
(2007) 08 DEL CK 0269

In the Delhi High Court

Case No : Writ Petition (C) No. 2746 of 2007 and CM No. 5124 of 2007

Balwan Singh and Others

APPELLANT

Vs

Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Land Acquisition Act, 1896 — Section 10, 4, 4(1), 6, 9

Citation : (2007) 08 DEL CK 0269

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Kailash Vasdev and P. Manish and Anjali Manish, for the Appellant;
Sanjay Poddar, Gaurav Sarin and Charul Sarin for DDA, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—The present writ petition has been filed by the Petitioners seeking writ of mandamus or any other appropriate writ, order or direction to the Respondents not to dispossess the Petitioners from the building constructed on 3 Bighas and 1 Biswa on Khasra No. 398/329/93, Village Masoodpur, New Delhi.

2. The brief history of the acquisition in question is that Government vide its Notification dated 23.01.1965, u/s 4 of Land Acquisition Act, 1896 (for short "the Act"), notified 4826 Bighas 04 bids was for acquisition for the purpose of "Planned Development of Delhi". Petitioners land at Masoodpur village comprising 11 Bighas and 10 bids was also a part of the land under acquisition, which was notified by the Government for aforementioned purposes. The Petitioners claim that in furtherance of the acquisition, an Award bearing No. 90/80-81 was passed by the Land Acquisition Collector in which it was particularly mentioned that among 873 Bighas of land, 3 Bighas of land was under residential construction and Therefore was excluded from the land acquisition.

3. Petitioners, in their writ petition, have averred that out of 11 Bighas and 10

bids was land, 6 Bighas and 10 bids was land was agricultural land and 5 Bighas land was Abadi land. The portion of land falling under agricultural land was acquired pursuant to the Section 4 Notification and of the 5 Bighas Abadi area, a portion of land, namely, 01 Bigha and 19 bids was land was Awarded in his favor and the rest of portion of land, namely, 3 Bighas and 01 Biswa land, which ought to have been excluded from acquisition has been acquired by the Respondents.

4. Petitioners are aggrieved of the acquisition of 3 Bighas and 01 Biswas, which they claim to own by virtue of it being Abadi area and also in view of the fact that the same was excluded from acquisition.

5. Petitioners' case is that on the said land in question, Petitioners have constructed their residential buildings, which have been in existence prior to publication of Section 4 Notification of Act. Petitioners have further contended that Award had been passed nearly 27 years ago and, Therefore, the public purpose of acquisition, i.e., for "Planned Development of Delhi" does not hold any relevance and has outlived its utility.

6. The respondent namely, Land and Building Department have, on the other hand, stated in their affidavit that of the 11 Bighas and 10 bids was falling under Khasra No. 398/329/93, the same was duly notified for acquisition. Out of this area, 1-19 Bighas was excluded from acquisition as some residential construction was seen on the said portion of land. The Award was made in respect of the area measuring 9-11 Bighas and out of this portion of land, possession of an area measuring 8-9 Bighas was taken on 29.1.1980 and was handed over to DDA. In respect of the remaining area some built up portion was found, which were raised after the Notification of Section 4, the possession of the same could not be taken at that point and were scheduled to be taken after demolition. Respondent has denied that the Abadi area was on a piece of land measuring 5 Bighas as alleged or otherwise.

7. DDA, in its counter affidavit, has stated that in so far as Petitioners' land is concerned of the 11-10 Bighas, Award was published for 9-11 Bighas and 1-19 Bighas was excluded from acquisition on the basis of assumption that some sort of residence was there and hence the same was left out of the said acquisition for the time being. The DDA claims that the contention of the Petitioners that the Abadi area was 5-Bighas is false and baseless. DDA has further submitted that of 9 Bighas and 11 bids was of land which is included in the Award dated 22.12.1980, possession of 8 Bighas and 9 bids was was handed over to the answering Respondent by the LAC on 29.12.1980. The possession of the remaining 1 Bighas and 2 bids was has till date not been handed over to the answering Respondent and for the purposes of the possession of 1 Bighas and 9 bids was of land, a demolition programme was fixed for 21.01.2007 to 23.04.2007. Due to the stay granted by the Court, the said demolition could not be carried out and had to be postponed. DDA has also contented that the Petitioners are challenging the contents of Award and the acquisition proceedings after delay of more than 27 years and after the issuance/ publication of the

same. DDA has also stated that the land falling under Khasra No. 398/329/93 is urgently required for widening of the road from Andheria More to NH-8 and also for completion of the ongoing housing scheme of the answering Respondent.

8. We have gone through the writ petition, counter affidavits and heard learned Counsel of the parties at length.

9. Learned Counsel for the Petitioners has made three-fold submissions at the bar. It is submitted that averments in the writ petition are true and correct and that land measuring 3 Bighas and 1 Biswa is being wrongfully acquired by the Respondents. The said land is Abadi land and as per the Award, the same was exempted from acquisition. The second submission of counsel for the Petitioners is that, on the land in question residential buildings have been in existence prior to the Notification u/s 4 and, Therefore, any acquisition of such land is against the Award and Therefore illegal in the eyes of law. The third submission of counsel for Petitioners is that the Award is being executed almost after delay of 27 years and the Award has outlived its purpose.

10. Mr. Sanjay Poddar appearing on behalf of LAC and Land and Building Departments has submitted that the land in question was acquired by the LAC for "Planned development of Delhi" and the said land was handed over to DDA for the said purpose. He further submitted that once possession of land is taken over and handed over to the beneficiary, the same vests in the Government free from all encumbrances and thereafter the same cannot be challenged.

11. Mr. Poddar has vehemently argued that since the Petitioners all along participated in the Award proceedings and after the assessment of compensation and payment of compensation, Petitioners have no reason to challenge the acquisition proceedings. He argued that the Petitioners have failed to place on record any evidence to show that the alleged residential buildings have been in existence prior to Section 4 Notification. This fact is neither borne from records filed by the Petitioners nor the construction alleged is in accordance with law and also as per the sanction plan. He further submitted that the alleged construction on the land in question has cropped up after the publication of Notification with the intention to stall the acquisition. The counsel for the Respondent on the issue of delay in acquisition proceedings urged the said controversy has been conclusively determined and has placed reliance on the judgment of *Roshanara Begum v. National Capital Territory of Delhi* AIR 1996 Del 206.

12. Mr Gaurav Sarin, learned Counsel for DDA, argued that Petitioners have instituted a false and baseless petition and the same is apparent from the records. He submitted that 1 Bigha and 19 bids was was exempted from the acquisition, however, the contention of the Petitioners that Abadi area was 5 Bighas is baseless and false. Of the Petitioners" land, 9 Bighas and 11 bids was formed part of Award dated 22.12.1980 of which possession of 8 Bighas and 9 bids was was taken and handed over to DDA by LAC on 29.12.1980. For the remaining 1 Bigha and 2 Biswas, possession was to be taken by carrying out

demolition of the structures which were raised after the Section 4 Notification, which got stayed pursuant to this Court's Orders. Learned Counsel has placed reliance on the judgment of Roshanara Begum's case (supra) and also judgment of Murari and Others Vs. Union of India (UOI) and Others, .

13. We have heard the counsel for the Petitioners and Respondents and perused the documents borne on record.

14. The Award dated 22.12.1980 bearing No. 90/80-31 categorically states that land under acquisition which pertains to the Petitioners land comprises of Rossli 9-05 and GM Gher 0-06 which in aggregate comes out to be an area of 9 Bighas and 11 Biswas. Further the Award states that an area of 3 Bighas on which there is some residential construction is excluded from the acquisition for the time being and in later part of Award the Petitioners' area of 1 Bighas and 19 bids was falling in Khasra No. 93/1(1/19) was excluded from acquisition for the time being on the ground that some residential houses were constructed in that area. We have carefully perused the records and found that there is not even a slight whisper of 5 Bighas of land, which is stated to be Abadi Area. The Petitioners, it seems, have only tried to mislead the court by twisting facts to gain some mileage out of same. The Petitioners have repeatedly mentioned that 5 Bighas land is Abadi area whereas the Petitioners have miserably failed to prove the same. Petitioners' argument that 3 Bighas and 1 Biswa should have been excluded from acquisition inspires no confidence as from the records it is abundantly and unequivocally clear that land measuring 1 Bigha and 19 bids was excluded and 9-11 Bighas was acquired of which physical possession of 8-9 Bighas was taken and the remaining land, i.e., 1-2 Bighas is pending physical acquisition. In view of these facts the Petitioners' claim of 3-1 Bighas is neither maintainable nor sustainable on facts. The Petitioners, it seems, had intended to derail the acquisition proceedings by creating a false case and sought legal recourse to frustrate and create unnecessary delay in acquisition. The first argument of the Petitioners that averments made in the writ petition in view of foregoing discussion and also the facts borne on records clearly reflects that Petitioners' argument had no force and the averments made in the writ petition are false and baseless.

15. The Petitioners' other argument that residential buildings have been in existence prior to Notification of Section 4 again finds no merit in view of the fact that the Petitioners have miserably failed to either show from the records that any residential buildings were in existence prior to Section 4 Notification. Further the Award itself had excluded Petitioners' 1-19 Bighas of land from acquisition, the benefit of which the Petitioners had enjoyed. For the rest of land, which the Petitioners claim, hold no water as the Petitioners have failed to conclusively prove the same.

16. As far the Petitioners' argument that 27 years have elapsed and that the acquisition has lost its significance, learned Counsel for the Respondents have submitted Roshanara Begum's case (supra) and Murari's case (supra) in their

respective submissions.

17. In Roshanara Begum's case (supra), the acquisition Notifications and the Award, subject matter of the present petition, were challenged by the other Petitioners, which were clubbed together as batch matters and ultimately decided by the Full Bench of this Court. The Court observed as under:

We conclude that the acquisition proceedings in these cases are not liable to be quashed on the ground of inordinate delay but following the ratio given in the case of Ram Chand (supra) we, while upholding the acquisition proceedings, have to give the same relief as has been given in the case of Ram Chand (supra) i.e. the Petitioners in whose cases the Awards have been made prior to 1982 would be entitled to have additional interest of 12% per annum commencing from two years after the decision given in Aflatoon's case till the date of the Award but such additional benefit would not be available in the cases where Awards have been made subsequently 64 So we hold that these land acquisition proceedings cannot be quashed on the ground of delay and laches which had occurred in completing the acquisition proceedings in respect of the aforesaid Notifications and declarations except for moulding the relief in consonance with the judgments of the Supreme Court noticed above.

18. In Murari" case (supra), it was held as under:

In the present case as stated earlier after issuance of the Notifications and notices u/s 9 and 10 of the Act not only large number of objections were filed by the land owners whose land was sought to be acquired but a number of writ petitions were filed in the Delhi High Court challenging the validity of the Notification u/s 4 as well as the declaration u/s 6 in which interim orders of stay were passed by the High Court which resulted into considerable delay. Thus the authorities alone were not responsible for the delay but the land owners were equally responsible for the same. In such circumstances and on consideration of several decisions of this Court including those Rendered in the case of Lalit Kumar Sharma and Others Vs. Superintendent and Remembrancer of Legal Affairs, Government of West Bengal, ; and Ujjain Vikas Pradhikaran v. Raj Kumar Johri [1992] 1 SSC 329 this Court in the case of Ram Chand and Others Vs. Union of India (UOI) and Others, took the view that in any case there was no justification for the authorities to make the Award in 1980/1981/1983 when the declaration u/s 6 was made in 1966-69, but at the same time, in view of the facts of delay caused by land owners themselves in approaching the Courts and the developments already made on the land for public use, quashing of acquisition proceedings would not be appropriate. But at the same time in the said decision this Court also took the view that the land owners alone were not responsible for the entire delay that was caused in completing the acquisition proceedings. This Court in the said decision pointed out that all those writ petitions were dismissed by this Court on August 23, 1974 in the case of Aflatoon v. Lt. Governor of Delhi yet no effective steps were taken by the Respondents till 1980-81 and in some cases even till 1983 for which the Respondents could give

no justification for that delay on their part in completing the acquisition proceedings even after the judgment of this Court in Aflatoon's case. This Court having regard to the fact that the Delhi Administration and Delhi Development Authority after taking possession of the lands various developments have been made and third party interest have also been created and, Therefore, having regard to the larger public interest declined to quash the acquisition proceedings on the ground of delay but at the same time having regard to the interest of the land owners who were likely to suffer loss in rating the price of the land with reference to the date of Notification u/s 4, directed payment of an additional amount of compensation to be calculated at the rate of 12 percent per annum after expire of two years from August 23, 1974, the date of judgment of this Court in Aflatoon's case (supra) till the date of the making of the Awards by the Collector to be calculated with reference to the market value of the lands in question on the date of Notification u/s 4(1) of the Act. We do not find any inconsistency in the said decision, (Ram Chand's case) and find ourselves in respectful agreement to the view taken by this Court in the case of Ram Chand (supra). The same principle has to be applied in those cases in which The possession is not taken and there is no reason to distinguish such case from the application of the principles laid down in Ram Chand's case merely on the ground that possession is not taken from some of the land owners. In this connection the fact could not be lost sight of that the land owners have enjoyed possession all these years and have taken the benefit of the usufruct and other advantages out of the said land and, Therefore, they stand even in an advantageous position than those land owners from whom the possession was taken earlier.

19. In view of the above mentioned judgments, it is apparent that the Notification u/s 4 of Act was upheld and the question of delay in completing the acquisition proceedings which were raised have also been dealt with. The Supreme Court in Murari's case (supra) observed that though the process of acquisition was fettered with delay, however, the court could not lose sight of the fact that Petitioners have also enjoyed benefit of the same. In view of the aforementioned judgments, the delay in completing the acquisition proceedings cannot be a ground to vitiate the acquisition and to turn the clock back. The law as enunciated by Supreme Court in Murari's case (supra) is being the law of land. We are of the view that the delay in acquisition has put tremendous financial burden on the Respondents. DDA's submission that land is required to widen the road in view of the ever increasing traffic at Andheria More and also for construction of SFS flats for residential accommodation is not without merit. In this case the delay has also been on account of stay granted by this Court during the pendency of the writ petition. The Petitioners by filing a totally misconceived petition has only contributed in insurmountable delay in carrying out the acquisition and has used legal remedy to serve oblique ends. It does not lie in the mouth of the Petitioners to say that since 27 years have elapsed the Notification has lost its significance. The Notification was carried out for the

"Planned Development of Delhi", which has been conclusively held to be a public purpose. The reason for delays is perhaps more attributable to the Petitioners than to the Respondents.

20. In the light of facts and circumstances of the case and also the law as enunciated above, the present Writ Petition and the pending application are devoid of merits and are hereby dismissed.