

(1990) 09 DEL CK 0044

In the Delhi High Court

Case No : Civil Writ Petition No. 3408 of 1982

Angelo Fernandes

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-09-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 11(1)

Citation : (1990) ILR Delhi 302

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : S.L. Watel, R.K. Watel and Ashok Aggarwal, for the Appellant;

Judgement

A.B. Saharya, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioner has challenged a notification dated 4th of April 1964 u/s 4, a declaration dated 7th of December 1966 u/s 6 and notice dated 8th of June 1967 u/s 9 of the Delhi Land Acquisition Act, 1894 (hereinafter referred to as the Act) in respect of land in perpetual tenancy of the petitioner, bearing Khasra No. 19 min, measuring 99 bighas 4 bighas in Village Okhala. By an additional affidavit, placing on record certain subsequent events, the petitioner has also claimed a declaration that the entire proceedings for the acquisition of the land have lapsed.

(2) In pursuance of the notification u/s 4, followed by the declaration u/s 6 and the notice dated 8th of June 1967, the petitioner filed, within the time allowed for that purpose, objections and claim to compensation u/s 9 of the Act, Thereafter, no proceedings were held. The petitioner was not notified of any progress despite reminders dated 22nd of February 1971, 19th of April 1972 and "6th of December 1979 (Annexure P-I to P-III respectively to the writ petition).

(3) In October 1982, on the basis of some rumour that acquisition proceedings were being taken up, the petitioner filed this writ petition on 4th of October 1982 challenging the said notification and declaration, inter alia, on the ground that

there was unreasonable delay in the conclusion of the acquisition proceedings.

(4) After Rule Nisi was issued, the writ petition was directed to be heard along with another writ petition, being C.W.P. 701/81- Roshanara Begum v Union of India and others. That case was subsequently referred to a Full Bench but it has not yet been disposed of.

(5) On or about 5th of February 1989, the Priest in charge of the petitioner Church again heard rumors that an award had been made but the petitioner had not received any notice of " the same. The petitioner through counsel, served & notice dated 6th of February 1983 under registered A.D. cover, on the Land Acquisition Collector apprising him of the said rumour and requested him to inform the petitioner if any such had been made, and award if so, the number and date of the award and to furnish a copy thereof. No reply was received from the Collector despite a reminder sent to him on 29th of March 1989. On 4th of" April 1989, the petitioner"s counsel personally called on the Collector .He seat for; the Tehsildar, who disclosed that an award had been made in the year !986 but no intimation of making he award had been sent to the petitioner. On the 8th April 1989 the petitioner obtained a certified copy of the award and came to know, for the third time that the award bearing No 76/86-87 had been made purportedly on 17th of September, 1986. All this was slated in the addition, affidavit dated 23rd of April 1989,filed en behalf of the petitioner.

(6) It was also alleged that on inspection of the record, counsel for the petitioner did not find any. indication, much less evidence ,of any enquiry u/s 11, or of the award having been made with the previous approval of the appropriate Government or any officer authorised in this behalf, as required by the first proviso to Section 11 of the Act. Further, it was alleged that the purported award had been made after the expiry of 19 years from the service on the petitioner of notice u/s 9 of the Act and that too after the change of several Collectors in the meanwhile, that the collector did not give any notice of the award to the petitioner as required by Sub-section (2) of Section 12 of the Act, and that the petitioner had reason to believe that the award was not made on the date it is purported to have been made, but had been ante-dated.

(7) On 19th of March 1990, when the case was placed before the Court for directions, counsel for the petitioner specifically invited attention to the provisions of the two proviso to Section 11 or the Act. which postulate permission of the Government prior to making of the award. Therefore, the Union of India was specifically directed to place on record the permission envisaged under these provisions. It was- noted that if the permission did not exist, then the award, which is purported to have been made, would be of no effect, in view of the first, proviso to Section 11 and that acquisition proceedings would automatically lapse, by virtue of Section 11-A of the Act.

(8) In this view of the matter, instead of awaiting hearing by the Full Bench of larger controversy, this writ petition was set down for hearing.

(9) Despite specific direction, the Union of India has not filed any counter-affidavit, nor has it produced any documents to controvert the averments made in the writ petition or in the additional affidavit. However, on the petitioner's application, registered as C.M. 2194/89, the Land Acquisition Collector's file of award No. 76/86-87 was seized and placed on record in a sealed cover. Now, at the time of hearing, counsel for the respondents has stated that there is no other record of the acquisition proceedings.

(10) To properly appreciate the controversy in the present case, relevant extracts of Sections 9, 11, 11-A, 12 and 15-A of the Act are set out below: ,

9(1)The Collector shall then cause public notice to be given at convenient place on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2)Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land "to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of notice), and to state the nature of their respective interests in the land and the amount, and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made u/s 8. The Collector may in any case require such statements to be made in writing and signed by the party or his agent.

(3)- - -

(4)- - -

11(1)On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land (at the date of the publication of the notification u/s 4, Sub-section (1) and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(I)the true area of the land,

(II)the compensation which in his opinion should be allowed for the land, and

(III)the apportionment of the said compensation among all the persons known or believed to be interested in "the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

PROVIDED that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf.

PROVIDED further that it shall be competent for the appropriate Government to

direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2)- - - (3)- - -

11A.The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse :

PROVIDED that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation N-IN computing the period of two years referred to in this section, the period during: which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

12(1)Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2)The Collector shall give immediate notices of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

15A.The appropriate Government may at any time before the award is made by the Collector u/s 11 call for any record of any proceedings (whether) by way of inquiry or otherwise for the purpose of satisfying itself as to the legality or propriety, of any finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit.

PROVIDED that the appropriate Government, shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

(11) The Collector's file has been examined. It does not show that any enquiry was held on the day fixed by the notice u/s 9 served on the petitioner or on any other day to which the enquiry may have been adjourned It appears, however, that fresh notices u/s 9 and 10 were prepared to be issued to about 98 persons interested in the entire land. notified for acquisition, 5th of September 1996 is "indicated in these notices as the day fixed for enquiry. The does not show when, under whose orders and why these notices were prepared. Bulk of these notices, in original, including those addressed to the petitioner, are still on this file. Interestingly,. an endorsement on the back of each of these notices purports to record that the same had been received back from the post office undelivered. After this. endorsement, appears the signatures of the Collector implying grant of

the request. Thereafter, another endorsement states that the notice has been affixed. According to counsel for the petitioner. these endorsement on. all these notices appear to have been made at the same time. This apart, it is pertinent to note that neither the first endorsement on any of the notices. about the same having been received back undelivered not the order for affixation nor the endorsement regarding affixation, bear any date. The notices u/s 9 and Section 10, meant for the petitioner, are at pages 78 and 79 of the Collector's file. The envelopes that should have been received back from the post office are not on the record. None of the notices bears any postal stamp or endorsement made by the postal authorities. In these circumstances, it is doubtful whether the fresh notices under Sections 9 and 10 of the Act were at all issued to all the persons interested including the petitioner. In any event, the petitioner has categorically stated on oath that no such notices were received. This statement has not been controverted. Indeed, no reply whatsoever has been filed on behalf of the respondent nor has anyone stated on oath or otherwise that these notices were, in any way served on the petitioner. In these circumstances, it cannot be said that the petitioner was given any opportunity to appear and to state the nature of its claims and objections before the Collector. The requirement of Sub-section (2) of Section 9 was thus violated

(12) Further, Sub-section(I) of Section 10 postulates an enquiry into the objections and various other aspects on the day fixed u/s 9 or any other day to which the enquiry may be adjourned. As noticed earlier. a notice dated 1st of June 1987 was issued u/s 9, and the petitioner had filed its claims and objections in pursuance thereof. But, thereafter, the petitioner was not given any opportunity to appear and to state the nature of its claims and objections etc. The Collector's file reveals that the proceedings at all were held for a number of years. Even later, on the basis of fresh notices, the file shows that only two sets of objections were received. One on behalf of Jagmal Singh and Dhanpal Singh and the other on behalf of Mohd. Asghar. The only note made on 5th of September 1986 records that the file was put up and the two above-mentioned claims were filed. This note does not bear any semblance of an enquiry into any of the aspects envisaged under this provision. Therefore, it is held that the provision for enquiry made under Subsection (1) of Section 11 of the Act also was violated.

(13) The Collector's file contains the original award. It is signed and dated 17-9-1986 by the Acquisition Collector. Below this is affixed a rubber stamp bearing the word "Approved" and there under, leaving blank space of about 2 cms. the designation "Secretary (Revenue)". Running across this rubber stamp is an illegible signature. and the date "17-9-86". Lower down, at the bottom of the same sheet is an endorsement in hand reading "Announced and Filed" signed by the Collector and dated "19-9-86" Apart from this there is nothing else to show the movement of this file from the Collector to the Secretary and back.

(14) Now, to decide whether the award was made by the Collector with or

without the previous approval of the appropriate Government or of an authorised officer as required by the first proviso to Sub-section (1) of Section 11 of" the Act, the vital question is: When is an award made -When it is drawn up and signed by the Collector or when it is announced and filed. Here, it may be noted that it is not the case of the respondents that the Government had directed the Collector to make the award without such approval as envisaged the second proviso.

(15) In *Leath Elie Joseph Solomon v HC. Stork Air* 1988 Cal. 788, it was held that the award cannot be said to be made until it is drawn up and signed. In *Nasar Chand Mallick v. State of West Bengal and others* Air 1952 Cal 67, it was explained : "An award is made when the Collector draws up and signs the award. The function is not a judicial one and there is no necessity of announcing it". In *Kaliyappan Vs. State of Kerala and Others*, , while dealing with Section 11-A of the Act. it has been clarified that to make an award in this section means "sign and award". It has been pointed out that an extended or a different meaning is neither warranted by equity nor will it advance the object, of the statute. Thus, it is clear that an award is made when the Collector draws up and signs the award. When it. is announced or communicated to the affected party, is not relevant for the present purpose.

(16) In this view of the matter, it is apparent that the Collector made the award on 17th of September 1986 and only thereafter, though on the same date, it was sent for approval to the Secretary. This is not in accordance with the. first proviso to Section 11 which prohibits the making of. any award without the "previous approval of the Government or an officer authorised in this behalf.

(17) The word "approval", according. to Random House Dictionary means formal permission or sanction. Similarly, according to Webster's New Twentieth Century Dictionary (Second Edition) it means consent or Sanction. So, the formal permission, sanction or consent of the appropriate Government must be obtained prior to the making of the award. Otherwise, it cannot be said to be "previous approval" and the award of the Collector would be hit by the first proviso to Section 11 of the Act.

(18) The Proviso to Section 11(1) have been introduced, along with certain other new provisions, for example. Section 11-A and 15-A and some of the other provisions inter alia, Section 6, 23, 28 and 34 to the Act have been amended by the Land Acquisition (Amendment) Act No. 68 of 1984. It became necessary to make these amendments to avoid delay in disposal of. the acquisition proceedings resulting in prejudice "to the persons interested whose Lands are acquired, as also to the public purpose for which the Government resorts to compulsory acquisition of land. This apart, in a number of cases, on judicial review, faults were found by the courts and the acquisition proceedings had to be set aside.

(19) To ensure prompt completion of the acquisition proceedings amendments.

have been. made .inter alia, to Section 6 and by the insertion of new Section 11-A. The preexisting first Proviso to Section 6 has been substituted so as to prohibit making of a declaration after the expiry of three. years from the date of publication u/s 4. The new Section 11-A. subject to the Explanation added So it, requires the. Collector to make The award u/s 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for acquisition of the land shall lapse.

(20) The prejudice cause by delay to the persons interested in the land is sought to be mitigated,, inter alia, by making provision for payment of additional amount calculated at the rate of 32 per centum per annum on the market value of the land and increasing the per centum rate for payment in consideration of the compulsory nature of acquisition u/s 23 and by increasing. the rate of per centum interest payable under Sections 20 and 34 of the Act.

(21) To get over the setback to the public purpose suffered by the Government by the lurking illegality or impropriety in the proceedings which were earlier discovered only after prolonged litigation in Courts, two Provisos in Sub-section (1) of Section 11 and a new Section 15-A have been inserted. These provisions have been made as it was felt that there was need for supervision by the Government of the -Collector's power of making award. Earlier, the Government, despite, its anxiety to "expeditiously achieve the public purpose for which acquisition proceedings were initiated, had no power to supervise, check or control the enquiry, findings or orders passed by the Collector in such proceedings, It has, Therefore, been provided in the first Proviso to Section 11 that the Collector, before making. an award, should obtain the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf. By the second Proviso, provision has been made that the appropriate Government may direct the Collector to make his award without such approval in such class of cases as the appropriate Government may specify in this behalf, This provision enables the Government to lay down guidelines under which certain class of cases can be disposed of by the Collector at his level, while in other important cases before the award, the previous approval of either the appropriate. Government, or an office authorised by it, will be obtained. By insertion of the new Section 15-A. rather than waiting up to the stage of making of the award, the Government has been empowered also to call for. at any time before the award is made by the Collector, any record of any proceeding for the purpose of satisfying itself as to the legality or propriety of any finding or order passed, and to pass such order or issue such direction in relation thereto as it may think fit. As a result of insertion of the Provisos to Section 11 and the new Section 15-A, while giving adequate freedom to the Collector to make the award, at the same time, the appropriate Government is empowered to ensure that proceedings for award are properly conducted and no injustice or irregularity is committed.

(22) In this way, by these amendments, the Legislature has sought to achieve

fulfillment within reasonable time of the public purpose for which the Government is compelled to resort to the provisions of the Act for acquisition of land by empowering the Government itself, to exclude, as far as possible, the peril of invalidation of such proceedings, and, at the same time, to do justice to the persons interested in the land.

(23) By these amendments, powers have been conferred upon the -Government itself to ensure not only that the acquisition proceedings are properly conducted and no irregularity is left out, but also to discreetly exercise effective supervision and control over the Collector's power to make the award. It is manifest that this important function must be performed before the award is made.

(24) The "previous approval" envisaged under the proviso to Section 11 obviously requires conscious application of mind to the entire proceedings from commencement till the conclusion-thereof by award made by the Collector. The previous approval is not an empty formality.

(25) The requirement cannot be flouted by a rubber stamp approval affixed on the award after it is made by the Collector as has been done in the present case. By acting in this indifferent manner the concerned authorities have reduced this requirement to a farce. They have really subverted the intention of the Legislature sought to be achieved by insertion of this significant and beneficial provision in the Act. The result is failure of the proceedings, unnecessary litigation and waste of time which could well be avoided if the power, under the amended provisions had been properly exercised by the concerned authorities.

(26) In find. it is found, that the award has been made in violation of the first proviso to Section 11 of the Act. The period of two years prescribed under the proviso to Section 11-A of the Act expired on 17th of September 1988. No valid award has been made within the prescribed period. Therefore, as provided in Section 11-A of the Act, the entire proceedings for the acquisition of the land have lapsed.

(27) In view of the foregoing discussion, it is unnecessary to go into the vexed question whether the award was in fact made on 17th of September 1986 or it was back-dated.

(28) As a result, the entire proceedings for the acquisition of the land are quashed, rule is made absolute, and the writ petition is allowed with costs. Counsels fee Rs.2,200.00 .