

(1998) 01 DEL CK 0091
In the Delhi High Court
Case No : C.W. No. 1419 of 1994

Badam Singh and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 AD 982 : AIR 1998 Delhi 162 : (1998) 71 DLT 569 : (1998) 44 DRJ 414

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr.A.K.Sharma, for the Appellant; Mr.Ravinder Sethi, Sr.Advocate, Mr.Abhisht Kumar, Ms.Gita Luthra, Mr.Manish Bhatnagar and Mr.Sanjay Poddar, for the Respondent

Judgement

Arun Kumar, J.—By this writ petition the petitioners have challenged the notifications under sections 4 and 6 of the Land Acquisition Act issued by the respondents with respect to their land. The petitioners have also made a prayer for quashing the awards made by the Collector consequent to the acquisition of the land. Briefly the facts are that the petitioners claim to be owners/bohemians of land bearing khasra numbers 341(4-5), 342(11- 16), 343(3-8), 344(9-4), 345(3-1), 346(14-11), 348(2-5), 348 min (0-15) and 349(2-17) situated within the Revenue Estate of village L7adha Sarai, Delhi. According to the petitioners Prithi Singh, their predecessor-in-interest came in possession of the aforesaid land in the year 1942. Prithi Singh died in 1970 and thereafter the petitioners came to be in possession of the land. It is further the case of the petitioners that they were declared bhoomidars with respect to the said land by competent authorities under the Delhi Land Reforms Act. The notification u/s 4 of the Land Acquisition Act was issued on 23rd January, 1965. This was followed by a notification u/s 6 of the said Act issued on 6th January, 1969. The Collector made award Nos. 64 and 64A/83-84 covering the said land. The initial award was made on 20th October, 1983 while the supplementary award was made on 20th

August, 1985.

2. The petitioners claiming themselves to be the owners/bohemians of the said land, applied before the Revenue Assistant as per the provisions of the Delhi Land Reforms Act for being declared as bhoomidars. Vide an order dated 29th June, 1972 passed by Shri K.N. Srivastava, Revenue Assistant, Delhi, the petitioners were declared to be bhoomidars with respect to the land in question. The decision of the Revenue Assistant was confirmed in an appeal filed before the Additional Collector vide order dated 28th February, 1974. The Financial Commissioner also confirmed the finding of the Revenue Assistant vide his order dated 14th April, 1974. Thus the petitioners were declared as bhoomidars of the land in question by the competent authorities under the Delhi Land Reforms Act.

3. The case of the petitioner in the present writ petition is that since the land in question was government land being evacuee property at the time of the notification u/s 4 of the Land Acquisition Act, the said notification was liable to be quashed because the government cannot acquire its own property. Thus the petitioners are now contending that the land in question already belonged to the government at the time of the notification u/s 4 and, Therefore, it could not have been acquired.

4. It is admitted in the petition that in pursuance of the aforesaid notifications u/s 4 and 6 of the Land Acquisition Act, the respondents Proceeded with the acquisition Proceedings and the award were made as stated hereinbefore. The petitioners have also stated in the writ petition that the government claims to have taken possession of the land after the awards. The petitioners, however, disputed this fact and claimed that they continue to be in possession of the land. The petitioners have also admitted in the writ petition that they have taken part of the compensation awarded by the Collector in lieu of compulsory acquisition of their land. The challenge to the acquisition is mainly on the ground that the land was already belonging to the Government at the time of the notification u/s 4 of the Act and the Government cannot acquire its own land. Therefore, the notifications u/s 4 and 6 of the Act are liable to be quashed.

5. In the counter affidavit filed in reply to the writ petition on behalf of the Delhi Development Authority it has been stated that the petitioners always claimed to be bhoomidars with respect to the land in question and they never accepted that the Government was owner of the land. It has been pointed out that the petitioners moved an application in pursuance of the provisions of the Delhi Land Reforms Act to establish their right as bhoomidars of the land. They succeeded in the said application and the Revenue Assistant upheld their contention that they were the bhoomidars of the land in question. This finding of the Revenue Assistant was upheld by the higher authorities under the Delhi Land Reforms Act. On the basis of this it is contended on behalf of respondents that the petitioners cannot be allowed to approbate and reprobate. The stand of the petitioners was always that they were owners and bhoomidars of the land in question. They never recognised the Government to be the owner of the land. They cannot be

permitted to contend at this stage, that the Government was owner of the land at the relevant time and, Therefore, the notifications under sections 4 and 6 were liable to be quashed. Further the respondents have claimed that the writ petition is highly belated and is liable to be dismissed on the ground of delay and laches. For this it is submitted that the notifications u/s 4 and 6 are of the year 1965 and 1969 respectively while the awards were made in the years 1983 and 1985. The possession of the land was taken on 26th October, 1983 in pursuance of the first award dated, 20th October, 1983 while the possession of the rest of the land was taken on 22nd September, 1986. It is also stated in the affidavit that on 8th November, 1983 and 10th October, 1986 notifications u/s 22 of the Delhi Development Act were issued placing the land in question at the disposal of the DDA and since then the DDA has taken possession of the lands and has been maintaining the same. The respondents have also reiterated the fact that the petitioners have already received substantial part of the compensation with respect to the acquired land.

6. We have considered the respective contentions raised by the parties. We find force in the submissions made on behalf of the respondents that the writ petition is highly belated and suffers on account of delay and laches. Apart, from the fact that the notifications which are sought to be challenged were issued more than twenty five years prior to the filing of the present writ petition (petition filed on 24th March, 1994), a glaring aspect which cannot be overlooked is that the petitioners have even received compensation with respect to the acquired land. This was also about ten years ago. Secondly, we find force in the submission that the petitioners cannot be allowed to approbate and reprobate. The petitioners never accepted that the Government was owner of the land and they took steps to establish their ownership of the land by following the procedure in accordance with the provisions of the Delhi Land Reforms Act. They were duly declared bhoomidars with respect to the land. Now that the land has been acquired, the petitioners have turned around and thought of the present device of getting away from the factum of acquisition of land. The petitioners today contend that the government was the owner of the land and, Therefore, the land could not be acquired. They cannot be permitted to raise this argument in view of their consistent stand to the contrary in the past. They cannot be allowed to approbate and reprobate. For these reasons, we find no merit in this petition. The same is dismissed. However, there will be no order as to costs.