
(2013) 08 DEL CK 0072

In the Delhi High Court

Case No : Writ Petition (C) 4732 of 2013, C.M. Application 10802 of 2013

Brij Mohan Lal Jain and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 4(1)

Citation : (2013) 08 DEL CK 0072

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : T.N. Singh and Sh. H.L. Srivastava, for the Appellant; Ajay Verma, Advocate, for DDA, for the Respondent

Judgement

S. Ravindra Bhat, J.

C.M. APPL. 10803/2013 (for exemption)

Allowed, subject to all just exceptions.

W.P. (C) 4732/2013, C.M. APPL. 10802/2013 (for stay)

1. The present writ petition questions the land acquisition proceedings, culminating in a notification issued by the respondent Government of NCT of Delhi, dated 27.10.1999 in respect of the petitioners' lands. The facts are that the Respondents issued Notification no. F-10(29)/96/L & B/LA/11394 u/s 4(1) of the Land Acquisition Act (hereafter "the Act") on 27.10.1999, to acquire lands (including those of the Petitioner No. 1) i.e. Khasra No. 55/2 measuring 1 Bigha situated in revenue estate of Village-Pehladpur Bangar, National Capital Territory of Delhi and that of the second Petitioner, i.e. 203.5 sq. yards out of Khasra No. 55/1/3 and 804.5 sq. yards out of Khasra No. 55/1/4 situated in the area and revenue estate of Village-Pehladpur Bangar, National Capital Territory of Delhi, for a public purpose, namely the Rohini Residential Scheme. The appropriate Government sought recourse to Sections 17(1) and 17(4) of the Land Acquisition

Act, 1894 for the acquisition of the lands and hearing u/s 5-A of the said Act was dispensed with. A final declaration dated 03.04.2000 was made u/s 6 along with Section 7 of the said Act.

2. The Land Acquisition Collector in furtherance of Sections 4, 6 and 17 of the Act proceeded to issue Awards dated 08.07.2002 and 12.07.2005, in respect of the petitioners' lands. The acquisition proceedings had been previously questioned by other landowners in various writ proceedings before this Court. Those writ petitions were dismissed. The aggrieved landowners appealed to the Supreme Court, by special leave. Their appeals were eventually allowed; the Supreme Court held that invocation of the urgency clause to dispense with inquiry u/s 5-A was unjustified in the facts and circumstances of the case. The notifications to that extent were quashed in respect of those writ petitioners; the executive government was granted liberty to proceed further and conclude acquisitions if there was need to do so after duly complying with Section 5-A. The Government of NCT of Delhi thereafter issued individual notices to such owners, conducted the enquiry and proceeded to issue Section 6 /7 declarations on 20th March, 2013.

3. The petitioners contend that the impugned notifications are illegal, because the Section 6 declaration was made beyond the period permitted in law, i.e. one year. It is submitted that even if the period is reckoned from the date of the Supreme Court's judgment, it is barred and the entire acquisition has lapsed.

4. Learned counsel for the petitioners argued that an application for impleadment had been filed before the Supreme Court; consequently the present petitioners unlike the others, who had not approached the courts, can take advantage of the Supreme Court's ruling; their challenge cannot be termed belated. It was additionally argued that the so called "public purpose", if any, ceased to subsist, due to the long delay and complete lack of development of the entire lands required for the original scheme, i.e. the Rohini Residential scheme. It was argued that the State cannot now contend that the present petition is not maintainable, because the fresh notification u/s 6 contains reference to suit lands, which clearly implies that even as per the respondents' understanding, the said lands were covered by the Supreme Court's quashing order. It was submitted that the second Petitioner made an application for impleadment, in the Supreme Court on 06.07.2012 and the same is numbered as I.A. No. 6 of 2012 and is still pending as SLP (Civil) No. 16578 of 2007. Therefore, it is contended that Section 6 declaration should have not been made considering that SLP is pending.

5. The Petitioners further contended that the Respondents-authorities have not at all considered the objections of the land owners filed u/s 5-A of the Act in light of the direction made by the Supreme Court in its judgment and order dated 21.03.2012. On the contrary they have rejected all the objections in a very mechanical manner without providing any hearing opportunity to these petitioners. The Petitioner further argues that in the present case the period

between the impugned notification u/s 4(1) of the Land Acquisition Act dated 27.10.1999 and declaration u/s 6 dated 03.04.2000 is 5 months and 5 days and the period from the date of allowing of the Appeals by Hon''ble Supreme Court on 21.03.2012 up to the date of issuance of declaration u/s 6 on 20.03.2013 is 11 months 29 days. Therefore, the total period (after deducting the period from the date of declaration dated 03.04.2000 up to the date of allowing of the Appeals by Hon''ble Supreme Court on 21.03.2012) is about 17 months and 4 days, which is more than prescribed period of one year i.e. 12 months and the notification u/s 4 stands lapsed. Therefore, both the notifications dated 27.10.1999 and 20.03.2013 are liable to be quashed by this Court.

6. Learned counsel for Respondents, at the outset, pointed out that the first Petitioner admits in the pleadings that few landowners (including second Petitioner but not including the first Petitioner), aggrieved by the issuance of Section 4 notification approached this Court in writ proceedings. The petitions were dismissed on 09.07.2007. Aggrieved by this judgment the landowners, not including the first Petitioner, approached the Supreme Court, which by order dated 17.09.2007 issued notice and granted interim stay on High Court's order dated 09.07.2007. The Supreme Court thereafter quashed the Section 17 notification, and the declaration issued and published u/s. 6 of the said Act, by an order dated 21.03.2012. Thereafter, the Land Acquisition Collector issued notice u/s 5-A calling for objections from interested parties. It was submitted that the entire assumption of the illegality of the present round of acquisition stems from the erroneous belief that the declaration of the Supreme Court, in its judgment was one in rem. A look at the order, submitted counsel for the respondents, would demonstrate that the declaration is to the contrary. The Court granted the relief of quashing the notification and declaration only to those landowners who had approached it; there was no general quashing of the notifications.

7. The Petitioner had contended that on 31.01.2013, the Land Acquisition Collector erroneously rejected the objections u/s 5-A of the Act merely on the basis that the possession of substantial portion of the acquired land has already been taken over and handed to DDA and that no proof or documents were filed in support of the plea of construction and built-up raised by various land-owners. It was further contended that notice u/s 5-A of the Act was issued to all the interested persons but no notice was ever received by the petitioners, hence without inviting objections from the petitioners, the Collector was not justified at all in rejecting all the objections.

8. The Court finds no strength in the arguments put forward by the Petitioner. A facial reading of the Supreme Court judgment would show that the relief of quashing the notification in respect of the same scheme, on the ground that the hearing u/s 5-A was wrongly dispensed with, was confined only to those who approached the courts. The petitioners were concededly not amongst them. In fact the petition is bereft of any particulars as to when either of the petitioners

had approached this court, questioning the land acquisition proceedings, dispensing with the requirement of Section 5-A earlier. In the context, this Court recollects the larger Bench decision of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, where it was stressed that a delayed challenge to land acquisition proceedings should not be entertained:

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the, notification even after the publication of the declaration u/s 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification u/s 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners....

9. This Court rejects the submission of Counsel for the Petitioners as the Supreme Court order of 21.03.2012 was not with respect to the Petitioner No. 1. As observed before, the Petitioner No. 1 was never a party to the Special Leave Petitions filed before that court.

10. The Petitioners have not produced any document showing that the second Petitioner had approached this Court questioning the land acquisition proceedings at any stage. It can be noticed that Para 25 of the Writ Petition states that the second Petitioner got himself impleaded in the SLP, whereas Annexure P-5 shows Brij Mohan Lal (Petitioner No. 1) as the applicant for getting impleaded in the SLP. In light of the impleadment of one of the Petitioners and not the other, the two could not be said to be having same cause of action as they are in different situations and hence the Petition should be dismissed on the face of it on these grounds.

11. The materials on record show that the first Petitioner was not aggrieved by the acquisition, notified in the Section 4 notification issued in 1999. He did not complain against the dispensing of hearing u/s 5-A of the Act. Now, after over 13 years, he cannot be allowed to use the Supreme Court judgment quashing the notification vis-?-vis others, to plead what is obviously a stale cause of action. As far as the second petitioner goes, it is evident that here, the attempt to join the others was made in a highly belated impleadment application before the Supreme Court, which the said petitioner approached after six years, and 13 years after the others approached this court. Furthermore, the materials on record also show that compensation was calculated in 2007 in respect of the suit lands; that the petitioners or one of them might not have accepted it, is another

matter. Having thus allowed the acquisition proceedings to become final, the present petitioners are seeking to somehow set the clock back, in a highly belated effort under Article 226 of the Constitution. The common petition clearly lacks in merit. It is held that for the above reasons, the writ petition has to fail. It is consequently dismissed along with pending application.