

(2006) 07 DEL CK 0166

In the Delhi High Court

Case No : Writ Petition (C) 15781 of 2004

Delhi Development Authority

APPELLANT

Vs

Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1984 — Section 11A, 17, 17(3A), 4, 50(2)

Citation : (2006) 131 DLT 194 : (2006) 90 DRJ 593

Hon'ble Judges : Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Gaurav Sarin, for the Appellant; Rajesh Katyal and Sanjay Katyal, for R-4, Bhaskar Mishra, for R-5 and Anand Yadav and Anita Tomar for R-6, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This writ petition by the Delhi Development Authority (DDA) seeks a writ of certiorari to quash the award dated 08.05.2004, passed by the Land Acquisition Collector (District South West, Delhi) (LAC) in relation to three plots of land admeasuring 1 bigha 5 bids was forming part of Khasra Nos. 114-116/32, 114-116/47 and 114-116/48 in village Mohd. Pur Munirka, Delhi. Background facts:

2. The background to the filing of the present writ petition may be briefly recounted. On 10.12.2001, a notification was issued u/s 4 of the Land Acquisition Act, 1984 (Act) read with Section 17 hereof for acquiring three plots of land (as mentioned hereinabove) located in Nos. 32, 47 and 48, Sunlight Estate, New Delhi (in the Khasra Nos. mentioned above admeasuring 9 biswas, 8 bids was and 8 bids was respectively) for the purpose of the Bhikaji Cama Place District Centre.

3. In respect of plot No. 32, Sunlight Estate, Smt. Krishna Kumari Uppal (respondent No. 5 herein), filed a writ petition being CW 7403/2002 in this Court

challenging the said notification dated 10.12.2001. Vide an order dated 20.11.2003, the said writ petition was disposed of (along with another writ petition No. 7404/02), recording the statement of the counsel for the petitioner that the challenge to the acquisition proceedings was not being pressed and that a direction may be issued for an alternate site. This court by the said order directed the respondent DDA to decide the application for alternate plot within a period of eight weeks from the date of the handing over the possession of the plot to it by petitioner (respondent No.5 herein). A review petition filed by respondent No.5 herein was dismissed vide order dated 19.12.2003 and a SLP filed thereafter by her was also dismissed as withdrawn on 09.01.2004 DDA was a party to all these proceedings. As a result of these proceedings, the challenge to the validity of the notification dated 10.12.2001 failed. All hurdles to the DDA taking possession of the land in question stood removed.

4. Since the urgency clause u/s 17 of the Act was invoked permitting the DDA to take possession of the land under acquisition even before the passing of the award, DDA was required to tender payment of 80% of the estimated compensation as stipulated in Section 17(3-A) of the Act. But the DDA did not make such payment of the 80% of the estimated compensation even though the time for taking possession of the land had come to an end. This led respondent No.5 herein to again file in this Court Civil Writ Petition No. 768 of 2004 for a writ of mandamus to the respondent DDA not to take possession of the property in question without following the due procedure of law provided u/s 17(3-A) of the Act. It was further prayed that a direction be issued to the DDA to assess the value of the premises on the basis of the market value on the date of the Section 4 notification and to make payment of 80% of the amount so assessed. DDA was a party respondent to this writ petition.

5. During the course of hearing of the said writ petition (W.P. (C) 768 of 2004) on 03.02.2004, this Court was informed that the LAC had, for the purposes of Section 17(3A) of the Act, estimated the compensation payable at a sum of less than Rs. 2 Lacs (which for a plot of 470.5 Sq. yds would work out to approximately Rs. 45/- per Sq. yd) and 80% thereof was offered to the petitioner (respondent No.5 herein). This court noted that the area in which the land is situated had become urbanised, that it was required for Bhikaji Cama Place District Centre and that the above estimated compensation was based on a circular dated 16.08.2001 issued by the Govt of the NCT of Delhi fixing minimum price of agricultural land, which had no application in the present case. The court was informed that the LAC proposed to follow a circular dated 16.04.1999 issued by the Ministry of Urban Affairs and Employment, Department of Urban Development (Lands Division) as per which market rate for residential/commercial areas in Delhi, nearest to the Bhikaji Cama Place, was Rs. 11,550/- per sq. m. The court was also informed that the LAC had in fact applied the said rate and prepared a draft award as per which the total compensation for the land in question after adding solarium etc worked out to Rs. 1,10, 94,724/- (i.e only as regards plot No. 32, Sunlight Estate). Vide an order dated 04.02.2004, the

court ordered status quo as regards the fixation of the compensation.

6. Later when the matter came before this Court on 27.04.2004, the LAC filed an application drawing the attention of the court to the fact that the award had to be made within two years from the date of the Section 6 declaration, which was issued on 10.05.2002, and that Therefore, the award had to be made on or before 09.05.2004 The court was also shown the revenue records, the draft copy of the award, the circular dated 16.04.1999 and the circular dated 09.08.2001 referred to earlier. Thereafter the matter was reserved for judgment. DDA, which was a party respondent was represented by counsel in the proceedings in the writ petition.

7. On 07.05.2004, judgment was pronounced by the Division Bench disposing of W.P. (C) No. 768/2004 directing LAC to publish the award by the stipulated date after taking into consideration the evidence produced by the petitioner (respondent No.5 herein) and further directing that the compensation so determined as per the award issued be paid to the writ petitioner immediately on the passing of the said award.

8. The judgment dated 07.05.2004, the Division Bench of this Court specifically adverted to the rate of compensation that had been estimated by the LAC to be paid to respondent No.5 herein in terms of S. 17(3A) of the Act and the rate proposed by the LAC in the draft award. The specific finding of the court reads as under:

In the instant case, the LAC, for the reasons best known to him, took shelter of Circular dated 16th August, 2001 estimating the compensation at a paltry sum of Rs. 2 Lac and offering 80% thereof to the petitioner. Such a compensation for a plot of 470.5 Sq. yards would work out to approximately Rs. 45/- per Sq yards. Arriving at such an estimation for the land in Bhikaji Cama Place is nothing but a farce. It is not understood as to how the LAC could even imagine such a compensation even when it was only an estimated compensation. Such an exercise on the part of the LAC was illusory, make belief and sham.

Even the rate proposed now, namely, Rs. 11,550/- per sq. mtrs. as compared to the estimated rate of Rs. 45/- per sq. yard is a clear indication with the earlier exercise done by the LAC was totally arbitrary and without application of mind, mechanically relying upon Circular dated 16th August, 2001, without even caring to notice that it had no application to the subject land.

The compensation now proposed to be offered, in view of the aforesaid scenario, would not be less than Rs. 1,10,94,724/- and may be higher if the petitioner is able to produce relevant evidence.

9. As mentioned earlier, the Division Bench in its judgment dated 07.05.2004 specifically took note of the position that award is to be rendered by the LAC in immediate future i.e by 09.05.2004.

10. On the next date 08.05.2004, the Land Acquisition Collector proceeded to

finalize the award and fixed the compensation calculated at the rate of Rs. 11,550/- per sq. m., which was the same as mentioned in the draft award which was placed before the court. In the other words, the evidence produced by the writ petitioner (Respondent No.5 herein) for claiming the higher compensation was not accepted by the LAC. For the three plots of land, the LAC worked out the aggregate compensation payable as Rs. 1,99,58,409.44/-

11. It is against the above award announced on 08.05.2004, that the DDA has filed the present writ petition. After notice was directed to be issued, two other plot owners in respect of Plots 47 and 48, Sunlight Estate, which are covered by the award, were also permitted to be impleaded as respondents. After pleadings were complete, the matter was set down for final hearing. Petitioner's Submissions

12 Mr. Gaurav Sarin, learned Counsel appear on behalf of the petitioner, at the outset, submitted that the only ground on which he was challenging the award dated 08.05.2004 was the non compliance with Section 50(2) of the Act which gave a right to the DDA to be served a notice by the LAC and to be heard before the award was made. He submitted that in the instant case, since no notice had been issued by the LAC to the DDA, it was deprived of an opportunity to participate in the proceedings before the LAC which culminated in making final award on 08.05.2004. He further submitted that the entire award, Therefore, stood vitiated for non-compliance of the mandatory provisions u/s 50(2) of the Act as explained by the Hon'ble Supreme Court in U.P. Awasthi & Anr. Vs. Vikas Parishad & Anr. (1997) 1 SCC 1. He referred in particular to the following passages at page 749 Para 49:

1 Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

2 The said right carried with it the right to be given adequate notice by the Collector as well as the reference Court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3 The proviso to S. 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court to invoke the remedy under Art. 226 of the Constitution as well as the remedies available under the L.A. Act.

4 In the event of the denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

13. Mr. Sarin while not denying that DDA had, by not challenging the earlier judgment dated 07.05.2004 of the Division Bench, accepted its finality, nevertheless contended that the LAC need not have rushed through the proceedings and made the award on the very next date i.e 08.05.2004. He sought to urge that it was open to the LAC to have delayed the making of the award so as to give the DDA an opportunity of being heard before the making of the award. He further contended that the amount now awarded was too high and that if given an opportunity, the DDA would have placed material to persuade the LAC to award a lesser amount. Submissions of the respondents:

14. It was submitted on behalf of the respondents that there was no question of DDA not having knowledge of the proceedings before the LAC since the DDA was throughout a party to all the proceedings in this Court and had been represented throughout by a counsel. The LAC had no option but to comply with the judgment of this Court dated 07.05.2004 which required him to pronounce the award before the deadline of 09.05.2004. In fact, the LAC had only carried forth the mandate of this Court. Further, the final award made by the LAC was in terms of the draft award already shown to the court and the rate applied by the LAC for fixing the compensation was Rs. 11,550/- per sq.m which has been implicitly accepted as being the minimum rate of compensation payable in the judgment dated 07.05.2004 of this Court. Learned counsel for the respondents also pointed out that the amount of compensation of Rs. 1,99,58,409.44/- was in regard to all the three plots in question and not in relation to the plot of respondent No.5 alone. Since the claimants' plea for compensation higher than what was proposed in the draft award was not accepted by the LAC, the award ought not to be interfered with by this Court. Questions for consideration

15. In the light of the pleadings and submissions of counsel, the following questions arise for determination in this writ petition:

(i) Did DDA have adequate notice of the land acquisition proceedings before the LAC

Is there a non-compliance with the mandate of Section 50(2) of the Act

(ii) Assuming that no separate notice u/s 50(2) of the Act was served on the DDA by the LAC, can the DDA be said to have been prejudiced on that score

(iii) Is the impugned award dated 08.05.2004 sustainable in law

Re: Issue (i)

16. As regards the first contention of non compliance with the provisions of Section 50(2) of the Act, it can hardly be denied that Section 50(2) confers on a local authority, for whom the land is sought to be acquired, a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation. S. 50(2) of the Act reads as under:

In any proceeding held before a Collector or Court in such cases, the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation: Provided that no such local authority or Company shall be entitled to demand a reference u/s 18.

17. In the instant case, it is a matter of record that in the proceedings before the Division Bench of this Court in the earlier two writ petitions W.P. (C) 7403/2002 and W.P. (C) No. 768/2004, the DDA participated in the proceedings throughout and was represented by a senior counsel and was heard in the matter. The proceedings transpired in the presence of counsel for the DDA and the judgment was also pronounced to the knowledge of the counsel for DDA. The judgment dated 07.05.2004 in W.P. (C) 768/2004 clearly gave the Collector time only till 09.05.2004 to pronounce the award in order to meet the deadline set by Section 11-A of the Act. The LAC had no choice in the matter but to pronounce the award before that date, which in fact he did. No fault can be found with the LAC for this. If the DDA had not participated at any stage of the proceedings and was not aware of what transpired in this Court, it may have been possible to accept the plea that DDA did not have notice of the proceedings before the LAC. However this is far from the truth because, as noticed hereinabove, the entire proceedings in this Court in W. P. (C) No. 768/2004 took place in the presence of DDA counsel. DDA ought to have appeared before the LAC and placed any material it had to persuade him to award a lesser amount as compensation. However, it chose not to do so. It must, Therefore, be held that DDA had adequate notice of the proceedings before the LAC consequent upon the order dated 07.05.2004 of this Court in W.P. (C) 768/2004 Re: Issue (ii)

18. Next we turn to the effect of the failure to serve upon the DDA a separate notice of the proceedings before the LAC. At the outset, it must be noted that all the parties were aware of the judgment dated 07.05.2004 of this Court which required the award to be pronounced by the LAC before 09.05.2004. In the circumstances, the LAC cannot be faulted with doing precisely what this Court required him to do. In the event, he did not issue any separate notice to the DDA and it is in this context that the question of violation of S. 50(2) requires to be examined. The object of Section 50(2) of the Act appears to be that no acquisition proceedings should take place without the participation of the local authority for whose benefit the land is being acquired. While, as explained by the Supreme Court in Gyan Devi's case (supra), the failure to give a notice as contemplated u/s 50(2) may result in the denial of the right of an authority, for whom the land is being acquired, to participate in the proceedings, it need not invalidate the proceedings if it can be shown that the authority had knowledge of the pendency of the proceedings and has not suffered any prejudice on account of failure to be served with such notice. This position in law has been explained by the Constitution Bench in Gyan Devi's case (supra) at page 728 (Para 9) in the following words:

The said right can be effectively exercised by the local authority only if it has

information of the proceedings which are pending before the Collector as well as the reference Court. In other words, the right conferred under S. 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom the acquisition proceedings are pending on the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority u/s 50(2) of the L.A. Act, can, Therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference Court and has not suffered any prejudice on account of failure to give such notice.

19. There can be no manner of doubt that the authority in the instant case, i.e., the DDA, had knowledge of the proceedings before the LAC. As to the question of prejudice, on repeated queries by the court whether it would have made any difference if DDA had been issued notice by the LAC, Mr. Sarin was unable to point out any material which DDA intended to place before the LAC in order to persuade the LAC to award a lesser amount of compensation. In any event, the Division Bench of this Court in its judgment dated 07.05.2004, in WP (C) No. 768/2004 between these very parties, had categorically held that:

The compensation now proposed to be offered, in view of the aforesaid scenario would not be less than Rs. 1,10,94,724/- and may be higher if the petitioner is able to produce relevant evidence.

This finding was never challenged by the DDA. In fact it is not disputed that the LAC has not awarded compensation at a higher rate than what has been stipulated as the minimum by the Division Bench (as extracted above) as far as respondent No.5 herein is concerned. The compensation has been worked out at Rs. 11,550/- per sq.m. which was what informed to the court during hearing of the matter. In these circumstances, the DDA which has accepted the judgment dated 07.05.2004 as final and binding, cannot claim any prejudice on account of the failure to be served with a separate notice by the LAC, particularly, when the compensation now determined by the LAC as payable is no different from what was proposed in the draft award noted and accepted by the court in its judgment dated 07.05.2004. If it were to be held, as urged by the petitioner, that on account of failure to serve DDA a separate notice in terms of Section 50(2), the award itself has to be set aside and the entire exercise before the LAC repeated, it would be just a waste of time and serve no useful purpose on the facts of this case. It would not serve the ends of justice to insist on a pedantic compliance with the requirement of Section 50(2) of the Act de hors the facts of this case. Issue No. (ii) is answered accordingly.

Re: Issue (iii)

20. The only other point urged is that the compensation amount determined to

be payable by the impugned award by the LAC was high. However, Mr Sarin was unable to show any material on record to substantiate this submission. We are aware of the fact that the award made by the LAC on 08.05.2004, for a total sum of Rs. 1,99,58,409.44/- covers all the three plots, namely viz. plot No.32, 47 and 48 Sunlight Estate New Delhi and is, Therefore, consistent with the draft award proposed by the collector applying the rate of Rs. 11,550/- per sq.m. The DDA cannot be said to be at all prejudiced by this award particularly when there is no material whatsoever produced by it, at any stage of the proceedings, or even before us, to show that this was not a reasonable amount. Also as noticed earlier, the DDA has accepted the finality of the order dated 07.05.2004 of the Division Bench of this Court in W.P. (C) 768/2004 which noticed that this was the minimum reasonable amount payable for the properties in question. We are of the view that the LAC was fully justified in awarding the amounts as determined to be payable by the impugned award and indeed was duty bound to do so by virtue of the mandate of the Division Bench and that it is in conformity with the law. Issue (iii) is decided accordingly.

21. We, accordingly, find no reason to interfere with the award dated 08.05.2004 made by the LAC, which is subject matter of the challenge in this Writ Petition. The Writ Petition, is, accordingly dismissed with no orders as to costs. The amount of compensation if not paid already, shall be paid to all the claimants covered by the award not later than 7th August, 2006.