
(2007) 05 SHI CK 0056
In the High Court Of Himachal Pradesh

Bhakra Beas Management Board

APPELLANT

Vs

Bansi Ram and Another

RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1), 6

Citation : (2007) 2 ShimLC 353

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—By way of this petition, the following reliefs have been sought for:

(a) That the Reference Award dated 9-8-2002 (Annexure P-4) passed by learned District Judge Bilaspur alongwith Award (Annexure P-I) passed by Respondent No. 2 u/s 11 of the Land Acquisition Act, 1894, dated 28.10.1998 concerning the land measuring 0-19 bighas, in Khasra No. 139/1 in village Jeor, Sub Tehsil Shri Naina Devi Ji (Swarghat), District Bilaspur, H.P. be quashed and set aside.

(b) That if for any reason prayer made in para-(a) supra is not found permissible by the Hon'ble Court, Reference Award (Annexure P-4) and Award (Annexure P-I) may suitably be modified by reducing the market value of the land for not more than Rs. 2,000/- per bigha irrespective of its classification.

(c) That records of the case may also be called for.

(d) That costs of the writ petition be also awarded in favour of the petitioner.

(e) Any other writ, order or direction deemed just and appropriate in the facts and circumstances of the case to which the petitioner is found entitled be also made in the interest of justice.

2. The brief facts necessary for adjudication of this petition are that the Joint

Secretary (Power), Himachal Pradesh Government issued notification u/s 4 of the Land Acquisition Act, 1894 vide letter No. (5) detail of 5-97 dated 30.9.1997. This notification was published in two newspapers, namely, daily edition of Punjab Kesari and Tribune, dated 20.1.1998. A notification under Sections 6 and 7 of the Land Acquisition Act was issued by the Joint Secretary (Power), H.P. Government. Consequently, the Land Acquisition Collector (Power), Sub-Division, Sadar, District Bilaspur announced the award whereby the value of the acquired land has been fixed as below:

Area	Rate	per	Total	No.	Sl. Kind of land Bigha Amount
2.17	73,303.37		2,08,914.60		1. Andrali Awal
2.	Andrali Awal	3.11	57,595.50	2,04,464.82	
3.	Bahrali Awal	0.17	40,578.65	34491.85	
4.	Banjar & Kharetar			6.19	7,853.00 50,657.11
					Total 13.14 Bigha
4,98,529.11					

3. The award was made by the Land Acquisition Collector on 28.10.1998. The petitioner-Board filed reference u/s 18 of the Land Acquisition Act, 1894 which was registered as Land Reference No. 15 of 1999 against the respondent No. 1. The learned District Judge had dismissed the reference No. 15 of 1999 vide award dated 9.8.2002. The petitioner has assailed the award dated 9.8.2002 by way of RFA which is pending in this Court.

4. During the course of arguments, Mr. Naresh Kumar Sood has confined his challenge only to the issuance of Annexure P-I, dated 28.10.1998. Mr. Naresh Kumar Sood had strenuously argued that the award dated 28.10.1998 was not in accordance with law and thus, liable to be set aside. Mr. G.D. Verma, Senior Advocate with Mr. Romesh Verma, Advocate appearing on behalf of the respondent No. 1 has supported the award dated 28.10.1998.

I have heard the parties and perused the record.

5. The award was made by the Land Acquisition Collector (Power), Sub Division, Sadar, Bilaspur on 28.10.1998. The same has been assailed before this Court by way of present petition on 20.4.2003. The petitioner had not explained the delay in challenging the award dated 28.10.1998 except the averments made in paragraph 10 of the petition. The reasons assigned for not approaching this Court within a reasonable time in this para are neither convincing nor cogent. The petitioner has not given any details what kind of information it was collecting and what documents were being arranged and who had approved the filing of this petition in this Court in official hierarchy. The reasonable period for filing the writ petition before this Court can be six months to one year and thereafter the delay has to be explained. The petitioner has failed to explain the delay of five

years in approaching this Court. The petitioner has also pursuing the matter by way of RFA against the award dated 28.10.1998.

6. The Hon"ble Supreme Court has held in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, as under:

In *Ram Chand v. Union of India*, Anr. Bench of three Judges of this Court had held that because of inordinate delay in approaching the Court after the entire process of acquisition was over pursuant to notification u/s 4(1) and declaration u/s 6, the Court was not justified in quashing the same. Same view was reiterated in *Bhoop Singh v. Union of India*, *Aflatoon v. Lt. Governor of Delhi*, *Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan*, *H.D. Vora v. State of Maharashtra* and *Girdharan Prasad Missir v. State of Bihar*.

It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

7. The Hon"ble Supreme Court in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , has held as under:

This Court has repeatedly held that writ petition challenging the notifications issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting a premium on dilatory tactics. Writ Petition (SCA No. 5149 of 1989) is thus barred by laches as well.

8. Their Lordships of the Hon"ble Supreme Court have held in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , as under:

The High Court has thus misplaced the factual details and misread the same. It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be

the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay, defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise. The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for public purposes of a school playground and roads in the development plan and by reason therefore, the notification to acquire the land has, therefore, been issued under the provisions of the Act as stated above.

9. The Hon''ble Supreme Court has held in *Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others*, , as under:

Further, learned Counsel for the appellant rightly submitted that on the ground of delay and laches in filling the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the notification u/s 6 was published in the Official Gazette on 24-5-1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban Development Act and also in having planned development of the area. The law on this point is well settled. *Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria and Hari Singh v. State of U.P.*

10. The Hon''ble Supreme Court has also held in *Government of A.P. and Ors. v. Kollutla OBI Reddy and Ors.* (2005) 6 SCC 493 as under:

We shall first deal with the plea relating to the maintainability of the writ petition filed after long passage of time. In a catena of decisions this Court has held that the High Court should not entertain writ petitions when there is delayed challenge to the notification u/s 4(1) and declaration u/s 6 of the Act.

11. In view of the pronouncements of law by the Hon''ble Supreme Court in above cited cases with regard to delay and laches, this petition is not maintainable. The delay of about five years has not been explained by the petitioner-Board in this petition except vague averments made in para 10 of the petition.

Accordingly, this petition is dismissed with no order as to costs.