

(1985) 04 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Petition No. 889 of 1983

Angira Devi Gupta

APPELLANT

Vs

The Land Acquisition Collector, Delhi

RESPONDENT

Date of Decision : 15-04-1985

Acts Referred:

Citation : AIR 1986 Delhi 40 : (1985) 28 DLT 413

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : Sanjeev Seth, R.K. Anand, K.R. Gupta and Deepak Kumar, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This petition under Article 226 of the Constitution of India seeks the quashing of the acquisition proceedings pursuant to notification dated November 13, 1959 issued u/s 4 of the Land Acquisition Act, 1894, declarations dated December 6, 1966 January 2, 1969 u/s 6 of the Act culminating in an Award No. 60/83 dated January 17, 1983 for the acquisition 30 bighas 6 bids was of land belonging to the petitioner situate in village Mehrauli.

(2) The facts are not in dispute. In 1959 respondent No. 2 issued a notification No. 15(III)/59/LSGdated November 13,1959 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) notifying that land admeasuring 34070 acres and marked with blocks and description specified in the notification was required by the Government at the public expense for public purpose, namely, the planned development of Delhi. The said notification covered, inter alia, the land of village of Mehrauli but specifically excluded from the purview of the acquisition proceedings "Government land and evacuee land".

(3) The land bearing khasra Nos, 1452, 1455, 2278/1456-1455, 1458 to 1460, 2006/1462, 1531, 1352 2071/1533, 2072/1553, 2073/1533, 1534 to 1537, 1539 to 1543, 2362/1544. 2363/1544, 2354/1544, 1545 to 1549, 1551, 1552,

1639, 1642 to 1651, 2017/1652. 2016/1652 and 1654 to 1658 measuring 30 bighas 6 bids was situated in village Mehrauli was acquired evacuee land and vested in the Government under the Displaced Persons (Compensation & Rehabilitation) Act, 1954. In 1960 an auction notice was published by the Office of the Regional Settlement Commissioner, Government of India, Ministry of Rehabilitation, putting the aforesaid and being evacuee land for sale by public auction. The public auction was held on March 3, 1960 in pursuance of the powers conferred upon the Managing Officer u/s 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. At the public auction the petitioner herein gave the highest bid for purchase of the said land for Rs. 72,000.00 . Har pid was accepted and approved by the Competent Authority. The sum of Rs. 72,000.00 was paid by the petitioner by adjustment of compensation of her and her associate's claim against properties left by her in Pakistan. A sale certificate was issued under Rule 90 on February 22, 24, 1966 declaring the petitioner as purchaser of the said land with effect from August 25. 1960. A copy of the sale certificate is attached as Annexure-II to writ petition.

(4) The petitioner then filed an application for mutation proceedings to get the properties recorded in her favor in the revenue records. The application although in the year 1966 was processed in 1981 and said land was finally mutated in the name of the petitioner in the revenue records on October 8, 1982.

(5) According to the allegations in the writ petition the petitioner came to know on or about April 28, 1983 about the acquisition proceedings when the agents/ employees of the respondents were seeking to enter upon the petitioner's land to take possession. On enquiry the petitioner was told that the said land had been acquired by the respondents. The petitioner then came to know that declarations dated December 7, 1966 and January 2, 1969 were issued including the said land of the petitioner in it, although the said land was not covered by the preliminary notification dated November 13, 1959 issued u/s 4. The petitioner also states that she did not receive any notices under sections 9 and 10 and she was never informed by the respondents probably for the reason that the land was not mutated in the name of the petitioner in the official records. It may be that all along the said land was shown as Government land in those records, and thus no notice was thought to be necessary. The petitioner further came to know that award in respect of part of the land was made on January 17, 1983. It is then that the petitioner filed the present writ petition on May 5, 1983 seeking a writ of certiorari to quash the acquisition proceedings and award dated January 17, 1983.

(6) Initially the Delhi Development Authority was not made a party to the writ petition. At the time of the grant of interior relief, Mr. R.K. Anand, who is appearing for the Central Government stated that the possession of a part of the land in dispute was taken on February 14, 1983 and was handed over on February 28, 1983 to the Delhi Development Authority. The petitioner then moved an application for impleading the Delhi Development Authority as a party

to the writ petition. The Delhi Development Authority was directed to be impleaded as a party respondent to the writ petition.

(7) Although initially the petitioner had alleged that the entire land was the subject matter of award No. 60/82-83 dated January 17, 1983 but later on sought leave of the Court to file a supplementary affidavit. The supplementary affidavit was filed on January 29, 1985. Para 2(a) of the supplementary affidavit specifies the portion of the land in village Mehrauli the possession of which was taken over by the Government and that the same are not the subject matter of award No. 60/82-83 dated January 17, 1983. Para 2(b) mentions the portions of the land in village Mehrauli which have been alleged to have been acquired pursuant to the award No. 60/82-83 dated January 17, 1983 and possession of which was taken by the Government and handed over to the Delhi Development Authority.

(8) The writ petition is entitled to succeed on the short ground that there is no notification u/s 4(1) of the Act covering the said land of the petitioner. The issue of a notification u/s 4(1) is a condition precedent to the exercise of any further power under the Act. The process of acquisition must start with the notification u/s 4 and the notification u/s 4 is a sine qua non. In the absence of Section 4 notification no acquisition proceedings can subsist as neither the Collector can enter upon the property for the purposes mentioned in sub-section (2) of Section 4, nor can the Collector hear the objections u/s 5A, nor can it submit the report to the appropriate Government for consideration and issue of the declaration u/s 6. The essential mandatory requirement of initiation of acquisition proceedings is the issuance of notification u/s 4 of the Act covering the land proposed to be acquired. The award of the compensation is on the basis of the market value as on the date of Section 4, notification. Where there is no notification u/s 4, the machinery provided by the Act for determination of compensation obviously cannot apply.

(9) In *Narendrajit Singh and Another Vs. The State of U.P. and Another*, the Government of U.P. issued a notification purporting to be u/s 4 of the Act that the lands mentioned in the schedule belonging to the appellants there was needed for a public purpose. This case being of urgency the Governor directed the Collector u/s 17 to take possession of the land. The appellants there filed writ petition in the High Court on the ground that the notification u/s 4 of the Act was invalid for non-compliance with the mandatory provisions of the Act rendering the whole proceedings void and that the exact land which was required by the State Government was not specified in the notification. It was held :

"ANY notification which is the first step towards depriving a man of his property must be strictly construed and courts ought not to tolerate any lapse on the part of the acquiring authority in the issue of such notification if it be of a serious nature. In the case of *Babu Barkya Thakur (supra)* it was pointed out by this Court that :

"THE proceedings being with a Government notification u/s 4 that land in any locality is needs or is likely to be needed for any public purpose."

It is well known that a person interested in the land which is affected by any notification u/s 4(1) may immediately object to it and take proceedings in Court against it. In *Smt. Somayani v. State of Punjab* one of the main questions before this Court was whether a notification u/s 4(1) and one u/s 6(1) could be issued simultaneously. Although the Court took the view that where Section 5-A was not in the way there was no irregularity in publishing the notification on the same day, yet it observed that :

"NOTIFICATION under sub-section (1) of Section 4 is a condition precedent to the making of a notification under sub-section (1) of Section 6."

(10) It is not disputed that the said land was acquired evacuee property and vested in the Central Government on November 15, 1959 when the notification u/s 4 was issued. "Government land and evacuee land" is specifically excluded from the purview of the notification dated November 13, 1959. In my opinion, a notification which specifically excludes the "Government land and evacuee land", cannot be resorted to have further acquisition proceedings in respect of excluded land.

(11) A preliminary objection has been raised by Mr. R.K. Anand, the learned counsel for the respondents that the writ petition is highly belated as it seeks the quashing of Section 4 notification dated November 13, 1959, declarations dated December 7, 1966/January 2, 1969. Reliance is placed on *Babu Singh and Others Vs. Union of India (UOI) and Others*, . It was held that if a person allowed the Government to complete the acquisition proceedings on the basis that Section 4 notification and Section 6 declaration are valid and then attacked the notification on the grounds which were available to him at the time when the notification was published, it would be putting a premium on dilatory tactics.

(12) In *Babu Singh's* case (*supra*) before the Supreme Court the notification under sub-section (1) of Section 4 was issued on March 15, 1963 and in view of the urgency the Government by a notification of the same date u/s 17 dispensed with the provisions of Section 5-A and thereafter made a declaration under sub-section (1) of Section 6 of the Act and issued the notification on the same date. The writ petitions were filed on April 22, 1969, i.e. nearly six years and month after the publication of the notification u/s 4 and about five years after the award. No Explanation was offered there why writ petition was filed after such an inordinate delay. In my view the delay in filing this writ petition has been satisfactorily explained. No Section 4 notification has been issued under the Act regarding the said land. The notification dated November 13, 1959 specifically excluded from its purview all "Government land and evacuee land". On the date of notification dated November 13, 1959 the said land was acquired evacuee land and vested in Government. No acquisition proceedings could have been commenced with respect to said land unless there was a notification u/s 4. The

petitioner became owner by virtue of a sale certificate dated February 24, 1966 and was declared as the purchaser of the said land with effect from August 25, 1960 (the date on which her bid was confirmed). The petitioner moved an application for mutation which was finally sanctioned in the name of the petitioner on October 8, 1982. The petitioner did not receive any notice, u/s 9 and 10 of the Act and Therefore cannot be imputed with any knowledge of the acquisition proceedings. The petitioner came to know of the acquisition proceedings when the agents/ employees of the respondents sought to enter upon the petitioner's land. The petitioner thus became aware of the acquisition proceedings in 1983 only. The petitioner then invoked the jurisdiction of this court soon thereafter.

(13) In the case before me there is no notice to the petitioner at all. Section 4(1) requires a notification to be published in the official gazette and also a public notice of the substance of the notification at convenient places in the locality. The purpose is to give public notice of the proposal and it is published in the locality so that the persons affected by the proposals are aware that such an activity is taking place. It is only then that the persons can be imputed knowledge of the acquisition proceedings. In the absence of the notification u/s 4, the petitioner cannot be put to notice of the subsequent acquisition proceedings. The petitioner approached this Court immediately after her dispossession from a part of the land.

(14) For the above reasons the writ petition succeeds and is hereby allowed. The impugned declarations dated December 6, 1966 and January 2, 1969 and the Award No. 60/82-83 dated January 17, 1983 are hereby quashed. The Delhi Development Authority is directed to restore possession to the petitioner of various khasra numbers mentioned in the notification dated February 28, 1983 placing the land at the disposal of the Delhi Development Authority. The possession of the remaining khasra numbers should be restored by the Delhi Administration. The restoration of the possession be done within one month from today. On the facts and circumstances of the case I make no order as to costs.