/9/2 (min. 1 Bigha), 49/12 (min. 3 Bighas) and 49/3 (min 1 Bigha) located in the area of Village- Pehladpur Bangar, National Capital Territory of Delhi. The petitioners are still in possession over the said land as the land is totally vacant and even no activities/development took place for the purposes for which it was acquired namely "Rohini Residential Scheme". True translated copies of Khatoni of year 1999-2000 of Village- Pehladpur Bangar showing the ownership of the petitioners along with

the photographs dated 7th January, 2014 to show that the acquired land is still vacant and in possession of the petitioners were also filed with the said writ petition.

3. In para-4 and 7 of the counter affidavit dated 1st July, 2014 to the W.P.(C) 1389/2014 it was stated as under:

"4. That the present writ petition is liable to be dismissed as the possession of the lands measuring 4 bigha 6 biswa out of total land measuring 4 bigha 16 biswa comprised in Khasra No.49//12 min. and land measuring 4 bigha 16 biswa comprised in Khasra number 49//13 min. was duly taken back on 31.08.2005. The left out area measuring 10 biswa. out of Khasra No.49//12 min. and lands in Khasra No.49//9/2 could not be taken due to same being built up. Thus the present writ petition is devoid of any cause of action and the same is liable to be dismissed.

7. That it is submitted that the lands of village- Prehladpur Bangar, were notified vide Notification under Section of the Land Acquisition Act, 1894 dated 21.3.2003 which was followed by the Notification under section 6 of the Act dated 19.3.2004. The Award was also passed vide Award No.6/2005-06 and the possession of the lands were also taken on 31.08.2005 and further handed over to the requisition agency, i.e., D.D.A. on the spot, the very same day, however the petitioners never turned up to receive compensation and same is yet to be recorded owners and/or to the petitioners, as the case may be. It is further submitted that after the possession was taken of the lands passed under the said Award from the petitioners herein, acquisition proceedings became complete, final and binding as the petitioners thereafter never challenged the same before any Court of law."

4. On hearing the parties, this Court while disposing of W.P.(C) No.1389/2014 on 24th September, 2014 held that even if it is treated that the possession in respect of the said land as being taken, admittedly, compensation has not been paid. Consequently, the petitioners are entitled to the benefit of Section 24 (3) of the 2013 Act and it is declared that the acquisition in respect of the said land namely Khasra No.49/9/2 Min.1 bigha, Khasra No.49/12 Min. 3 bighas and Khasra No.49/13 Min. 1 bigha in Village- Pehlادpur Banger has lapsed. Thus the writ petition was allowed.

5. Challenging the order of this Court dated 24th September, 2014 the DDA and LAC preferred Special Leave Petitions where after granting leave, the appeals were dismissed and the Hon'ble Supreme Court vide order dated 31st August, 2016 noted that in the peculiar facts and circumstances of these cases, the appellants, that is, DDA and LAC are given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the Act of 2013) for initiation of acquisition proceedings afresh. It was further clarified that in case no fresh acquisition proceedings are initiated within the said period of one year from the date of the order while issuing a notification under Section 11 of the Act of 2013, DDA and LAC, if in possession, shall return the physical possession of the land to the original land owners. Since no action was taken by the LAC and DDA in terms of the order of the Hon'ble Supreme Court dated 31 st August, 2016, the applicants filed Contempt Petition (Civil) No.1705/2018 in the Civil appeals filed by DDA/LAC wherein notice was issued. It is stated by the learned counsel for the applicants that the proceedings

before the Supreme Court were disposed of vide order 15th November, 2019 in view of the LAC issuing fresh notification on 7th November, 2019 after the notice in contempt petition was issued.

6. Grievance of the applicants in this case is very serious that despite the fact that the applicants are the owners of Khasra No.49/12, 49/13, 49/1&2, 49/1 (13), in the present writ petition being W.P. (C) No.567/2015 titled as 'Omwati & Ors. vs. Govt. of NCT of Delhi & Ors.' all these khasra numbers were added to be a land comprising of the petitioners' in W.P.(C) No.567/2015 and in the counter affidavit filed by LAC it was neither pointed out that the land in question did not belong to the said petitioners nor it was pointed out that prior proceedings in relations to part of Khasra numbers have taken place, which proceedings have attained finality. W.P. (C) No.567/2015 was dismissed by this Court vide order dated 26th March, 2019 and the interim order passed in favour of Omwati and others was vacated in relation to the same khasra numbers for which the applicants had preferred the earlier writ petition being W.P.(C) 1389/2014 which was duly allowed by this Court and Special Leave Petitions filed by the respondents dismissed permitting the respondents to issue fresh notifications.

7. Reply affidavit has been filed by the respondent LAC to this application which nowhere clarifies the facts pointed out in this application and adverts to the facts of the original petitioners in W.P.(C) No.567/2015, which reads as under:

"1. That the writ petitioners have filed the present writ petition seeking lapsing of certain parcel of lands, which is described in para 4-9 of the writ petition as the petitioners did not specify the same in the prayer clause or anywhere else in the writ petition in a sequence or a tabular form. In prayer (D), the petitioners have showed the khasra numbers to contend that a passage was going through those khasra numbers and they sought continuance of easement rights.

2. That the Hon'ble Court declined the relief of lapsing u/s 24 (2) of Act, 2013 vide judgment dated 26.3.2019 for the subject lands on the ground that the subject land falls within the unauthorised colony and the relief of lapsing u/s 24(2) of Act, 2013 cannot be granted to the lands falling in unauthorised colonies as the writ petitioners itself filed a provisional certificate of regularisation. The Hon'ble Court, while declining the relief to the writ petitioners, have relied upon the judgment of Mool Chand.

3. That the writ petitioners thereafter filed a review petition 206/2019 primarily with the pleadings that the sale deed were executed in their favour and they never applied for regularisation, hence the judgment dated 26.3.2019 may be reviewed. It is submitted that the review petition 206/2019 was also dismissed vide judgment dated 14.5.2019."

8. It is in view of this gross negligence in filing the replies resulting in affecting the rights of the parties in different writ petitions that this Court was constrained to summon the Land Acquisition Collector (North) vide order dated 30th March, 2022.

9. After arguments have been heard at length, learned Standing Counsel for LAC seeks time to file a fresh affidavit clarifying all the facts.

10. A detailed fresh affidavit in response to this application be filed within two weeks by the LAC.

11. List on 13th May, 2022.

12. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

NEENA BANSAL KRISHNA, J.

APRIL 19, 2022 'vn'