

(1999) 07 DEL CK 0076
In the Delhi High Court
Case No : C.W.P. No. 1158/96

Ashok Nagar Welfare Association (Regd.) APPELLANT
Vs
Union of India and others. RESPONDENT

Date of Decision : 12-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 5 AD 84

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Sh. Mohan Singh Kashyap, through Mr. Y.K. Kapur, for the Appellant; Mr. Ravinder Sethi, Mr. M. Bhatnagar, Ms. Pinki Anand and Mr. Sanjeev Sahay, for the Respondent

Judgement

C.M. Nayar, J.—This petition has been filed by an Association known as Ashok Nagar Welfare Association (Regd.) for issuance of a writ of mandamus directing the respondents to regularise the colony of Ashok Nagar Welfare Association, Delhi which comprises of the area measuring 141 Bighas and 15 bids was falling in Khasra Nos. 391/263, 392/264, 393/264 and 402/268 situated at Ashok Nagar of village Chilla Saroda Bangar, Delhi along with site plan (Trans Yamuna Area) Delhi as per petitioner's proposal dated 19th September, 1988.

2. Notice to show cause was issued and as no reply was filed Rule was issued and the matter was directed to be heard along with CWP No. 1507/84 (Ashok Nagar Welfare Association Vs. Union of India and another) which was listed before the Division Bench. This matter could not be taken up at the time of hearing of CWP No. 1507/84 as the pleadings were not complete as will be indicative from reading of the order dated April 30, 1998 which reads as under:

"C.W. No. 1158/96

This petition was ordered to be heard along with CWP No.1507/84. Arguments in C.W. 1507/84 have been concluded today and the judgment has been reserved.

We find in the present writ petition that the pleadings are yet to be completed, Therefore, it cannot be heard at this stage.

List this case for directions before the learned Single Judge as per the roster on 17th July, 1998. Notice of the said date be issued to the Standing Counsel for Union of India, respondent No.1 in this case and to respondents 4,5 and 6 without process fee.

Sd/- Arun Kumar, J.

Sd/- M.S.A. Siddiqui, J.

3. This petition as well as Civil Writ Petition No.1507/84 related to the same Notifications which were issued under Sections 4 and 6 of the Land Acquisition Act dated November 17, 1980 and September 29, 1981 respectively in respect of the same lands. The acquisition was sought to be made for the purposes of planned development of Delhi. The Division Bench has dismissed the challenge to the Notifications by judgment delivered on May, 21, 1998. Therefore, the acquisition has become final. In this view of the matter the present petition, it is contended by the respondents, is also liable to be dismissed.

4. The learned counsel for the petitioner has vehemently contended that the land forming part of Khasra numbers which are subject matter of the present petition has already been directed to be regularised by Delhi Development Authority and the present petition is liable to be allowed. He has placed on record a detailed additional affidavit to reiterate his proposition. The document where reference has been made is placed on record which reads as under:

"DELHI DEVELOPMENT AUTHORITY PARLIAMENTARY CONSTITUENCY-WISE LIST OF UNAUTHORISED COLONIES APPROVED BY THE DELHI DEVELOPMENT AUTHORITY Parliamentary Sl. Name of the Layout Date Remarks Constituency No. colony Plan App. Res. No. Date EAST DELHI 1. Ashok Nagar YES 56 20.5.81 2. Nathu Colony YES 56 -do- Similarly, copy of the Unstarred Question No.3095 which was raised in the Lok Sabha has also been referred to. This has been filed as Annexure PA/2 and reads as under: LOK SABHA UNSTARRED QUESTION NO.3095 5. To be answered on the 15th April 1985.

REGULARISATION OF UNAUTHORISED COLONIES IN DELHI

No. 3095 SHRI CHITTA MAHATA: Will the Minister of Works and Housing be pleased to state:

(a) the names of the unauthorised residential colonies in Delhi and New Delhi; and

(b) the steps Government propose to take to regularise them during the current year?

ANSWER

THE MINISTER OF WORKS AND HOUSING

(SHRI ABDUL GHAFOR)

(a) & (b): The Delhi Administration had compiled a list of 607 unauthorised colonies, where unauthorised residential and commercial structures had come up up to 30.6.77 and 16.2.77.

537 of these colonies have been regularised and 56 colonies have not been approved by the Technical Committee for regularisation. The cases of balance 14 colonies are expected to be finalised in the current year.

The details are given in Annexure I & II."

Copies of Annexures I and II have been filed to highlight that certain unauthorised colonies including Ashok Nagar have been approved by Delhi Development Authority for regularisation. The learned counsel for the petitioner on the above basis has vehemently argued that a policy decision has been taken by the Government of National Capital Territory of Delhi to recommend to the Union of India to regularise colonies including the colonies of the petitioner which have come up in Delhi till 31st January, 1993.

6. The learned counsel for Delhi Development Authority has, however, denied the averments as made by the petitioner, referred to above, and has stated that the land on which the alleged colony of the petitioner is based has been acquired and the acquisition having been upheld by this Court in CWP No.1507/84 the present petition is liable to be dismissed. He has argued that the alleged policy of the Government for regularisation may be applicable to valid title-holders and for the purpose of granting civic amenities. Paragraphs 4,5 and 6 of the counter affidavit filed by Delhi Development Authority read as follows:

"4. That in another civil Writ Petition No. 1507/84 the very same society had challenged the notification dated 17th November, 1980 u/s 4 of the Land acquisition Act and notification dated 29th September 1981 issued by Delhi Administration for the purpose of acquiring a large tract of land in village Chilla Saroda Bangar for the plan development of Delhi. The said writ petition was contested by the respondent on the ground that the possession of the acquired land was handed over to the Delhi Development Authority on 1st October, 1982 and thereafter the land in question was placed at the disposal of the respondent Authority u/s 22 of the Delhi Development Act vide notification dated 14th October, 1982.

5. That the acquisition in respect of the land situated in Khasra Nos. 391/263, 392/264, 393/264 and 402/268 has become final. The possession of the land having been taken over the title of the land in question vests in the Government free from all encumbrances and there is no provision under the scheme of the Act to divest the same which has branches validly vested with the Government under the Land Acquisition Act. The Division Bench of this court heard arguments in C.W. No. 1507/1984 and the same was dismissed vide order dated 21st May.

1998.

6. That further, some portion of the land acquired has been allotted to Saraswati Kunj Cooperative Group Housing Society for a valuable consideration and the said Cooperative Group Housing Society has constructed their flats on the demised land."

The plea that the built up areas cannot be acquired was repelled by the Division Bench of this Court in the judgment reported as Prem Chand Ramesh Chand Vs. Delhi Development Authority, . The operative portion in paragraphs 6 and 7 read as follows:

"6. The contention that there is any policy to regularise unauthorised colonies or there is a policy decision not to acquire built up area, are concluded against the petitioner by a Division Bench decision of this Court in the case of Atter Singh Vs. D.D.A. (CW No. 3110 of 1991) decided on 10th August, 1992. In Atter Singh's case also it was alleged that the petitioner had a godown built up on an area situate in village Haiderpur on private land and no action can be taken by the respondents against the petitioner. In that case too, the Bench referred in the judgment to the same Award No. 50/80-81 made on 18th July, 1980. The contention that there was a policy of Government to regularise the unauthorised colonies and also not to acquire built up area was rejected and it was observed that:

"It was further contended that unauthorised colonies on Government land are sought to be regularised. It is possible that a political decision to this effect may be taken with regard to some of the colonies but as far as this land is concerned there have been valid proceedings for acquisition under the provisions of the Land Acquisition Act. If there was any built up area on the date when Section 4 Notification was issued, the claimants would be entitled to receive compensation in accordance with law. As far as the petitioner is concerned, we do not find that the petitioner is entitled to any compensation and in fact it is one Udai Singh who had already received the compensation. Be that as it may merely because some of the colonies are going to be regularised cannot be of any assistance to the petitioner specially when, in the writ petition, there is no challenge to the acquisition proceedings. The proposal of excluding the land from the award which was therein 1968 has apparently been given a go bye and this has resulted in, first Notification u/s 6 being issued on 2nd January, 1969, followed by the award in 1980."

7. The contention in respect of the policy of leaving out from the acquisition built up area has also been repelled in another Division Bench decision of this Court in Shri Bhagwan and another Vs. Union of India & ors. 1991 (2) DL 59. This decision has been affirmed by a Full Bench of this Court in Roshanara Begum Vs. Union of India 1996 (I) AD (Delhi) 6. We may also notice that the appeal filed against Full Bench has been dismissed by the Supreme Court (see: Murari and Others Vs. Union of India (UOI) and Others,)."

7. The petitioner as stated in the earlier part of this judgment had filed civil writ No. 1507/84 (Ashok Nagar Welfare Association Vs. Union of India and another) impugning the Notifications issued under Sections 4 and 6 of the Land Acquisition Act and the challenge having been already repelled in respect of the same cannot now re-agitate the question of acquisition in the present petition. There may be some decision to regularise some of the unauthorised colonies but as far as the lands where the petitioners are alleged to be based there have been valid acquisition proceedings for acquisition which are upheld. The Division Bench has already decided the matter vide judgment dated May 21,1998. This petition is, Therefore, devoid of merit and is dismissed accordingly. This will, however, not debar the petitioner from raising the plea of regularisation of the Colony before an appropriate Authority or Authorities as constituted for that purpose. There will be no order as to costs.