

Mohd. Talib & Anr vs.delhi Development Authority & Ors

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Court : Delhi

Decided On : Jul-23-2019

Appellant : Mohd. Talib & Anr

Respondent : Delhi Development Authority & Ors

Advocate for Pet/Ap. : Mr. Bahar U.Barqi, Mr. Nikhil Goel, Mr. Piyo Harold, Mr. Dushyant Sarna, Mr. Siddharth Panda

Judgement :

\$~92 * + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 2239/2017
.....

... Petitioner

s Through: Mr. Bahar U.Barqi, Advocate DELHI DEVELOPMENT AUTHORITY &
ORS

... RESPONDENTS

Through: Mr. Nikhil Goel, Mr. Piyo Harold and Mr. Dushyant Sarna, Advocates for
Respondent/DDA Mr. Siddharth Panda, Advocate for Respondent Nos.2 & 3.
versus MOHD. TALIB & ANR CORAM: JUSTICE S. MURALIDHAR JUSTICE
TALWANT SINGH

ORDER

2307.2019 % Dr. S. Muralidhar, J.:

1. The prayer in the present petition read as under: (a) Quash the proceedings allegedly resulted into Award No.19/92-93 in respect of their properties/plot measuring 300 square yards bearing No.S-4 and measuring 350 square yards bearing No.S-4 fallen in Khasra Nos. 419/260, and 420/260, Village: Jogabai, New Delhi. 2. There are two

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s in this Petition, Mohd. Talib (Petitioner No.1) and Zareef Khan (Petitioner No.2). It is stated that Mohd. Talib purchased the property measuring 300 square yards at Plot No.S-4

located on Khasra No.420/260 at Village Jogabai in Delhi from one Mr. Laeeque Ahmad S/o Mumtaz Ahmad at Batla House, Jamia Nagar, Okhla under a W.P.(C) 2239/2017 Page 1 of 8 General Power of Attorney (GPA) dated 10th January, 2012. It is claimed that in turn Mr. Laeeque Ahmad purchased the said land from recorded owners/cultivators on 13th April, 2010.

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No.1 claims to have been in peaceful possession thereof since then. The relevant documents in furtherance of the above claim have been enclosed with the petition as Annexure P-2.

3. As far as

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No.2 is concerned, he claims to have purchased the property measuring 350 square yards at Plot No.S-4

in Khasra No.420/260 in Village Jogabai from one Mr. Kamaluddin in 1999. It is claimed that in turn Mr. Kamaluddin purchased the said land from one Mr. Iqrar, who himself purchased it from one Mr. Hasan Mehendi. Mr. Mehendi claimed to have purchased it from its real cultivators who are all sons of one Mr. Hazari.

4. It is averred in para 3 that the real recorded owners sold out all of the land in Khasra Numbers 419/260, 415/2016 & and thereafter 90% of the land measuring 26 bighas was fully converted into

residential colony and that thousands of persons have been residing there since 1990. The so called relevant documents executed by the sons of the original cultivator in favour of Mr. Mehendi on 29th April, 1992 have been enclosed with the petition as Annexure P-3.

5. It must be noted straightaway that the documents relied upon by the

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s are unregistered. They are basically GPAs, Agreements to Sell and Purchase, Will, Receipts etc. with dates of 13th April, 2010, 10th W.P.(C) 2239/2017 Page 2 of 8 January, 2012 and the earlier documents have the dates of 20th February, 1995, 12th July, 1999 and so on. They appear to have been executed after the Award No.90/1992-93 was passed and in any event, long after the notifications under Sections 4 & 6 of the Land Acquisition Act, 1894 (LAA) were issued for the acquisition of the lands in question. Clearly these transactions have no validity in the eye of law and also are in teeth of the Delhi Land (Restriction of Transfer) Act, 1972. It is therefore not possible to recognise the locus standi of such

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s in relation to the reliefs claimed in the present petition.

6. Importantly, in para 4 it is averred that land in Khasra Nos. 419/260, and

is generally and popularly known as Batla House. It is stated that residents of the above Khasra numbers have formed a society known as Khalil Ullah Residents Welfare Society, Batla House which has 1500-1600 members who have constructed approximately 2800 residential houses/tenements. It is stated in para 5 that the said society applied for regularisation and that fortunately the

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turned inclined to regularize the society where the properties of the present

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s are also situated. The provisional regularisation certificate dated 17th September, 2008 is annexed to the petition.

7. According to the

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s, the

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started demolition of the houses belonging to the members of the above society in September, 2014. This led the society to file WP(C) No.5892/2014 in this Court. According to the

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s it is only when the

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appeared in the said petition that the

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s became aware that the land in various Khasra Numbers W.P.(C) 2239/2017 Page 3 of 8 stood acquired by under the above Award No.95/1983-84 and two other awards bearing numbers 76/1986-87 and 19/1992-93. It is claimed that the

... RESPONDENTS

never complied with the various provisions of the LAA. Reference is made to the guidelines issued for regularisation and notification dated 12th December, 2007 issued by the Lt. Governor (LG), Government of NCT of Delhi in relation thereto.

8. It is stated that the society filed another WP(C) No.6868/2014 on 29th September, 2014 for quashing the aforementioned Awards. Since in the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 2013 Act) came to be enacted, the aforementioned WP (C) No.6868/2014 was withdrawn on 26th April, 2016 with permission to file fresh petitions by the individually aggrieved persons.

9. Consequently, the present petition was filed on 4th March, 2017. It was listed for hearing on 10th March, 2017 when this Court passed an interim order directing parties to maintain status-quo as regards nature, title and possession of the

subject land. This interim order was confirmed on 5th December, 2017.

10. In response to the notice issued in the petition, the Delhi Development Authority (DDA) has filed a counter affidavit on 14th July, 2018 inter-alia stating that the acquisition proceedings with respect to the Award No.19/1992-93 have become final and the

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s have no locus to file the present petition. It is stated that the

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s have filed the present W.P.(C) 2239/2017 Page 4 of 8 petition in respect of certain lands mentioned in para 1 of the petition, which from the records available with the DDA fall in Khasra Nos.

min (1 Bigha 04 Biswas),

min (7 Bigha, 00 Biswas) and

min (4 Bigha 16 Biswas). It is stated that subsequent to the impugned Award being passed, physical possession of the land in Khasra No.415/260 min (1 Bigha 04 Biswas), Khasra No.260 min (2 Bigha 00 Biswas), Khasra No.26

min (1 Bigha 10 Biswas) of village Jogabai, Delhi has been handed over to the DDA by Land Acquisition Collector/L&B, Govt. of NCT of Delhi on 11.01.2002. As regards compensation, it is submitted that against Award No.19/1992-93, compensation was paid to the L&B Department by cheque dated 28th August 1990 for an amount of Rs.10,00,00,000/-.

11. In a separate counter affidavit filed by the LAC, it is pointed out that the

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s are not the recorded owners and have placed no documents to show any right or title on the subject land. It is submitted that possession of the lands in Khasra No.420/260 (300 sq. yards) and 350 sq. yards in Khasra Nos.

and

was not taken over. As far as compensation is concerned, it is pointed out that payment of compensation could not be ascertained as Statement A and payment files are not available. A rejoinder has been filed by the

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s to both counter affidavits reiterating the grounds urged in the writ petition and maintaining that the

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s are entitled to relief under Section 24(2) of the 2013 Act.

12. At the outset, it must be noticed that even while the

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s do not have convincing explanation to offer for the inordinate delay in approaching the Court for relief, the admitted position is that the property in question is a W.P.(C) 2239/2017 Page 5 of 8 part of an unauthorised colony which is awaiting regularisation. On the

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s own showing, the application by the Society for regularisation is pending consideration.

13. This Court has consistently held that properties that form part of an unauthorised colony awaiting regularisation would not be amenable to the relief of declaration of deemed lapsing of land acquisition proceedings under Section 24(2) of the 2013 Act. The legal position was explained by this Court in the following paragraphs in Mool Chand v. Union of India (2019) 173 DRJ595(DB): 48. The third aspect of the case is that the

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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

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s 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

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s 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: W.P.(C) 2239/2017 Page 6 of 8 the themselves constructions 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, 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. Mr. Bahar U. Barqi, learned counsel for the

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s, sought to distinguish the above judgment in its applicability to the facts of the present case where according to him the land acquisition proceedings themselves were lacking in validity on account of failure to issue notices to the occupants of the land in question prior to the finalisation of the impugned Award.

15. These pleas are plainly untenable in view of the decision of this Court in Mool Chand v. Union of India (supra) where similar pleas stood rejected. The above decision has been followed in other cases. Illustratively reference may be made to

the decision dated 25th January, 2019 in W.P.(C) No.3438/2015 (Krishna Devi v. Union of India).

16. Consequently, the Court does not find any merit in this petition and it is dismissed as such. However, the dismissal of this petition will not come in W.P.(C) 2239/2017 Page 7 of 8 the way of the

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s pursuing their case for regularisation in accordance with law. The interim orders passed on 10th March, 2017 which stood confirmed on 5th December, 2017 is hereby vacated. JULY23 2019 mw S. MURALIDHAR, J.

TALWANT SINGH, J.

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