

(2004) 05 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C) No's. 3221, 3438, 3510, 3524, 3534, 3561, 3660, 3661, 3782, 3919, 4361, 4828, 5578, 6509 and 6526 of 1998, 4907, 5008, 5009, 5010, 5011 and 5086 of 2000 and 1612 of 2001

Deepak Bhardwaj and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 5A, 6

Citation : (2004) 112 DLT 937

Hon'ble Judges : D.K. Jain, J;A.K. Sikri, J

Bench : Division Bench

Advocate : P.N. Lekhi and Subhash Mittal, in W.P. C Nos. 3534, 4361 and 4828/98, N.S. Vashisht, in W.P. C Nos. 3660 and 3661/98, Atul Kumar, in W.P. C No. 5086/2000, V. Shekhar and Anuj Narain, in W.P. C Nos. 3438, 3782 and 5578/98, 5008, 5009 and 5010/200, for the Appellant; Geeta Luthra, J.J. Sarkar and Amit Sharma for LAC and Land and Building, Mahua, for DDA in W.P. (C) No. 4361/98, Sachin Nawani, Rajesh Mahajan, for DDA in W.P. (C) No. 5578/98, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.—Writ Petition No. 4361/1998 entitled "Deepak Bhardwaj and Ors. v. Union of India and Ors., was heard by a Division Bench of this Court and was allowed vide judgment dated 24th July, 2001. In the said writ petition, the petitioners have challenged a Notification No. F. 7(7)/97/L&B/LA/4252 dated 24th June, 1998 issued u/s 4 read with Section 17(1) of the Land Acquisition Act, 1894 (for short the Act"). By the impugned Notification large tracts of land, including the land of the said petitioners falling in village Samalkha within the National Capital Territory of Delhi were being compulsorily acquired. Urgency provision contained in Section 17 of the Act was invoked and provisions of Section 5A of the Act were dispensed with. By a detailed judgment, the Division Bench held that there was non-application of mind on the part of the

respondents to show urgency warranting invoking urgency provision and dispensing with the provisions of Section 5A of the Act. It was accordingly held that invoking of Section 17(1) and (4) of the Act and dispensing with provision of Section 5A of the Act was clearly vocative of authority of law and could not be sustained. The Division Bench quashed the impugned Notification in its entirety, on the aforesaid ground.

2. Following the aforesaid judgment, other writ petitions were also allowed.

3. The respondents filed special leave petitions against the said judgment. The special leave petitions were granted and were assigned Civil Appeal Nos. 8104-8126/2002. These appeals were ultimately heard and disposed of by a common judgment dated 30 July, 2003. In the said judgment, the Supreme Court upheld the decision of this Court insofar as it held that invocation of urgency provision under Sections 17(1) and 17(4) of the Act was not proper, observing as under:

"The reasons recorded by the High Court for quashing the notification issued under Sections 17(1) and (4) cannot be faulted with. This does not require further discussion in view of the correspondence produced on record. This aspect has been properly dealt with by the High Court and it has become final."

4. However, the Supreme Court further noted that quashing of the impugned Notification in entirety had the effect of quashing the Notification u/s 4 of the Act as well and this portion of the judgment could not be sustained inasmuch as:

"however the impugned orders passed by the High Court quashing the Notification u/s 4 without assigning any reason cannot be justified and hence that part of the order requires to be set aside."

5. It is, in these circumstances, to consider this aspect of the matter relating to validity of the Notification u/s 4 of the Act, the matters are remitted to this Court for fresh decision in accordance with law. While remitting the matters, the Supreme Court observed that it would be open to the parties to raise all contentions which are permissible on the basis of the record except the contention with regard to personal mala fides.

6. These matters were accordingly placed before this Court pursuant to aforesaid order dated 30 July, 2003. When the cases came up for hearing on 22 April, 2004, it was submitted on behalf of the petitioners that apart from other contentions, the petitions should be allowed on the ground that limitation for issuing Declaration u/s 6 of the Act had already expired. This contention was noted by passing the following order:

"At the threshold, Mr. Lekhi, learned Senior Counsel for the petitioners, has submitted that assuming for the sake of argument that validity of the impugned notification is upheld by this Court, but still the period of limitation to issue declaration u/s 6 of the Land Acquisition Act has already expired and the notification has, thus, lapsed. In support of the proposition, learned Counsel has

placed reliance on the decision of the Apex Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

Ms. Geeta Luthra, learned Counsel for the LAC, prays for some time to have instructions on this aspect of the matter.

At request, adjourned to 24 May, 2004 as it is stated that the Secretary concerned is on election duty.

Meanwhile, if considered necessary, the respondents may file reply to the additional" affidavit filed on behalf of the petitioners."

7. No reply has been filed to the additional affidavit filed on behalf of the petitioners. When the matters came up for hearing today, Ms. Geeta Luthra, learned Counsel for LAC and Land & Building conceded that no declaration u/s 6 of the Act had been issued till date. If that be the position, the only inescapable conclusion is to allow these writ petitions in view of the judgment of the Supreme Court in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

8. Provisions of Section 6 of the Act in this behalf are abundantly clear. After issuance of Notification u/s 4 of the Act, Declaration u/s 6 has to be issued within one year thereof. Notification u/s 4, in the instant case, was issued on 24 June, 1998. Although almost six years have passed but no such Declaration u/s 6 has been issued so far. Under these circumstances, in the case of Padma Sundara Rao (supra) Their Lordships of the Supreme Court had occasion to lay down the following principle of law:

"Para 11: It may be pointed out that the stipulation regarding the urgency in terms of Section 5A of the Act has no role to play when the period of limitation u/s 6 is reckoned. The purpose for providing the period of limitation seems to be the avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification u/s 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification u/s 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the notification u/s 4(1) of the Act. The prescription of time-limit in that background is, Therefore, pre-emptory in nature. In Ram Chand and Others Vs. Union of India (UOI) and Others, , it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non est and was effaced. It is fairly conceded by learned Counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh notification u/s 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be

acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

Para 14: While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. (See *M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.*, . The legislative casus and omisus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others*, . In *State of Karnataka and Others Vs. D.C. Nanjudaiah and Others*, , the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only Clause (i) and/or Clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent."

9. These writ petitions are accordingly allowed. Rule is made absolute. Notification dated 24th June, 1998 issued u/s 4 of the Act is also quashed on the aforesaid grounds.

10. There shall be no orders as to costs.