

(2005) 07 DEL CK 0011
In the Delhi High Court
Case No : Writ Petition (C) 19108 of 2004

Ashish Paul

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 16, 17(1), 17(3A)

Citation : (2005) 122 DLT 353 : (2005) 83 DRJ 382

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Sanjay Poddar and Anil Sapra, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The reliefs prayed for in this writ petition are to the effect that a Notification dated 13th December, 2000 issued u/s 4 of the Land Acquisition Act, 1894 (the Act) and a declaration dated 7th December, 2001 issued u/s 6 of the Act by the Respondents be struck down and the land acquisition proceedings in respect of the Petitioner's land in the revenue estate of village Bhartal, Tehsil Mehrauli, Delhi be declared void and of no legal effect. The Petitioner has also prayed for quashing of a Notification dated 21st March, 2002 issued u/s 17(1) of the Act in respect, inter alia, of the land of the Petitioner.

2. The above Notifications were also challenged by another land owner in village Bhartal and the acquisition proceedings were upheld by a Division Bench of this Court by a judgment and order dated 4th September, 2003 which is reported as Raheja Hospital and Pshychiatric Research Institute Vs. Land Acquisition Collector and Others, . A petition for special leave to appeal being SLP (C) No.18080/2003 directed against that decision was dismissed by the Supreme Court on 9th October, 2003. The land acquisition proceedings in respect of village Bhartal have, Therefore, attained finality and the Petitioner is not entitled to any of the

reliefs claimed in the writ petition.

3. Notwithstanding this position, a preliminary issue was raised by learned counsels for the Respondents, during the course of oral submissions, that since possession of the Petitioner's land had been taken by and on behalf of the Land Acquisition Collector on 14th August, 2002 the present writ petition filed sometime in November, 2004 was not maintainable in view of the provisions of Section 16 of the Act. In addition, it was also contended that the writ petition is liable to be dismissed on the ground of delay and laches.

4. As mentioned above, the Respondents issued a Notification u/s 4 of the Act on 13th December, 2000. The Petitioner filed objections u/s 5-A of the Act but the Land Acquisition Collector by his report dated 23rd October, 2001 rejected all the objections. The appropriate Government then issued a declaration u/s 6 of the Act on 7th December, 2001 in respect of 2904 bighas and 16 biswa of land.

5. Thereafter, on or about on 12th July, 2002 the Respondents issued notices under Sections 9 and 10 of the Act inviting claims for compensation. It appears that the Petitioner did not file any claim for compensation.

6. On 14th August, 2002, possession of the entire acquired land was taken by the Respondents, except for few pockets in respect of which this Court had granted interim orders of stay of dispossession. The Respondents took possession of the Petitioner's land on the same day.

7. On 23rd October, 2002, the Land Acquisition Collector announced his award bearing No.26/2002-2003.

8. According to the Respondents, on or about 17th November, 2004 the Petitioner illegally sought to encroach upon the acquired land of which possession had already been taken by the Respondents. The Petitioner tried to sow certain crops on a portion of the land and this compelled the Delhi Development Authority (DDA - Respondent No.5) to lodge a complaint with the police on 17th November, 2004 intimating them about the illegal cultivation and encroachment being carried out by the Petitioner. It is only thereafter on 27th November, 2004 that the present writ petition was filed by the Petitioner challenging the acquisition proceedings.

9. It was contended by learned counsel for the Petitioner that the writ petition was maintainable despite Section 16 of the Act, since the Respondents had not taken physical possession of the acquired land. It was also contended that even if it assumed that possession was taken, then it was illegal and not in accordance with law in as much as 80% of the compensation for the acquisition of land was not tendered to the Petitioner in accordance with the provisions of Section 17(3A) of the Act, before possession of the land was taken by the Collector. It was also submitted in this context that in any case the persons who are said to have taken possession on 14th August, 2002 were not authorised to do so and they did not follow the procedure in this regard.

It was finally contended that the Petitioner had constructed a farmhouse on the acquired land and as such the land could not have been acquired. As regards delay in approaching this Court, it was submitted that the Petitioner was residing in America and was unaware of the acquisition proceedings till recently.

10. As far as the question of delay and laches is concerned, we may note that the Petitioner has stated in paragraph 23 of the writ petition that he has been residing abroad for the past six years and came to know of the Notification dated 21st March, 2002 issued u/s 17(1) of the Act and the award dated 23rd October, 2002 only recently during his visit to India.

11. The above statement of the Petitioner is supported by the affidavit of his attorney, which has been attested on 25th November, 2004. If the affidavit is correct, it must mean that the Petitioner was out of India from sometime in 1998 onwards. Notwithstanding this, the admitted position is that the Petitioner filed objections u/s 5-A of the Act on or about 9th January, 2001, as per the list of dates filed by the Petitioner Along with the writ petition.

12. This being the position, it is very difficult for us to accept the selective knowledge of the Petitioner. On the one hand, the Petitioner had knowledge about the Notification having been issued u/s 4 of the Act in respect of which he filed objections even though he was abroad; but, on the other hand he feigns ignorance of the subsequent events. If the Petitioner knew of the acquisition proceedings and had even objected to the same by filing his objections u/s 5-A of the Act, it cannot be believed that the Petitioner was blissfully unaware of the subsequent developments. On the facts of the case, we are of the view that the Petitioner had knowledge of the subsequent events in the land acquisition proceedings, but inexplicably chose to keep silent until the award was made u/s 11 of the Act on 23rd October, 2002. Even thereafter, the Petitioner kept silent and it is only more than two years later in November, 2004 that the present writ petition was filed. There is absolutely no valid Explanation for the delay in approaching this Court and on this ground alone the writ petition deserves to be dismissed.

13. As regards possession of the land having been taken by the Respondents, the DDA has categorically stated on affidavit that it had taken possession of the land of the Petitioner and that the Petitioner sought to encroach upon it by sowing certain crops. This led the DDA to file a complaint with the police on 17th November, 2004. The Petitioner has denied this allegation by stating that the story of encroachment is false. We are of the view that it is not possible to accept the contention of the Petitioner in this regard. The relevant dates are far too proximate to each other. Soon after the encroachment is said to have taken place, the DDA lodged a complaint with the police on 17th November, 2004. The writ petition was filed by the Petitioner almost immediately thereafter on 27th November, 2004. The affidavit of the attorney of the Petitioner having been attested on 25th November, 2004. The writ petition seems to have been filed as a counter-blast to the police complaint made by the DDA.

14. That apart, the DDA has categorically stated in its affidavit that possession of the land was taken over by the Land Acquisition Collector on 14th August, 2002. Orders in this regard were issued by the Land Acquisition Collector (South West) and the concerned officers, namely, the Naib Tehsildar, Kanungo, Patwari, Field Kanungo and Halqua Patwari from the office of the Land Acquisition Collector had taken possession of the acquired land for and on his behalf in the presence of officials of the DDA and the Land and Building Department of the Government of Delhi. Physical possession of the land was handed over to the Naib Tehsildar of the DDA on the same day. The Land Acquisition Collector has filed the possession report on the record of this Court.

The Petitioner has merely denied the averment of the DDA. However, since a copy of the possession report is on record, and there being no effective denial to its contents, we see no reason to disbelieve it.

15. The DDA has also filed an affidavit that no farmhouse existed on the land of the Petitioner, as alleged. There was only small kaccha room (without roof), which continues to exist even till date. This averment is confirmed in the affidavit of the Land Acquisition Collector. As regards deposit of the amount of compensation for acquisition of the land, the DDA has stated on affidavit that it has deposited a sum of Rs.160 crores on 22nd February, 2002, a further sum of Rs.125 crores on 5th December, 2002 and another sum of Rs.50 crores on 11th December, 2002 in discharge of their obligation for acquisition of the land. The claim of the Petitioner, as per the affidavit filed by the Land Acquisition Collector, comes to hardly about Rs.57 lakhs. According to the affidavit of the Land Acquisition Collector, compensation was disbursed to the claimants of village Bhartal with effect from 15th November, 2002 onwards and most of them have received the compensation during November-December, 2002.

16. In a further affidavit dated 15th February, 2005, the Land Acquisition Collector has categorically mentioned, and this has not been disputed by the Petitioner, that several persons interested in the acquired land met the Land Acquisition Collector after the Notification under Sections 9 and 10 of the Act was issued and requested him to take possession of the land and make payment of the total compensation after making the award. The villagers explained their difficulty in receiving payment in two passes and requested that the entire payment be made in a lump sum, which would enable them to purchase agricultural land in the adjoining states like Haryana and Rajasthan. [It appears that on the basis of the request of the villagers, possession of the land was taken on 14th August, 2002 and the Respondents faced no difficulty during the possession proceedings as mentioned in the award.] It is further stated in the affidavit that nearly 95% of the landowners have received their compensation till date.

17. As regards payment of compensation to the Petitioner is concerned, the Respondents say that they are ready and willing to pay it and the Petitioner can collect the same any time. It has, in fact been mentioned that the cheques for

payment of compensation to the Petitioner were brought to Court but were not received on behalf of the Petitioner. As far as the contention of the Petitioner that compensation was not tendered to him when possession of the acquired land was taken, we may note that according to the Petitioner the Respondents have not yet taken possession of the acquired land. If that is so, the question of tendering payment would not arise. Secondly, as per the affidavit of the attorney of the Petitioner he was not in India during the relevant time. Quite clearly, Therefore, the compensation could not have been tendered to him when possession was taken. The stand taken by the Petitioner appears to be quite self-defeating.

18. It may also be mentioned that it has been held by a Division Bench of this Court in Pawan Singh and Others, Shanta Talwar and Diwan Chand Vs. Union of India (UOI) and Others, that even if possession of acquired land is taken without offering compensation u/s 17(3A) of the Act, that would not by itself render the taking of possession illegal. However, it was observed that such a step should be taken only in exceptional circumstances. We are satisfied that given the facts of the case, even if the Respondents wanted to tender the compensation to the Petitioner before taking possession of the acquired land, they could not have done so because on the own showing of the Petitioner he was not in India at that time. This being the position, we do not think that the Respondents acted illegally in taking possession of the land of the Petitioner on 14th August, 2002.

19. In view of conclusion that possession of the Petitioner's land was taken by the Respondents on 14th August, 2002 the present writ petition cannot be entertained.

20. As regards the final contention of the Petitioner that a farm house had been constructed on the acquired land and, Therefore, it was exempt from acquisition, we may note that sanction for permission to construct the farm house was valid only up to 17th August, 1990 as per the letter dated 18th August, 1988 issued by the Municipal Corporation of Delhi in favor of Mani Ram Gupta who was the erstwhile owner of the acquired land. There is nothing on record to suggest that advantage was taken of this sanction and a farm house was actually constructed. In fact the photographs that have been filed by the Petitioner along with an additional affidavit dated 20th January, 2005 do not show any construction at all except for a boundary wall and one kaccha room.

These photographs actually confirm what has been stated in the possession report of the Land Acquisition Collector, as well as the photographs filed by the DDA Along with its affidavit that there is no farm house of the Petitioner on the acquired land.

21. For the above reasons, we are of the view that the writ petition has to be dismissed. Since the Petitioner has filed the writ petition after an enormous and unexplained delay and has stalled the acquisition proceedings by approaching this Court, the DDA would be entitled to costs from the Petitioner. The Petitioner will pay to the DDA within four weeks from today costs of Rs.25,000/- It is

ordered accordingly.