
(2009) 01 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) No. 2783 of 1985

Bawa Satyapaul Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0005

Hon'ble Judges : Manmohan Singh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : N.S. Vashisht and Vishal Singh, for the Appellant; Sanjay Poddar, for the Respondent

Judgement

A.K. Sikri, J.—These two writ petitions raise identical issue with singular but important difference on a fact which has resulted in varying results.

2. Notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") was issued on 25.11.1980 covering six revenue estates, including the revenue estate of village Chattarpur, land whereof was sought to be acquired. The land of the petitioner is situate in village Chattarpur and was covered by that notification. Objections u/s 5-A of the Act were invited. Large number of persons filed their objections which, however, did not find favour with the Land Acquisition Collector (LAC). On the basis of report of the LAC, declaration u/s 6 of the Act was issued by the competent authority on 7.6.1985 thereby acquiring the land. The petitioners in these two writ petitions have challenged the validity of the aforesaid notifications u/s 4 and 6 of the Act.

3. We may note that in WP (C) No. 2783/1995 the petitioner has referred to some other writ petitions which were filed at that time and pending consideration and, inter alia, submits that writ petition of the petitioner raises an identical and similar question of law as raised in those writ petitions. Question of law which the petitioner raises is that though Section 4 notification was issued on 25.11.1980, declaration was not made within three years thereafter and on the expiry of

three years, Notification u/s 4 lapsed. Therefore, it was not open to the respondents to issue declaration u/s 6 of the Act after a lapse of three years from the date of Notification u/s 4 of the Act thereof. Thus, such a declaration is not only illegally, unconstitutional, unwarranted, but is also barred by time. It is also pointed out that the petitioner had earlier filed WP (C) No. 649/1984 (which was obviously filed before the declaration was issued u/s 6 of the Act on 7.6.1985) challenging Section 4 Notification on the ground that it had lapsed after a period of three years. However, the petitioner withdrew the said writ petition as, according to him, when it came up for consideration, the Division Bench felt that the same was premature. We may point out that neither the date on which the petition was dismissed as withdrawn is given nor the copy of the order is placed along with this writ petition.

4. Challenge on the aforesaid ground is clearly misconceived as the matter stands covered by the Full Bench judgment of this Court in the case of Balak Ram Gupta Vs. Union of India (UOI), , where the vires of same Section 4 Notification was upheld. The decision in Balam Ram Gupta (supra) was upheld by the Supreme Court in Delhi Development Authority Vs. Sudan Singh and Others, . The petitioner, however, does not want that the matter is given a quietus on this ground. Certain subsequent developments on judicial side, which have taken place while deciding various other writ petitions, are sought to be taken advantage of by the petitioner. We may first refer to these developments.

5. The Apex Court had occasion to consider the decision in Balak Ram Gupta (supra) once again in Abhey Ram (dead) by LRs. and others Vs. Union of India and others, , and thereafter in Delhi Administration Vs. Gurdip Singh Uban and Others etc., . In these cases, the Supreme Court took the view that the benefit of the judgment of Balak Ram Gupta (supra) was available only to the 72 petitioners whose cases were decided by that judgment. The Court laid down the principle that ratio of the said judgment can be availed of only by those who had filed objections u/s 5A of the Land Acquisition Act and those who failed to file such objections were not competent to challenge the notification.

6. What follows from the aforesaid is that the petitioner would be entitled to the benefit of Balak Ram Gupta (supra) only if he had filed objections u/s 5-A of the Act. In the present case, there is no such averment made by the petitioner that he had failed any such objections. No doubt, in certain cases, where such an averment was not taken, on the application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, during the pendency of those writ petitions, those petitioners were allowed the amendment permitting them to raise such a plea, even if not originally raised, when it was found that objections u/s 5-A of the Act were in fact filed by those petitioners. We may point out that in certain cases such amendments were even disallowed and writ petitions dismissed.

Be that as it may, in the present case, no such application is filed by the petitioner seeking amendment of the writ petition for incorporation of the plea regarding filing of objection u/s 5-A of the Act. Reason is obvious. The petitioner,

in the writ petition itself, has impliedly conceded that no such objections were filed by him inasmuch as in paras 6 to 8 of writ petition it is specifically averred that other land owners filed the objections.

Interestingly, in paras 6 and 7, it is originally typed that "objections filed by the petitioner and other land owners", but the words "petitioner" and "alongwith" are specifically scored out. We reproduce paras 6 and 7, as typed, with the aforesaid words scored out:

6. That the petitioner alongwith other land and owners in the revenue estate of Village Chattarpur, received Notices in the first week of January, 1984, purported to be u/s 5-A directing them to appear before the Collector for a personal hearing on the objections filed by the petitioner and other land owners. The said notice was received by the petitioner them after a span of more than three years from the date of publication of the notification u/s 4(1) of the Act.

7. That on the date fixed under the said notice, the petitioner alongwith the other land owners appeared before the Collector and raised the following objections, inter-alia, amongst other:

That the three years period from the date of publication of Notification u/s 4(1) of the Act had expired and as such no declaration u/s 6 of the Act could be made.

This clearly implies that insofar as the petitioner is concerned, he has not filed any objections. In view thereof, as per the judgment of the Supreme Court in the case of Delhi Administration Vs. Gurdip Singh Uban and Others etc., , the petitioner shall not be entitled to the benefit of the judgment in the case of Balak Ram Gupta (supra), or for that matter Smt. Chatro Devi and Others Vs. Union of India (UOI) and Others, is, accordingly, dismissed.

7. However, in WP (C) No. 2092/1985, the petitioner therein has made a specific averment in para 5 that he had filed objections u/s 5-A of the Act. The petitioner subsequently also filed application under Order VI Ruler 17 of CPC (CM No. 13516/1999) with a prayer that he be allowed to amend the writ petition and incorporate the factum of filing of objections u/s 5-A of the Act. However, it appears that thereafter no specific orders were passed in this case as this writ petition was tagged along with other batch of writ petitions and common orders were passed from time to time in all these cases. Thereafter, this writ petition was adjourned to await the opinion of the third Judge in Chatro Devi (supra).

8. In any case, no such application under Order VI Rule 17 CPC was even necessary as there is already a specific plea taken in the writ petition itself that the petitioner had filed the objections u/s 5-A of the Act and in the counter affidavit filed by the respondent this averment is specifically admitted by the respondent, case of the petitioner in this writ petition shall be covered by the judgment of this Court in Balak Ram Gupta (supra) as well as in Chatro Devi (supra).

9. WP (C) No. 2092/1985 is accordingly allowed. Notification issued under

Sections 4 and 6 of the Act qua the petitioner's land in WP (C) No. 2092/1985, which is comprised in Khasra Nos. 415, 417, 418, 422, 436, 437, 440, 441, 442 and 443 measuring 42 bigha and 12 biswa in revenue estate of village Chattarpur is hereby quashed.