
(2018) 12 DEL CK 0213

In the Delhi High Court

Case No : Civil Writ Petition No. 6309 Of 2015

Alok Kumar Yadav & Ors

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 17-12-2018

Acts Referred:

Constitution of India, 1950 — Article 32, 136, 226, 227
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2018) 12 DEL CK 0213

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Anil Kumar, Gaganmeet Singh Sachdeva, Yeeshu Jain, Jyoti Tyagi, Shobhna Takiar

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. The prayer in this writ petition reads as under:

"(a) this Hon'ble Court may pleased be issued a writ/order/ direction in the nature of certiorari calling for the records of the acquisition proceedings in respect of the land comprised in khasra No. 231 min (3-14) situated in the revenue estate of village Haiderpur, Delhi acquired vide Award No.50/1980-81 dated 18.07.1980 and further to issue an appropriate writ order or direction declaring the acquisition proceedings having been lapsed and have become in operative after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and also award cost of the present proceedings in favour of the petitioners."

2. The case of the Petitioners is that their predecessor in interest, one Khazan Singh son of Devka, was the owner of land admeasuring 3 bigha 143 biswa in Khasra No.231 min (3-14) situated in the in the revenue estate of Village Haiderpur, Delhi. Khazan Singh is stated to have expired on 21st February 1983.

Petitioner Nos. 2 to 19 who claim to be the legal heirs of Khazan Singh are stated to have executed a General Power of Attorney ("GPA") in favour of Alok Kumar Yadav (Petitioner No.1), authorising him to file the present petition.

3. The admitted facts as stated in the petition itself are that the notification under Section 4 of the Land Acquisition Act 1894 ("LAA") proposing to acquire the aforementioned land in question was issued way back on 24th October 1961. This was followed by a declaration under Section 6 of the LAA and an award dated 18th July 1980. It is also admitted in the petition itself that possession of the land was also taken on 19th July 1980.

4. The only ground on which the Petitioners seek relief is that, according to them, no compensation has been paid till date and the land is also lying vacant. However, no attempt is made to explain why neither the Petitioners nor their predecessor in interest failed to approach any court for relief for 35 years after the passing of the award and taking of possession of the land in question.

5. In reply to the petition, the Land Acquisition Collector (North-west) ["LAC (NW)"] has filed a counter-affidavit dated 11th April 2018 stating that the writ petition is a speculative one and that the Petitioners cannot revive "stale claims which lapsed around 37 years back" particularly since the physical possession of the land was admittedly taken way back on 19th July 1980. It is further stated in paragraph 5 as under:

"5. That the petitioners are claiming relief of (3-14) in khasra number 341 min. however, the petitioners have not given any details as to their entitlement and share as there are 19 petitioners. The compensation of Rs.66,287.78 including khasra number 341 min (3-14) was paid to Khazan vide cheque number 408988 dated 23.1.1981."

6. The voucher accepted by Khazan Singh is annexed as Annexure R-1 of the said counter-affidavit.

7. The DDA has filed a separate affidavit dated 7th May 2018, more or less stating the same facts and also specifically contending that the petition is barred by delay and laches.

8. Despite the two affidavits referred to hereinabove being available to the Petitioners for over 7 months now, no attempt has been made by the Petitioners to file a rejoinder explaining the delay in approaching a court. The prayer made today by the learned counsel for the Petitioners for further time in that regard is rejected since there was sufficient time available to the Petitioner to file a rejoinder.

9. The delay in approaching a writ court for discretionary relief, unless properly explained, would disentitle the Petitioner to relief. This has been reiterated in a large number of decisions of the Supreme Court. In *Tridip Kumar Dingal v. State of West Bengal* (2009) 1 SCC 768, it was observed as under:

"56. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of state claims and exhumed matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (See also: P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152)."

10. In Tamil Nadu Housing Board, Chennai v. M. Meiyappan (2010) 14 SCC 309, the Supreme Court held the as follows:

"13. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to the writ petitioner."

11. The following observation in State of Jammu & Kashmir v. R. K. Zalpuri (2015) 15 SCC 602 is also relevant on this aspect:

"27. The grievance agitated by the respondent did not deserve to be addressed on merits, for the doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim "deo gratias" - "thanks to God".

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, needless to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present."

12. In light of the legal position discussed hereinabove, this Court is not satisfied that the Petitioners in the present case are entitled to relief.

The writ petition is, therefore, dismissed on the ground of delay and laches.