
(1994) 05 RAJ CK 0014

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 245 of 1994

Chhotelal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 31

Land Acquisition Act, 1894 — Section 11, 23, 4, 5A, 6

Citation : (1994) 2 WLN 250

Hon'ble Judges : V.K. Singhal, J;Arun Madan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arjun Madan, J.—This special appeal has been preferred In this court against the order, dated 15th March, 1994, passed by learned Single Judge of this Court, whereby the learned Single Judge, after examining the legal position and the principles governing the validity of acquisition proceedings, has dismissed the writ petition filed by the appellant under Article 226 of the Constitution of India. Feeling aggrieved by the impugned order of the learned Singh Judge, the present appeal has been preferred.

2. The above noted special appeal was admitted on 21st March, 1993 and the arguments advanced by the learned Counsel for the parties were heard and concluded on 4th April, 1994 with a direction that stay order, dated 21st March. 1994 passed by this court will continue till the pronouncement of judgment In this appeal. On 4th April, 1994 learned Counsel for the appellant gave an undertaking on behalf of the appellant not to make any construction over the disputed land during subsistence of the stay order.

3. Brief facts giving rise to the filing of this special appeal are that on 13th May, 1960 the Government of Rajasthan issued Notification u/s 4 of the Rajasthan Land Acquisition Act, 1953 which was published In Rajasthan Gazette, dated 6th June, 1961, for the purported acquisition of land mentioned therein. The purpose

of acquisition of the land was Indicted to be construction of stadium and new High Court Building at Jaipur. Khasra No. 35 was also mentioned In the aforesaid Notification but the area sought to be acquired from said khasra No. 35 was Indicated as 6 bighas only.

4. It will be pertinent to mention here that the aforesaid Notification was followed by subsequent Notification, dated 3rd May, 1961, which too was published in Rajasthan Gazette, dated 11th May, 1961. This Notification contained the declaration u/s 6 of the Act of 1953 authorising the Land Acquisition Officer to initiate and persue the proceedings for acquisition of the land mentioned in the aforesaid Notification. Pursuant to the aforesaid, the Land Acquisition Officer started the proceedings for acquisition of the aforesaid land which culminated in passing of the Award on 9th January, 1964. This Award related to various lands acquired under the Notification referred to above, Including the remaining areas of khasra No. 35 measuring 3 bighas 10 biswas. With regard to acquisition of khasra Nos. 34 to 38 belonging to the appellant, the Land Acquisition Officer directed that a plot of land measuring 100 sq. yards be allotted to the appellant apart from compensation. It was further directed by the Collector that in lieu of acquisition of the appellant's land in khasra No. 277, a residential plot of land measuring 2000 sq. yards be also allotted to the appellant.

5. Consequently for implementation of the aforesaid Award, the appellant filed civil suit No. 1177/85 (48/88) in the court of Munsiff (East), Jaipur City, Jaipur. The said suit was partly decreed by the judgment and decree, dated 14th February, 1992, giving relief for allotment of plot measuring 1000 sq. yards to the appellant, while remaining claim of the appellant was dismissed. Being aggrieved by the aforesaid, order the appellant preferred a civil appeal before the District Judge, Jaipur City, Jaipur and the appellant simultaneously filed a writ petition in this court Under Article 226 of the Constitution of India which was numbered as S.B. Civil Writ Petition No. 2935/92 on 15th July, 1992 which was heard and decided by the learned Single Judge of this court on 15th March, 1994 against which the present appeal has been preferred as indicated above.

6. During the course of hearing the following contentions were advanced by Shri G.S. Bapna, learned Counsel for the appellant:

(a) That the land measuring 3 bighas 10 biswas falling in khasra No. 35 was never made subject matter of acquisition in Notifications dated 13th May, 1960 and 3rd May, 1961 though included in the Award, dated 9th January, 1964 (Annex. 4 to the writ petition) and physical possession thereof remained with the appellant,

(b) That the appellant had served two notices on the respondents challenging his dispossession from the land falling in the aforesaid khasras on 6th January, 1992 and 3rd March, 1992,

(c) That on 28th February, 1992 Revenue Officials such as Patwari, Asstt. Engineer and officers of the Jaipur Development Authority visited appellants"

premises at Jaipur over khasra No. 36 and co-erced the appellant to sign some documents in proof of handing over possession of the entire piece of land,

(d) That the aforesaid threat was repeated by Jaipur Development Authority through J.D.A.'s officials on 2nd April, 1992 regarding appellant's land falling in khasra No. 35 measuring 3 bighas 10 biswas,

(e) That in absence of acquisition of erstwhile khasra No. 35 measuring 3 bighas 10 biswas by the State Govt. under the aforesaid Act, the respondents have no jurisdiction to dispossess the appellant from the said land. In view of the above contentions the appellant had thus questioned the legality and validity of the action taken by the respondents in seeking dispossession of the appellant from the aforesaid land acquired by the State Government pursuant to the aforesaid Notifications.

7. While refuting the aforesaid contentions of the appellant, Shri R.D. Rastogi, learned Counsel for the respondents made the following submissions:

(a) That the appellant had already received the compensation from the Land Acquisition Officer in respect of the entire land acquired by the State Government hence it is not open to him to question the legality and propriety of the impugned Notification acquiring the said land. It is true that Notification u/s 4 of the Land Acquisition Act was issued and the land to be acquired was also mentioned. Notification which was issued earlier was only in respect of 6 bighas of land from khasra No. 35 amongst other land falling in different khasra numbers, but one more Notification was issued which was published in Rajasthan Gazette, dated 7th January, 1971 and 3 bighas 10 biswas land which might have been left to be acquired from khasra No. 35 was also included in the Notifications u/s 4 of the Land Acquisition Act and, therefore, it is wrong to say that no power u/s 4 of the said Act was exercised by respondent No. 1 in respect of 3 bighas 10 biswas of land falling in khasra No. 35.

(b) That the appellant having already received payment of compensation in respect of entire and acquired was estopped from challenging legality and validity of the acquisition of the land in subsequent proceedings by way of writ petition before learned Single Judge of this court and subsequently in appeal before us.

(c) That the writ petition filed by the appellant was highly belated and deserved dismissal both, on the ground of laches and acquiescence since final Award was passed on 9th January, 1964, whereas civil writ petition No. 3925/92 was filed in this court on 15th July, 1992 after the period of more than 28 years which has not been explained by the appellant.

8. It was further contended by the learned Counsel for the respondents that pursuant to the Award passed by the Land Acquisition Officer on 9th January, 1964, the possession of the acquired land was also transferred to the then Urban Improvement Trust, Jaipur on 29th June, 1970 and a letter was also written by the Secretary to the then Urban Improvement Trust, Jaipur, dated 2nd July,

1970, to the Land Acquisition Officer, Urban Development Scheme, Jaipur, in which the amount of compensation paid to the appellant was specified and at item No. 2 the area of khasra No. 35 had also been specified as 3 bighas 10 biswas and the Land Acquisition Officer was directed to make payment of the amount awarded and thereafter compensation amount was paid to the appellant for his entire land acquired which included the land referred to above, and the payment having been accepted by the appellant in taken of acknowledgment, the same was not open to challenge before this court at such a belated stage.

9. It was further "contended that civil suit was also filed by the appellant earlier in the court of Munsiff (East), Jaipur City, Jaipur for grant of perpetual injunction regarding the aforesaid land with special reference to khasra No. 35 with a prayer to civil court that the appellant may not be dispossessed from the land without alternative and simultaneous allotment of a plot measuring 3000 sq. yards.

10. It is thus, clear from the above that the appellant had not only perused the civil remedy independently but had also filed writ petition earlier before this court which has since been dismissed by the learned Single Judge and against which the present appeal has been preferred.

11. It will not be out of place to mention here that regarding the claim of the appellant for compensation in lieu of 1000 sq. yards of land, the appellant had preferred second appeal in this court vide civil second appeal No. 123/92 which is still pending and the matter is subjudice. Regarding remaining 2000sq. yards of land the matter is still subjudice in view of the fact that an appeal preferred by the appellant is already pending before the District Judge, Jaipur City, Jaipur. The learned Counsel for the respondents also argued that in view of the alternative remedy having already been availed of by the appellant, the acquisition proceedings were not open to challenge before this court as the same were barred on the principles of res-judicata.

12. Learned Counsel for the appellant further contended that his client being illiterate, he has not aware of the complexity and technicalities of procedure regarding the land acquisition proceedings.

13. The appellant's plea regarding belated information or knowledge regarding acquisition of his land was also not available to him In view of the publication of the notifications Under Sections 4 and 6 of the Act in the Gazette published by the State Government. Even the final Award passed by the land acquisition officer was also published in the Gazette on 9th January, 1964, and the appellant had accepted compensation without any demeanour, hence the stand of the appellant was an afterthought and camaflogue to improve his own case.

14. We have heard rival contentions advanced by the learned Counsel for the parties and also examined the legal position regarding the controversy at issue.

15. We are of the considered opinion that the learned Single Judge was justified

in rejecting the writ petition on the ground of laches and, therefore, we need not examine the various submissions which have been made on permit.

16. During the course of hearing learned Counsel for the respondent invited our attention to affidavit, date 5th January, 1993, and a copy of the agreement by which the appellant had accepted the compensation in lieu of his land acquired falling in khasra Nos. 34 to 38 and wherein he has specifically stated that he has parted with possession of the entire land to the then Urban Improvement Trust, Jaipur and to the Land Acquisition Authorities. Faced with this situation, the learned Counsel for the appellant disputed the validity of the aforesaid affidavit furnished by him to Jaipur Development Authority on the ground that since the said affidavit contains over-writings therefore, the possession of land was never taken from the appellant. Learned Counsel for the appellant has further argued that on 27th January, 1994 he had filed reply to the re-joinder to the reply of the petitioner to the additional information which was furnished by non-pet. no. 3, J.D.A. In this reply the petitioner has contended that claim of the petitioner relating to 3000 sq. yard land in pursuance of the Award given by the Land Acquisition Officer and that his land had been acquired by respondents without any authority of law.

17. We are not impressed by this contention, since we are of the view that this is merely a camouflage and an excuse to challenge the genuineness and the validity of the land acquisition proceedings as earlier stated above and the appellant having already received compensation for the land acquired by the State Government and as such having granted acquiescence to the same by his own conduct and acknowledgments and having remained quiet for a period of more than 28 years should not be permitted to question the legality, validity and propriety of the acquisition proceedings. The principles of estoppel, res-judicata and constructive res-judicate are fully attracted to the facts of the present case. We are of the considered opinion that notwithstanding the fact that physical possession of the land remained with the appellant during the pendency of the acquisition proceedings, yet the appellant is not entitled to raise this plea in view of the fact that the land having been validly acquired in pursuance of the Notifications which are duly published in the State Government Gazettes and Award having been passed by the Land Acquisition Officer pursuant thereto, it is not open to the appellant to raise such pleas on flimsy and untenable grounds. In this regard it is very pertinent to mention the observations of the learned Single Judge of this court to the following effect:

The petitioner not only participated in the proceedings which led to the passing of the award but also took compensation meant for the entire land falling in those khasra numbers. He handed over possession of the entire land as early as in the year 1970 and therefore, he cannot now after a period of 30 years question the legality of the acquisition proceedings.

18. We are in full agreement with the above observations of the learned Single Judge of this court. Learned Single Judge has also opined that the appellant had

suppressed, the material facts from the notice of this court and had not approached the court with clean hands. He has observed that the appellant had thus clearly disentitled himself from any relief in exercise of its jurisdiction Under Article 226 of the Constitution of India because the appellant having secured interim relief from this court by concealment and mis-representation of facts had disentitled himself from any indulgence by this court. The Appellant had himself chosen to file civil suit for grant of perpetual injunction against the respondents to the effect that they should give land measuring 3000 sq. yards to the appellant in view of the Award, dated 9th January, 1964. It is further noteworthy to mention that the appellant having already availed the remedy of the civil court in the aforesaid suit and in respect of which he succeeded in getting partial relief, has also challenged the same by way of second appeal which is pending before this court with regard to land measuring 1000 sq. yards and also by filing an appeal before District Judge, Jaipur City, Jaipur in respect of land measuring 2000 sq. yards which is also pending and the decision of the court is still awaited. As we have already stated above that notwithstanding the remedy of civil courts, the appellant had also simultaneously filed a civil writ petition No. 2935/92 which was dismissed by the learned Single Judge of this court vide his order, dated 15th March, 1994, which is the subject matter of the present appeal before us.

19. Learned Counsel for the appellant placed reliance on a case reported in Syed Hasan Rasul Numa and others Vs. Union of India and others, which was a case under Delhi Development Act, 1957 regarding acquisition of land by Delhi Development Authority for town planning. In this case notices were published inviting general objections from the public to the proposed modification in the Master-plan. The Apex Court held that resort to any two of the three alternatives viz affixing copies of the notice or publishing by beat of drum or advertisement in local newspapers was mandatory. In this case the Apex Court held that there is no right to have the objections. But if delay in filing the objections was due to publication of the notice in non-compliance with the mandatory procedure prescribed by Section 44, prejudice to the right to have the objections considered can be complained of. The aforesaid proposition of law laid down by the Apex Court is not attracted to the facts of the present case, in view of the fact that there is no dispute in this case regarding mode of publication of the notifications inasmuch as the said notifications were duly gazetted and ignorance of the same cannot be complained of by the appellant after a delay of more than 28 years.

20. Reliance has also been placed by the learned Counsel for the appellant in the matter of Hindustan Oil Mills Ltd. and Another Vs. Special Deputy Collector (Land Acquisition), This was a case concerning notification of acquisition issued under S.4 of the Land Acquisition Act (1 of 1894). The question which arose before the Apex Court was whether the notification which was lacking details as to the area proposed to be acquired and names of the owners could be considered as an effective notification? On examination of the said question the Apex Court held as under:

Though it is true that the notification need not precisely define the nature of the land proposed to be acquired or the persons to whom it is considered to belong, there should be a clear indication in the notification of the land that is proposed to be acquired, from which the owners or occupiers of the land can get a fair idea as to the details of the acquisition and the impact on their rights.

21. We are thus of the considered view that the appellant is not entitled to take benefit of the aforesaid observations of the Apex Court inasmuch as he had not approached this court with clean hands and we are fortified in our view by the observations of learned Single Judge of this court who has held that the dispute which the appellant is now seeking to raise about the possession of the land was not a bonafide dispute in his opinion. He has further observed in his order that the petitioner had the full knowledge of the facts and he knew that if he were to disclose all these facts in the writ petition which he filed in the year 1992, the court may non-suit him at the very initial stage itself and that these facts have not been conclusive for making an adjudication on the validity of the contention raised by the petitioner, and further the petitioner has suppressed some facts with the sole object of misleading the court by getting an interim order in his favour on 24th April, 1992.

22. We are in full agreement with the observations of the learned Single Judge that the action of the appellant in re-depositing the compensation amount in the year 1992 which the appellant had received 28 years earlier by acknowledging the expenses of the same and after three months and 15 days of the issue of notice by learned Single Judge of this court cannot come to the rescue of avail of the appellant.

23. Learned Counsel for the appellant also placed reliance on Full Bench judgment of Punjab Haryana High Court in the matter of Rattan Singh and Another Vs. The State of Punjab and Others, In this case the learned Full Bench of P. & H. High Court while examining the validity of notification u/s 4(1) of the Act and S. 5A(i) of the said Act, held that to make the notification valid it is essential to give publicity of its substance in concerned locality simultaneously with or immediately alter its publication in official Gazette. The substance of the notification in the concerned locality was published with a delay of 29 days after the publication in the official Gazette, it was held that notifications issued under Ss. 4 & 6 of the Act could not be sustained. This is not the position here in the present appeal before us and, therefore, no benefit of the said judgment can be taken by the appellant.

24. Learned Counsel for the appellant also placed reliance on the judgment of the Apex Court in the matter of Jaipur Development Authority v. Radhey Shyam and Ors., Civil Appeal Nos. 4209 and 4210 of 1992 decided by the Apex Court on 17th February, 1994. In the said appeals the question which arose for consideration before the Apex Court was whether the Collector had power under any provisions of the Act to award land in lieu of compensation from the acquired lands or any other lands. Section 11 of the said Act postulates that the Collector

shall proceed to enquire into objections which any person interested in the land may make to the measurement of the land acquired or respective Interest of the persons claiming the compensation and then he shall make the Award. It was contended before the Apex Court that the Government has formulated a policy to allot any other suitable land to the displaced persons and a request was made to give suitable directions in this regard. We are of the view that the aforesaid observations of the Apex Court are not attracted to the facts of the present case and the findings recorded by the learned Single Judge of this court deserve to be maintained.

25. Shri R.D. Rastogi, learned Counsel for the respondents placed reliance upon the Constitution Bench judgment of the Apex Court in the matter of Aflatoon and Others Vs. Lt. Governor of Delhi and Others, wherein their Lordships of the Supreme Court held on the issue concerning laches and delay regarding validity of the notification concerning land acquisition. In para 11 of the said judgment it was held as under:

To have sat on the fence and allowed the Govt. 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.

26. Their Lordships of the Supreme Court further coserved in the said Judgment that the validity of Section 23 of the Land Acquisition Act is also not open to challenge on the ground of inadequacy of compensation payable under it since such challenge is precluded by Article 31(5) of the Constitution of India. The aforesaid view of the Apex Court was again affirmed in the matter of Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others, and subsequently in the matter of Har Avtar Singh Vs. State of Punjab, and in the matter of The Ramjas Foundation and Others Vs. Union of India and Others, . In the aforesaid latest judgment of Ramjas Foundation and Ors. (supra) the observations of their Lordships of the Supreme Court in para 14 are very significant wherein their Lordships have observed as under:

Thus, we find no justification at all for the delay in not challenging the notification issued u/s 4 on 13.11.1959 till 1973. Even notifications u/s 6 of the Act were issued in 1968 and 1969 but not challenged till 1973. As already mentioned above in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, a Constitution Bench of this court has clearly held that even after the declaration u/s 6 of the Act published in 1966, the appellants had approached with their writ petitions in 1970 when the notices u/s 9 were issued to them the writ petitions were liable to be dismissed on the grounds of laches and delay.

27. We are also fortified in our views from observations of this court in the matter of Hastimal v. State of Rajasthan: RLW 1973 (24) Raj 309 wherein the

Division Bench of this court while dealing with the question of delay and laches held that exercise of power being discretionary Under Article 226 of the Constitution of India, undue delay will disentitle a person from seeking remedy Under Article 226 of the Constitution of India.

28. Apart from the question of delay we are of the considered view that even on merits of the case the appellant is not entitled to succeed.

29. For the aforesaid reasons and also keeping in view the legal position and facts and circumstances of the case, the order of the learned Single Judge, dated 15th March, 1994, is affirmed and consequently this appeal fails and is dismissed with no order as to costs.