

(2005) 11 DEL CK 0128
In the Delhi High Court
Case No : W.P.(C) No. 952/2002

Babu Ram and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 6(3)

Citation : (2005) 11 DEL CK 0128

Hon'ble Judges : T.S. Thakur, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Tamali Wad, for R-1, S.S. Dalal, for R-3, Sanjay Poddar, for R-4, Mini Pushkarna, for R-5 and Shivinder Chopra, for R-6, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—The impugned declaration u/s 6 of the Land Acquisition Act was issued more than 32 years before the filing of these petitions. That kind of delay is manifestly inordinate. The only question is whether the petitioners have offered any Explanation, and if so, whether the same is acceptable to the Court to prevent dismissal of the petitions on the ground of laches.

2. A large extent of land measuring 516 bighas situate in 7 different villages including Ziauddinpur was notified for acquisition in terms of a preliminary notification issued u/s 4 of the act as early as on 6th March, 1965. The acquisition was meant for the public purpose of planned development of Delhi. Seven different declarations one each for each one of the villages was issued by the competent authority u/s 6 of the Act including a declaration dated 7th January, 1969 in relation to the lands under acquisition from Ziauddinpur. An award was eventually made by the Collector, Land Acquisition, a decade later on 9th July, 1980. According to the respondents, possession of a part of the land covered by the above notifications, was also taken over from the owners.

3. Aggrieved by the acquisition proceedings, Shri M.L. Malhotra, predecessor-in-interest of petitioners in WP(C) No. 5661/01, filed Suit No. 236/80 (renumbered as 456/1987) for declaration that the said proceedings are illegal and for a direction restraining the defendants from dispossessing him from the suit property. Shri Prem Sagar, petitioner in WP(C) No. 848/02 also filed a similar suit for a similar relief being Suit No. 59/84 and so did late Shri Babu Ram and four others who claimed to be the general attorneys of owners of land in Khasra No. 117/2 of village Ziauddinpur in Suit No. 60/84. The plaintiffs in all these suits secured orders of injunction against the defendants which remained in force till the suits were eventually dismissed on 9.8.2001 by the civil court in terms of Order VII Rule 11 of the CPC on the ground that the same were not maintainable. In coming to that conclusion, the Court placed reliance upon the judgment of the Supreme Court in State of Bihar Vs. Dhirendra Kumar and others, .

4. We have heard learned counsel for the parties and perused the record. Two distinct aspects fall for our consideration. The first is whether there is any Explanation for the inordinate delay in the filing of the petitions challenging the acquisition proceedings. The second aspect relates to the merits of the challenge and would arise for consideration only if the writ petitions survive the objection to their maintainability on the ground of delay, laches and acquiescence.

5. The period of over 32 years between the date when the declaration u/s 6 was issued and the filing of these writ petitions can, for the sake of convenience, be divided into two parts. The first part would cover the period of 11 years between 7th January, 1969 to 4th January, 1980, i.e., the date on which the declaration u/s 6 was issued and the date of filing of the suit by the petitioner in WP(C) No. 5661/2001. The second part would cover the period between 1980 to 9th August, 2001 during which time the petitioners in WP(C) No. 5661/2001 were pursuing their remedy before the civil court. In the case of petitioners in WP(C) Nos. 846/02 and 952/02, this period would be between 1984 when the petitioners in those cases filed their suits to 9th August, 2001 when the same were dismissed.

6. In so far as the period of more than 11 years between the year 1969 to the year 1980 and 1984 is concerned, the writ petitions do not make any averment or offer any Explanation for the inaction of the petitioners during the said period. All that was argued by Mr. Sethi was that the petitioners were expecting the authorities to exclude the land in question from the acquisition proceedings in terms of a general policy under which built-up properties were not being acquired. There is, however, not even a murmur to that effect in the writ petitions leave alone any material to show that the authorities had at any stage extended any assurance to the petitioners that the properties in question would be excluded from the acquisition proceedings. There is, on the contrary, material to show that Shri M.L. Malhotra and Babu Ram, predecessors in interest of the petitioners in WP Nos. 5661/2001 and 952/2002 had participated in the award

proceedings and filed their claims for payment of compensation. These claims were no doubt made without prejudice to the right of the land owners to challenge the acquisition proceedings but apart from reserving liberty to do so, the owners did nothing to challenge the impugned notifications. In that view of the matter, Therefore, the challenge to the notifications had become barred by delay and laches even before the institution of the suit by the plaintiffs petitioners herein and their predecessors in interest. The fact that the plaintiffs petitioners had filed a suit 11 years after the issue of the declaration u/s 6, was wholly inconsequential from the point of view of providing a cogent Explanation for the intervening delay.

7. Even if the petitioners had been advised to file a writ petition in this court to challenge the acquisition proceedings instead of a suit which was not maintainable and which was subsequently dismissed on that ground, any such writ petition would also have been barred by unexplained delay and laches in January, 1980 when the suit was filed. That is because the law regarding exercise of extraordinary writ jurisdiction by the High Courts especially in cases where the challenge is to proceedings under the Land Acquisition Act is fairly well-settled . In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the declaration u/s 6 was issued in the year 1966 whereas the writ petition was filed in the year 1972. The Supreme Court considered this delay to be sufficient to warrant dismissal of the writ petition on the ground of laches. The Court held that if there was any defect in the notification u/s 4 issued as early as in the year 1959 and a declaration u/s 6 was issued in 1966, there was no reason why the petitioners should have waited till the year 1972 to come to the Court. It was not, observed the court, permissible for the petitioners to sit on the fence, allow the Government to complete the acquisition proceedings on the basis of notifications issued under Sections 4 and 6 of the Act and then attack the same on grounds which were available to them when the notification was published. The following passage is in this regard instructive :-

"To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

8. In *Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others*, . The Supreme Court reiterated the view taken in *Aflatoon*'s case and observed :

"This Court in the recent unreported decision in *Writ Petn. Np. 362 of 1972* decided on 23-8-1974 = (now reported in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, *Aflatoon v. Lt. Governor of Delhi* held that if persons allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then attacked the

notification on grounds which were available to them at the time when the notification was published it would be putting a premium on dilatory tactics. "

9. In *Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others*, , there was a delay of two years in filing the petition, assailing the proceedings under the Land Acquisition Act, 1894 (for short "the Act"). The Court held that in cases where land is needed for a public purpose and that too for implementation of a scheme under the Urban Development Act, the Courts need to take care not to entertain the challenge to the acquisition proceedings on the ground of delay for otherwise it would cause serious prejudice to the person for whose benefit the Scheme was framed.

10. In *Rudradhar R. Trivedi Vs. State of Maharashtra and another*, , the High Court had dismissed the petition on the ground of inordinate delay and laches. In an appeal against the said order, the Supreme Court held that the discretionary remedy available to a litigant under Article 226 of the Constitution could not be invoked after long and unexplained delay. Similar is the view taken by the Supreme Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , where the Court reiterated that undue and unexplained delay in the filing of the petition before the High Court was in itself sufficient to deny to the petitioner the discretionary relief under Article 226 of the Constitution. The Court declared that equity favors only the vigilant and not the indolent litigant. The question of granting an order of cancellation of a notification issued for a public purpose did not Therefore, arise. Reference may also be gainfully made to the decision of the Supreme Court in *Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others*, , where the Court observed:

"It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times : even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favored rather than claiming disfavor. Law courts never tolerate an indolent litigant since delay defeats equity "the Latin maxim *vigilantibus et non dormientibus jura subvention* (the law assists those who are vigilant and not those who are indolent)."

11. Applying the above principles to the facts of the instant case, it is manifest that the petitioners could and ought to have challenged the validity of the declaration u/s 6 of the Act within a reasonable period from the date of the issue of the said declaration. The courts have generally understood and held the period of limitation for filing a suit on the same cause of action to be a reasonable period for filing a writ petition also. By that standard, a writ petition challenging the validity of the declaration u/s 6 should have been filed by the year 1972. The petitioners did not obviously do so. They allowed the grass to grow under their feet and eventually chose a remedy which was not even otherwise available to them more than 11 years after the issue of the impugned declaration in 1980. By that time, the remedy of filing a writ petition stood barred by delay and laches.

The institution of the suit, even assuming the same was bona fide, could not, Therefore, either explain the previous delay or revive for the petitioners the remedy by way of a writ.

12. We may now deal with the period between the years 1980 (1984 in the case of petitioners in WP(C) Nos. 848/2002 and 952/2002) to 9th August, 2001 during which time the suits filed by the petitioners were pending before the civil court. On behalf of the respondent it was argued by Mr. Poddar, counsel for the respondent that the suits instituted by the petitioners were not maintainable as was held by the Supreme Court in *State of Bihar Vs. Dhirendra Kumar and others*, . He contended that although the declaration of law made by the Apex Court in the said decision would be deemed to be the legal position at all material points of time assuming that there was any justification for the petitioners to seek redress in a civil suit before the said pronouncement, the said justification would come to an end by the decision in the year 1995. He argued that instead of withdrawing the suit immediately and filing a writ petition which was the only remedy open to the petitioners, they persisted with the suit till August, 2001 when the Court eventually dismissed the same. There was, Therefore, no justification whatsoever for not challenging the notifications in appropriate proceedings between the year 1995 and 2001. Reliance in support of that contention was placed by Mr. Poddar upon a judgment of the Supreme Court in *Narayan Prasad Agrawal Vs. State of M.P. and Others*, .

13. There is considerable merit in the submission made by the learned counsel. The judgment of the Supreme Court in *Dhirendra Kumar's case* (supra) authoritatively declared that the validity of acquisition proceedings could not be assailed by an aggrieved land owner in a suit, the only remedy open to him being by way of a writ petition under Article 226 of the Constitution. That must be deemed to have been the position in law even on the dates the petitioners filed their suit before the civil court. Even assuming that the legal position was authoritatively settled only in the year 1995 with the pronouncement in *Dhirendra Kumar's case*, there is no reason why the petitioners should have persisted in the civil proceedings for another six years thereafter. The continuance of the civil proceedings notwithstanding the decision of the Supreme Court in *Dhirendra Kumar's case* shows lack of bona fides on the part of the petitioners in pursuing their remedy against the impugned notifications rendering the writ petitions liable to be dismissed. That is precisely what happened in *Narayan Prasad Agrawal's case* (supra). In that case also, instead of filing a writ petition, the land owner had sought a remedy in a suit before the civil court. It was only after the dismissal of the suit as not maintainable that the owner had filed a writ petition which was dismissed by the High Court. Aggrieved by the said order of dismissal, the land owner had approached the Apex Court before whom the question was whether the writ petition suffered from delay and laches. Answering the question in the affirmative, the Court held that the only remedy open to the aggrieved party was a petition under Article 226 but even after the legal position to that effect was clearly stated in *Dhirendra Kumar's case*, the

owner had continued to pursue his civil suit. The delay occasioned on that account could not, Therefore, be overlooked, observed the Court. The following passage from the said decision is in this regard apposite :-

"The appellant has been seeking to quash Section 4(1) Notification under the Land Acquisition Act which was published on 29-12-1989. The decision of this Court in State of Bihar (supra) was given on 27-4-1995 and it was held that Civil Court had no jurisdiction to go into the question of validity and legality of the Notification of Section 4(1) or Declaration u/s 6 and the remedy open to the aggrieved partly is to invoke the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution. Even after the said decision of this Court, the appellant herein pursued his civil suit and only when the Additional District Judge held that the suit was not maintainable, the appellant decided to file the Writ petition. The learned District Judge was justified in taking the view that the long delay of about 11 years cannot be condoned in a matter relating to land acquisition as, by that time, the authorities must have proceeded with the acquisition proceedings and would have taken further steps in the matter. We do not think that the learned single Judge as well as the Division Bench erred in holding that the invocation of the extraordinary jurisdiction of the High Court was made belatedly."

14. The fact situation in the present case is identical to the one in Narayan Prasad Agrawal's case (supra). The delay in the filing of the writ petition post decision of the Supreme Court in Dharendra Kumar's case cannot, Therefore, be explained on the ground that the petitioners were engaged in diligently pursuing an alternative remedy open to them.

15. Mr. Sethi, however, argued that the declaration u/s 6 was void ab initio and that since the same was non est in the eye of law, a petition that challenged its validity could not be dismissed on the ground of delay and laches. In support, he placed reliance upon a Division Bench decision of this Court in Shri Gajendra Kumar Vs. Union of India (UOI) and Others, .

16. We have carefully gone through the said decision but are of the opinion that the same does not lend any assistance to the submission made by Mr. Sethi. This Court was in Gajendra Kumar's case (supra) dealing with a situation where the preliminary notification u/s 4 of the Act itself excluded Government and evacuee land from its purview. The declaration u/s 6, however, notified for acquisition what was according to the petitioner evacuee land. One of the questions that fell for consideration, Therefore, was whether a writ petition could be maintained long after the issue of the said declaration on the ground that the declaration was void ab initio as the same was unsupported by a preliminary notification u/s 4. Relying upon Delhi Development Authority Vs. Shyam Sundar Khanna and Others , the Court held that the writ petition would be liable to be dismissed on the ground of delay and laches. The Court went on to observe that a void order may be challenged at any stage but once the order is enforced, any writ petition filed subsequent to such enforcement will give rise to considerations of delay,

laches and waiver. There is no gainsaying that before these observations can be called in aid by the petitioners, they shall have to establish that the impugned declaration u/s 6 of the Act is void ab initio as distinguished from being merely voidable. That is because the legal proposition underlying the observations made by this court will have no application to cases in which the order under challenge is voidable as distinguished from an order that is void ab initio. We say so because resort to legal proceedings to avoid the consequence of a voidable order is inevitable and any one seeking to avoid a voidable order must resort to such proceedings within a reasonable period.

17. Dealing with the question of invalidation of an order, H.W.R. Wade and C.F. Forsyth have in their treatise Administrative Law " Eighth Edition observed :

"The truth is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be "a nullity" and "void" but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results."

18. We may also at this stage refer to the following passage from the decision in Smith v. East Elloe Rural District Council, [1956] AC 736, where Lord Radcliffe has emphasised the need for resorting to legal proceedings to establish the cause of invalidity of an order and to have it quashed for otherwise the order remains valid:

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

19. As to what is void and what is voidable, has been the subject matter of numerous judicial pronouncements but before we refer to some of those decisions, we may usefully extract the following passage from De Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, Fifth Edition, para 5-044, where the concept of void and voidable has been summarised as follows:

"Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra virus in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is intra virus it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record."

20. A careful reading of the above would show that what distinguishes an order that is void from another that is voidable essentially lies in whether the order in question is outside the jurisdiction of the authority making the same. On the other hand, if it is an order that is within the jurisdiction of the authority making the same but the order suffers from an error or irregularity that falls within the jurisdictional sphere of the authority making the order, it is voidable.

21. In *Winona Oil Co. v. Barnes*, 200 P.981, 83 Okl. 248, the Court held that a judgment is void if it falls short of jurisdictional elements on three counts, which were summed up as under:

"A judgment is "void" when it affirmatively appears from the inspection of the judgment roll that any one of three following jurisdictional elements are absent: First, jurisdiction over the person; second, jurisdiction of the subject-matter; and, third, judicial power to render the particular judgment."

22. To the same effect is the decision in *New York Casualty Co. v. Lawson*, 24 S.W.(2d) 881, 883, 160 Tenn. 329, where the Court observed:

"A "void judgment" is one which shows on the face of record a want of jurisdiction in court assuming to render judgment, which want of jurisdiction may be either of the person or of the subject-matter generally, or of particular question attempted to be decided or relief assumed to be given."

23. In *Ittavira Mathai Vs. Varkey Varkey and Another*, , the court was dealing with the question whether a decree in a suit which was barred by time would fall within the realm of nullity. Answering the question in the negative, the Court observed that while passing a decree in a suit that is time barred, the Court may be committing an illegality, but since the Court has the jurisdiction to decide right or to decide wrong, the decree would not be a nullity even if the decision was wrong. The following passage is, in this connection, relevant:

""If the suit was barred by time and yet the court decreed it, the court would be committing an illegality and Therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong ; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject matter and it had the jurisdiction over the party and, Therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities"".

24. It is, Therefore, evident that expressions "void" and "voidable" have more than one facet. Transactions and decrees which are wholly without jurisdiction are void ab initio and no declaration may be necessary for avoiding the same.

Law does not take any notice of such acts, transactions or decrees which can be disregarded in collateral proceedings or otherwise. There are, however, transactions, which will remain good unless declared to be otherwise. For instance, transactions against a minor without being represented by a next friend may be voidable at the instance of the minor in appropriate proceedings in which case it becomes void from the beginning. The third category may be the cases where an act or transaction is good unless declared to be void. Such a transaction is voidable because the apparent state of affairs is the real state of affairs and a party who alleges otherwise, shall have to prove it. For instance, if the document is forged and fabricated, a declaration to that effect is necessary for otherwise the document is legally effective.

25. Let us, in the above backdrop, see the scheme of the Land Acquisition Act to determine whether a notification u/s 6 thereof can be deemed to be void per se when the defect is not evident on the face of the notification. Section 6 envisages a declaration that land is required for a public purpose when the appropriate Government is satisfied about the same after considering the report, if any, submitted u/s 5-A. Sub-section (3) of Section 6 makes a declaration made under sub-section (1) thereof to be conclusive evidence that the land is needed for a public purpose or for a company as the case may be. It reads as under:

"6. Declaration that land is required for a public purpose:-

(1). XXX XXX

(2). XXX XXX

(3). The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the Appropriate Government may acquire the land in a manner hereinafter appearing."

26. The impugned declaration in the instant case thus conclusively signifies that land in question is needed for a public purpose, which is the very object underlying the making of such a declaration by the Government after considering the report, if any, submitted to it u/s 5-A thereof. There is no challenge to the competence of the authority, who has issued the declaration nor is there any element of lack of jurisdiction either by reference to the persons or the subject matter in regard to which the same has been issued. Such a declaration cannot, Therefore, be said to be a nullity or ignored as non-est in law. The issue regarding the validity of the declaration shall have to be raised in the competent Court and adjudicated upon before the same is held to be legally bad. To borrow the words of Lord Radcliffe, the impugned notification does not "bear the brand of invalidity upon its forehead." Proceedings at law to establish why it is invalid, are, Therefore, necessary. If that be so, any person interested in avoiding the consequence of the declaration must resort to such proceedings and persuade the Court to come to its rescue by granting the relief prayed for. The argument that the notification is a nullity because no inquiry u/s 5-A was conducted or

because the authority competent to issue the declaration had not applied its mind properly may have resulted in the grant of such a declaration by the Court only if the same was prayed for in appropriate proceedings at the appropriate time. Having remained indolent for years, the petitioners cannot contend that the delay and laches in the filing of the petition is inconsequential by dubbing the notification as void ab initio. We have, Therefore, no difficulty in rejecting the contention urged by Mr.Sethi that the notification was void ab initio thereby making the delay, laches and the acquiescence of the petitioners inconsequential.

27. It was lastly argued by Mr.Sethi that the respondents had permitted the petitioner to raise construction over the land in question which, according to him, amounted to abandonment of the acquisition proceedings. Reliance in support was placed upon a decision of the Division Bench of this Court in Avtar Singh Vs. Union of India and Others, . There is, in our view, no merit in that contention either. In Avtar Singh's case (supra) the authority acquiring the land had itself permitted the raising of the construction by the land owner. In the instant case, however, the permission granted to the petitioners was conditional and subject to the land being acquired for a public purpose. No intention to withdraw the acquisition proceedings can, Therefore, be attributed to the respondents.

28. We may, before parting, refer to the submission made on behalf of the respondent that petitioners in W.P.(C). Nos.848/2002 & 952/2002 were subsequent purchasers. That is evident from the documents placed on record by the petitioners themselves in the form a power of attorney executed in their favor. The legal position is fairly well settled that a subsequent purchaser cannot challenge the validity of the acquisition proceedings. Reference may in this connection be made to the judgment of the Supreme Court in Star Wire (India) Ltd. Vs. State of Haryana and Others, where the Court has observed thus:

"In this case, admittedly, the petitioner has purchased the property covered by the notification u/s 4(1) after it was published and, Therefore, its title is a void title. It has no right to challenge the acquisition proceedings much less the award. The Division Bench of the High Court has exhaustively reviewed the case-law to negate the claim of the petitioner. We do not find any illegality in the judgment of the High Court warranting interference."

29. In the result, these petitions fail and are hereby dismissed with costs assessed at Rs.2,000/- in each petition.