

(2000) 12 DEL CK 0071
In the Delhi High Court
Case No : C.W.P. No. 3614 of 1991

Ajit Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 11, 16, 17(1), 4, 48

Citation : (2001) 2 AD 412 : (2001) 89 DLT 495 : (2001) 57 DRJ 335 : (2001) 3 RCR(Civil) 70

Hon'ble Judges : Arun Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Mr. N.S. Vashisht, for the Appellant; Mr. Sanjay Poddar, Ms. Gita Mittal, for the Respondent

Final Decision : Dismissed

Judgement

ARUN KUMAR, J.—The petitioners filed the present petition seeking a writ of mandamus directing the respondents to forthwith hand over the actual and physical possession of the petitioners' land measuring 112 bighas and 14 bids was in village Maidan Garhi, New Delhi. The petitioners further prayed that respondents be directed to comply with the judgment and directions contained in the judgment of this court dated 16th May, 1989 in CWP 51/1989 and in Balak Ram Gupta v. Union of India. The petitioners subsequently filed an amended writ petition claiming the relief of restoration of possession of their land and the relief of quashing of the notifications u/s 4 and 6 of the Land Acquisition Act with respect to the land in suit.

2. Briefly the facts are that the Government had issued a notification dated 25th November, 1980 u/s 4 of the Land Acquisition Act for acquisition of certain lands including the lands of the petitioners which are subject matter of the present writ petition. The notification containing a declaration u/s 6 of the Act was issued on 18th June, 1985. The respondents also made the award with respect to the suit

lands being Award No. 23/87-88. It is an admitted fact as per various averments contained in the writ petition itself the petitioners had accepted compensation for their acquired land in pursuance of the award and the government had taken possession of the lands. It is stated in para 7 of the writ petition that "the petitioners, Therefore, again approached the respondents and requested them to hand over the peaceful possession of the land to them." Again in para 9 of the writ petition, it is averred "....the action of the respondents in not restoring the possession of the entire land of the petitioners over the years ago is wholly mala fide and illegal" In para 10 of the writ petition, it is stated as under:

"that the petitioners have imp leaded the Delhi Development Authority as a party respondent since the lands after the acquisition are vested in the DDA for the carrying out of development activities."

3. As already stated, one of the reliefs sought in the writ petition is for restoration of possession of the suit lands. Thus, as per their own averments, the possession of the lands subject matter of the writ petition is with the government. The government has taken possession of the land in pursuance of an award of the Collector made in accordance with the provisions of the Land Acquisition Act after paying compensation to the land owners/petitioners.

4.The learned counsel for the petitioners vehemently argued that the petitioners had filed objections u/s 5A of the Land Acquisition Act and, Therefore, the judgment of this court in Balak Ram Gupta v. Union of India squarely applies in the facts of the present case. The notifications u/s 4 and 6 of the Act were quashed by this court by the said judgment. For the same reason it is submitted that the notifications u/s 4 and 6 of the Act are liable to be quashed in this case also. A controversy had arisen as to whether the decision in Balak Ram Gupta's case whereby a batch of 73 writ petitions had been allowed quashing notifications u/s 4 and 6 of the Act was confined to the petitioners in those petitions or its benefits would flow to all the villagers whose land was sought to be acquired irrespective of whether they filed petitions challenging the notifications. This controversy has been set to rest by the latest decisions of the Supreme Court in Delhi Administration Vs. Gurdip Singh Uban and Others, . According to the said decision, the benefit of quashing of the notifications u/s 4 and 6 of the Act is confined to the petitioners in that batch of writ petitions.

5. The learned counsel for the petitioners argued that in the present case also, the petitioners had filed objections u/s 5A of the Act and rest of the facts are identical to the cases subject matter in Balak Ram Gupta's case. Therefore for the same reasons, the notifications u/s 4 and 6 of the Act are liable to be quashed. Secondly it was argued that the government has no schemes for this area. They have not planned any public project so far as the area comprised in the suit lands is concerned. For this reason also, according to the learned counsel, the entire acquisition is liable to be quashed.

6.At the outset the respondents have raised two Preliminary objections. First, it

is submitted that admittedly possession of all the lands which are subject matter of the petition has been taken over by the Government in pursuance of an award made as per the provisions of the Land Acquisition Act. In view of section 16 of the Act, the land now vests absolutely in the government free from all encumbrances. Thus the writ petition is not maintainable. The second objection is based on the assertion that there is inordinate delay and laches on the part of the petitioners and for that reason the petition is liable to be dismissed.

7. We find considerable force in the first preliminary objection, i.e., in view of provisions of section 16 of the Act, the suit land vests absolutely in the government, free from all encumbrances and this petition is not maintainable. Section 16 provides as under:-

"16. Power to take possession.-

When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the government, free from all encumbrances."

8. Section 16 signifies culmination of the land acquisition proceedings. As it has happened in the present case, compensation has been received by the land owners and possession of the land has been taken over by the government. The award was made in May 1987 and possession of the lands was taken in pursuance thereof. It is settled law that once the land vests in the government after its possession is taken over by it, the land becomes absolute property of the government. Thereafter even the government does not have any power to denotify the land or to quash the notifications under which it had been acquired. The effect of taking possession u/s 16 is that a curtain is drawn so far as the land acquisition proceedings are concerned. The government becomes absolute owner of the land. The land goes outside the purview of the Land Acquisition Act. If later the government has to pass on the title of the land to anyone else including its erstwhile owners, it can do so only by conveying the title by way of a sale deed or grant etc., i.e., the land thereafter has to be dealt with in accordance with ordinary civil law.

9. In support of this legal proposition, our attention was drawn to various decisions of the Supreme Court. In *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, , possession of the land had been taken by the government in pursuance to a notification u/s 17(1) of the Land Acquisition Act. The provisions of section 17(1) are in pari materia with the provisions contained in section 16 of the Act. The land vested in the government. The question arose whether the notification u/s 17(1) could be cancelled u/s 21 of the General Clauses Act or could it be withdrawn in exercise of powers u/s 48 of the Land Acquisition Act. It was held that after possession has been taken pursuant to a notification u/s 17(1) of the Act, the land vests in the government and the notification cannot be cancelled u/s 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of powers u/s 48A of the Land Acquisition

Act. The court observed that there is no provision by which land statutorily vested in the government reverts to the original owner by mere cancellation of the notification.

10. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , possession of land in question had been taken u/s 17(1) of the Act. It was held that u/s 48 of the Land Acquisition Act the government could not withdraw from acquisition land once it had taken its possession u/s 17 of the Act. When section 17(1) is applied by reason of urgency, government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title of the land which gets vested in the government. In such a situation even if the award is not made within two years as provided u/s 11A of the Act, it will have no effect on vesting of the land in the government. Ordinarily when the land does not vest in the government, failure to make award within the time permitted by section 11-A would mean that the acquisition proceedings would lapse. It was held that the effect of taking possession u/s 17(1) is that the land automatically vests with the government. The owners are divested of the ownership which, as a result of section 17(1), vests in the government. The result of this vesting and divesting is that the land goes out of the purview of the Land Acquisition Act. Thereafter the government cannot be divested of its ownership. Vesting of the land in government u/s 16 or section 17(1) has the effect of finally drawing a curtain on the land acquisition proceedings. Even if the government would wish to withdraw the land from acquisition proceedings, it could not do so. This is the legal consequence of vesting of the land in the government u/s 16 or section 17(1) of the Act.

11. In *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, , possession of the land had been taken by the government after the award of the Collector as per provisions of section 16 of the Act. The land had been handed over to the appellant Society thereafter. The Society had carved out plots and had allotted them to its members. Some of the members had even started construction on their plots. At that stage writ petition was filed challenging the notification u/s 4(1) of the Land Acquisition Act. Allowing the appeal, the Supreme Court observed that by operation of section 16, the land vested in the State free from all encumbrances. The property under acquisition having vested in the government and having been allotted to the appellant, valid title could not be defeated.

12. Reliance was also placed on *H.M. Kelogirao and Others Vs. Govt. of A.P. and Others*, . In this case also the land stood vested in the government. As per provisions of section 17 of the Act the majority of land owners had received compensation also for their acquired land. A public bus stand had already become functional on the disputed land. The Supreme Court turned down challenge to the notifications regarding acquisition of land in these facts.

13. In view of this settled position of law, we are of the considered view that this petition is liable to be dismissed on the ground that the land in dispute already

stands vested in the government in view of its possession having been taken over by the government in pursuance of provisions of section 16 of the Act. Since the question of government having taken possession of the land is of paramount importance for purposes of the preliminary objection, we have already referred to the various admissions on the part of the petitioners in the writ petition that the possession is with the respondents and one of the reliefs in the petition being that respondents be directed to hand over possession of the lands to the petitioners. We would like to note here that the respondents in their counter affidavit have very clearly and categorically asserted that they are in possession of the lands in question. They have also relied on official records regarding taking over possession of the lands. There is no rebuttal or denial of this assertion. No attempt was made to file any rejoinder to controvert these assertions of the government. Therefore, it is established beyond doubt that the government had taken over possession of the lands after the award as per provisions of section 16 of the Act. The lands stood vested in the government. The owners like the petitioners were divested of their ownership of the lands. They received compensation for their acquired lands. The government has become absolute owner of the lands free from all encumbrances and it cannot be divested of its ownership. The proceedings under the Land Acquisition Act have come to an end. Curtain had been drawn on the proceedings. The lands are out of the purview of the Act. This writ petition is, Therefore, not maintainable and is liable to be dismissed on this ground alone. The petitioners cannot be permitted to challenge the acquisition of their lands in these facts. We need not go into any other aspect.

14. The petition is dismissed. No costs.