

(2005) 03 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) 2919, 2920 and 2922 of 2005

Beg Raj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 03 DEL CK 0047

Hon'ble Judges : Swatanter Kumar, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Valmiki Mehta and Vikram Nandrajog, for the Appellant; Sanjay Poddar, for LAC/LandB., Ajay Verma, for DDA and Sandeep Aggarwal, for DJB in WP (C) Nos. 2922 and 2972/2005, Sanjay Poddar, for LAC/LandB, Ajay Verma, for DDA. in WP (C) Nos. 2933-35, 2936-38, 2939-40 and 2965/2005, for the Respondent

Judgement

Swatanter Kumar, J.—By this order, we would dispose of the above noticed writ petitions as they raise common points of law based on similar facts for adjudication.

2. A notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued by the appropriate Government on 13th February, 1981 notifying large tract of land including the land of the petitioners in these writ petitions situated in Village Rithala, Delhi. According to the petitioner on 17th March, 1981, the Collector had taken the possession of the land in question and an award was passed by the Collector on 18th April, 1985 awarding compensation of Rs.3,800/- and Rs.2,600/- per bigha respectively for the lands falling in blocks A and B. The compensation awarded by the Collector was enhanced by the learned Addl. Distt. Judge to Rs.20,000/- per bigha vide judgment dated 16th March, 1995. These amounts were further enhanced by the High Court against which the respondent-Government filed Special Leave Petitions before the Supreme Court which were admitted on 19th April, 2004, but no interim orders staying the operation of the judgment of the High Court was

passed by the Supreme Court; as such the petitioners were entitled to receive entire amount of compensation available to them in terms of the judgments of the High Court.

3. The petitioners contend that they wrote to the Vice Chairman, Delhi Development Authority on different occasions as well as on 25th November, 2004 requesting for payment of the amount due to them. They also filed execution petitions, which are stated to be pending before the learned Addl. Distt. Judge, Delhi who vide his different orders passed from time to time granted opportunity to the respondents to pay the amount. He even issued warrants of attachment for the decretal amount. It was also stated on behalf of the respondents, that they would deposit the enhanced compensation on or by 8th November, 2004, but according to the petitioners they have not been paid the compensation till date. Thus compelling them to file the present writ petition.

4. The respondents had appeared before the Court and we have heard the learned counsel appearing for the parties. It was contended on behalf of the respondents that since executions are pending and the petitioners are already pursuing the remedy available to them, in accordance with law, the present writ petition is not maintainable.

5. According to the Land and Building Department of the respondents, it is contended that they have been requesting the DDA to make the payment. No reason whatsoever has been stated on behalf of the DDA as to why the payment has not been deposited. In fact the Land and Building Department, produced the records before us to show that despite their letter dated 6th January, 2005, the DDA has not come forward to make the payment. The relevant part of the letter written by the Secretary (Revenue) and Divisional Commissioner, GNCT of Delhi to the Commissioner (Land Management) reads as under :-

2. In this regard it is informed that the land in village Rithala was acquired under planned Development of Delhi. The ADJ enhanced the market value of the land to Rs.21,000/- per bigha. Delhi High Court further enhanced the market value of the land @ Rs.73,000/- per bigha. Opinion of DLA was taken. DLA opined to file appeal on whole of the enhanced amount over and above Rs.21,000/- per bigha. Appeal has been filed in Supreme Court of India in the leading case titled as Jasrath v. UOI. The case is still pending for adjudication.

3. Simultaneously, demand in most of the cases was raised with DDA through Land and Building Department. But due to non releasing of the payment by DDA this office is unable to deposit the same in the Court of ADJ leading to issuance of warrant of attachment of movable property of the LAC (North-West) for no fault. Here it is pertinent to mention that Supreme Court has not granted any stay till date. As such the stand taken by the DDA not to release the payment does not appear tenable.

4. Moreover, it is pertinent to mention that the court of ADJ releases appealable amount if any, against bank guarantee. And in case the enhanced market value

is decreased by the Supreme Court (as understood by DDA) then the excess amount so released can be realized from the surety.

5. Further, it is also pointed out that non-release of payment by DDA is burdening the Government exchequer dearly @ 15% p.a. As interest liability being incurred on the aforesaid amount due to delay in release of the same. At present the enhanced amount comes to the tune of Rs.120 Crores.

6. Hence, in the light of the above, you are requested to look into the matter and arrange to send the enhanced compensation in favor of LAC at the earliest so that warrant of attachment and passing of strictures by the court is avoided. As early act on is solicited.

6. In addition to the above, a letter was also written to the Vice Chairman, Delhi Development Authority, by the Land Acquisition Collector requiring the DDA to make the payment or to state the reason why it has not been able to make the payment. From the correspondence of records, it also appears that on 5/6 January, 2005, the Commissioner (Land Management), DDA had wrote a letter to the Secretary, LandB, Govt. of NCT of Delhi, which reads as under:-

LAC had also informed the position vide his letter No.F.13(229)85/Lit.IV/SV/3488 dt.25.11.04 in which he had also mentioned about the issuance of warrant of attachment of moveable property without his fault. In such cases, I would request you to kindly instruct concerned LAC to intimate such cases to us so that DDA will approach the concerned court for becoming added party and bringing out the facts of pendency of appeal before the Supreme Court of India so that decrees against LAC are not passed and executed. The Hon''ble Court will also be informed that the amount of compensation will run into crores of rupees and it will not be practically possible to recover the same if appeal by GNCTD (LandB) deptt. If DDA succeeds. In pooth Kalan DDA is yet to recover excess payment made when Hon''ble Supreme Court by its order reduced the compensation.

7. Learned counsel appearing for the DDA also produced the records during the course of hearing. It was contended on behalf of DDA that a view was taken by the management of the DDA to await the decision in the Special Leave Petition.

8. We have perused the records which were produced before us during the course of hearing. It is really surprising that although the prayer of the DDA as well as the Government for stay of payment of enhanced compensation to the land owners was declined by the Supreme Court vide order dated 23rd February, 2004, more than an year has gone by ,but no reason whatsoever can be traced in the records produced before the Court and in the arguments advanced on behalf of these authorities as to why the amount has not been paid nor tendered before the Court where the execution filed by the petitioners are pending. In the execution proceedings, order of attachment has been issued but still no payments have been made by the DDA or the other Department. In fact the Land and Building Deptt. entirely blames the DDA for non-payment of the amount of compensation. From the relevant letters afore-referred, it is again not clear as to

why appropriate steps are not being taken for payment of the compensation to the land owners.

9. The Court cannot lose sight of the fact that these are cases of compulsive acquisition and the appropriate Government in exercise of its authority of dominant domain has acquired the land belonging to the petitioners, which may even to some extent would deprive them of their livelihood. The lands were acquired as back as in the year 1981 and possession taken thereof in the year 1985, the claimants have been litigating for all this time and the compensation payable to them has been enhanced by the courts of competent jurisdiction. No doubt, its final determination is pending before the Supreme Court, but the Supreme Court has declined to stay the payment of enhanced compensation to the land owners. It would neither be just nor fair that the petitioners who have taken recourse to all legal remedies are not able to receive compensation despite orders of the executing court. Such a conduct on the part of the appropriate authorities needs to be deprecated at the very outset. It is a statutory obligation on the part of the authorities to pay the compensation due to the land owners at the earliest and without fail. Payment of compensation as awarded to the claimants should be a rule and non-payment thereof should be an exception. There have to be compelling reasons for delaying the payment of compensation to the owners that too in accordance with the provisions of the Act unless there was stay of such payments to the claimants.

10. From the records produced before us, it is clear that the authorities are attempting to avoid the payment of compensation to the land owners/claimants, despite the fact that their prayer for stay was declined by the Supreme Court vide order dated 23rd February, 2004. Even from the records it is not clear that any efforts were made by the concerned Department of the State Administration to seek any specific directions from any Court of competent jurisdiction. In response to the various letters from the Land and Building Department, the DDA vide its letter dated 6th January, 2005 stated that it would like to move the Supreme Court or bring certain facts to the notice of the Court in relation to the fact that the compensation payable runs into crores.

We are afraid that once application for stay is rejected by the Supreme Court more than an year back, it would hardly lie in the mouth of the official respondents to take such stand and deprive the land owners of their legitimate dues. We have also noticed that these are cases of compulsive acquisition of land and are not voluntary acts of sale on the part of the land owners. They, in any case, do not get the value of their land which might have been available to them if they were to sell their lands in the open market.

11. If the land owners are deprived of even the amounts of compensation payable to them as per orders of the Court, it will be perversity of justice. It would be unfair on the part of the administration not to release the payments. The records produced before us show attitude of no action on the part of the concerned officer/official. Land and Building Department shifts the responsibility

to DDA and DDA intends to wriggle out of its liability and delay the payment on one pretext or the other despite the fact that the highest court of the land has declined to stay payment of enhanced compensation to the claimants. A very serious consequence of this inaction and careless attitude on the part of the administration is, payment of heavy interests on the amount of compensation payable in terms of the provisions of Land Acquisition Act and order of the Court. The administration enhances its liability on various counts without any plausible cause and just because the money is to be paid from the public exchequer, it really concerns none in the hierarchy of the Government. Growing attitude in the administration to defer decisions at different levels in the State administration should be deprecated. It is the duty of the concerned Department to take decisions as per rules and orders of the Court expeditiously and without delay. The records produced before us clearly demonstrate that this basic percept of administration has been the real causality in the present cases.

12. In the facts and circumstances of the present case if the Court finds that at least from February, 2004 onwards are entitled to any interest on any counts including under the provisions of the Land Acquisition Act, it will be unfair to burden the public exchequer which could have been avoided just by timely decision taken by the officer/official required to take such decision. Proper exercise of power essentially requires that person in possession should take decisions and ensure that right of a citizen is not frustrated for want of action of administration. The times have arrived when the principle of administration's accountability should be enforced strictly and for the leisure and careless attitude of the officer/official, a common man should not be made to suffer by paying liabilities resulting from inaction of such officer/official. Another factor which the Court cannot ignore is that State is the largest litigant before the courts in our country. Even a smallest inaction and/or decision not taken timely can create huge liability upon the public exchequer and a common man would be forced to suffer that liability for no fault of the common person directly or indirectly.

13. In the present case, request of the petitioners have failed to yield any results, the learned executing courts have been giving long dates and just awaiting whether the orders of attachment have been executed or not. A decree holder should be able to enjoy the fruits of his decree and justice must give what is due to it. Despite these settled canon of law, the petitioners have failed to keep benefit of either of them.

14. In these circumstances, we are compelled to issue certain directions despite the fact that we are of the view that the present writ petitions are not the proper remedy taken by the petitioners under Article 226 of the Constitution of India, we have already noticed that petitioners have taken recourse to execution proceedings making representations and as such should pursue the alternative effective legal remedy available to them by pursuing the execution petitions filed by them. But keeping in view the extraordinary facts and circumstances of the present case and the fact that larger public interest is bound to suffer because of

enhancing liability by lapse of time, we would issue the following directions under Article 227 of the Constitution of India while disposing of this petition :-

(a) The Executing Court shall ensure that the claimants-petitioners are able to get compensation payable to them in accordance with law expeditiously. The orders of attachment should be made more effective and result oriented rather than a mere procedural compliance;

(b) From February, 2004, the date when the prayer of the Administration for stay was declined by the Supreme Court, the interest, costs or any other such amounts as the Executing Court directs to be paid to the petitioners shall, at the first instance, be paid by the Administration of the Authority/State but subsequently would be recovered from the salary of all the officers/officials responsible for causing such delay, in appropriate ratio directly relatable to the negligence, carelessness and/or not pursuing the matter expeditiously of the concerned officer. While complying with this direction, we direct that period of three months from the date of order of the Supreme Court shall be excluded, as in our opinion, that would have been the reasonable time to pay the entire compensation due to the claimants in accordance with the orders of the Court;

(c) We do express a pious hope that these directions would be implemented in their true spirit and responsibility of the erring officer/officials fixed within a period of six months from the date of pronouncement of this order, the compliance report shall be submitted to the Registrar of this Court within two weeks thereafter.

15. We also direct the concerned authorities to lay down proper guidelines in the above regard and ensure that such guidelines are adhered to strictly. We would expect the authorities to clearly state in these guidelines that for any delay in taking decision and non-compliance of the orders of the Court would result in fixation of personal responsibility and consequential payment of interest and costs by such erring officer/official, even in future.

16. These writ petitions are disposed of with the above terms.