

(2019) 01 DEL CK 0114

In the Delhi High Court

Case No : Civil Writ Petition No. 10140 Of 2015

Arti Kapahi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2019) 2 AD(Del) 86

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

Bench : Division Bench

Advocate : N.S. Vasisht, M.P. Bhargava, Abhay Prakash Sahay, Mrinalini Sen, Tanmay Yadav, Siddharth Panda

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. The prayers in the present petition read as under:

"In the facts and circumstances hereinabove stated, the Petitioner most humbly pray that this Hon'ble Court may be pleased to:

(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the land to 6 Bighas 12 Biswas of land of the Petitioner comprised in Khasra Nos.901/1 (901 min) (4-0) & 900/1 (2-12) situated in the revenue estate of village Satbari, NCT of Delhi having lapsed and further quashing the impugned notification No. F.9(16)/80-L&B dated 25.11.1980 issued under section 4, Notification No.F.9(20)/85-L&B dated 27.05.1985 issued under Section 6 of the Land Acquisition Act, 1894 and the Award no. 14/87-88 dated 26.05.1987 with respect to 6 Bighas 12 Biswas of land of the Petitioner comprised in Khasra Nos.901/1 (901 min) (4-0) & 900/1 (2-12) situated in the revenue estate of village Satbari, NCT of Delhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to disturb or hinder the possession and enjoyment of the Petitioner over 6 Bighas 12 Biswas of land of the Petitioner comprised in Khasra Nos.901/1(901 min) (4-0) &900/1 (2-12) situated in the revenue estate of village Satbari, NCT of Delhi.

(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

2. As per the narration in the petition, notification under Section 4 of the Land Acquisition Act, 1894 ("LAA") was issued on 25th November 1980 followed by declaration under Section 6 LAA on 27th May 1985. The Award No.14/87-88 was passed by the Land Acquisition Collector (LAC) on 26th May 1987.

3. According to the Petitioner, the possession of the land in question has remained with the predecessor of the Petitioner and after his demise with the Petitioner which has continued from 1980 till date. In para 4.3 of the petition it is stated that the Petitioner had received the compensation, however, he immediately returned it along with interest by Cheque No.158233 dated 11th July 1989. According to the Petitioner since the money that was returned was received by the Respondents, for which Mr. Vasisht refers to the relevant document enclosed with the petition, there has been no payment of compensation to the Petitioner. It is claimed that in the above circumstances, the Petitioner is entitled to invoke Section 24(2) of the 2013 Act and ask for a declaration that the land acquisition proceedings have lapsed.

4. There is no explanation in the petition for the delay in approaching the Court for relief. The counter-affidavit filed by the Land Acquisition Collector (South) inter alia points out that the acquisition proceedings were challenged by interested persons by filing various writ petitions in which interim protection was granted by this Court. The interim protection continued till 2005. In one set of writ petitions there was a difference of opinion and the cases were referred to a Civil Judge and finally those cases were decided in favour of the plaintiffs and land acquisition proceedings were quashed. With there being conflicting views, both sets of aggrieved parties i.e. land owners and Union of India preferred appeals in the Supreme Court of India. The appeals of the land owners were dismissed by the decision in *Om Prakash v. Govt. of NCT of Delhi* (2010) 4 SCC 17. The other set of appeals by the Government of India were dismissed by the Supreme Court in *Union of India v. Shiv Raj* (2014) 6 SCC 564.

5. It is pointed out that possession of the land was taken over and handed over to the beneficiary department i.e. the Delhi Development Authority (DDA) way back on 30th September 1987. It is stated that compensation amount was paid to Shri Atul Kapahi by a cheque dated 28th October 1987 in the sum of Rs.158047.50 and the balance of Rs.4571.44 was unpaid.

According to the LAC "as per the available record no compensation has been returned back to the Department."

6. In the rejoinder filed to the said affidavit, it is reiterated that the compensation amount has been returned by the predecessor-in-interest. Further reliance is placed on an order dated 9th December 2016 passed by this Court in WP(C) 6507 of 2014 (Godfrey Phillips (I) Ltd. v. Union of India & Ors.) where in a similar case, related to village Sayoorpur where the compensation amount was returned, this Court allowed the prayer of the Petitioners and issued a declaration of lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act.

7. A separate counter-affidavit has been filed by the DDA on 7th November 2017 supporting the stand taken by the LAC where it is pointed out that physical possession of the land was handed over to the DDA by the LAC on 30th September 1987. In para (VII) of the affidavit of the DDA, it is averred as under:

"VII. It is submitted that the relief sought by the petitioner qua quashing of the Award No. 14/2005-06, in the light of the judgment passed by the Hon'ble Supreme Court in *Abhey Ram v. UOI* (1997) 5 SCC 421 and also in *Delhi Administration v. Gurdeep Singh Uban and Others* (1999 SCC 44), wherein it has been held that "in connection with the owners or persons interested who have not filed objection under section 5 A, in the principle, it must be accepted that they had no objection to Section 4 notification operating in respect of their property. It is submitted that the petitioners in the present case did not raise any objection to Section 4 notification thus, in view of the aforesaid judgements. Petitioners is therefore, barred to seek such a relief and as such Award to be in force."

8. It may be noted that the predecessor-in-interest of the Petitioner himself never filed any writ petition at any point of time. In other words, there was no challenge laid by the Petitioner or his predecessor-in-interest to the land acquisition proceedings at any point of time.

9. Further, the Supreme Court in *Delhi Administration v. Gurdip Singh Uban & Ors.* (2007) 7 SCC 296 held that the relief granted in *Balbir Singh v. Union of India* 39 (1989) DLT 233 would be confined only to the Petitioners in the *Balbir Singh* case and was not intended to apply to others in a blanket manner. Consequently, the present Petitioner cannot take advantage of the decision the *Balbir Singh* (supra) case.

10. What is apparent from the above narration of facts is that apart from not having a case on merits, no explanation has been put forth by the Petitioner for the inordinate delay in approaching the Court. The passing of the 2013 Act cannot by itself constitute a cause of action when the Petitioner has taken no steps to pursue a challenge to the land acquisition proceedings in the meanwhile.

11. On the aspect of laches, in *Mahavir v. Union of India* (2018) 3 SCC 588 the Supreme Court has observed as under:

"23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being

barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale."

12. Following the above judgment, this Court has in W.P.(C) No.2734/2015 (Devender Singh v The Hon'ble Lt. Governor), dated 10th December, 2018, W.P.(C) No.1380/2016 (Bhule Ram v Union of India), dated 17th December, 2018; W.P.(C) No.5647/2016 (Ram Devi v NCT of Delhi), dated 21st December, 2018 and in W.P.(C) No.6287/2014 (Kartar Singh v Union of India), decided on 19th December, 2018, rejected petitions seeking similar reliefs on the ground of laches.

13. For the aforementioned reasons, the writ petition is dismissed on the ground of laches. The interim order passed by this court on 30th October 2015 is hereby vacated.