
(2008) 05 DEL CK 0215
In the Delhi High Court
Case No : Writ Petition (C) 1036 of 1994

Gagan Chopra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11
Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6
Land Acquisition Rules — Rule 3

Citation : (2009) 156 DLT 77

Hon'ble Judges : V.K. Shali, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Sanjay Poddar, for respondent Nos. 2 and 3 and Gaurav Sarin, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This writ petition is filed by the petitioner challenging the award bearing No. 10/87-88 dated 19th May, 1987 of Village Shayoorpur. The petitioner has also in the writ petition prayed for declaration to the effect that the entries in the revenue record relating to the land of the petitioner falling in Khasra Nos. 192/1 (0-10) and 192/2 (4-06) measuring 4 bighas 16 biswas, in the aforesaid Village Shayoorpur, Tehsil Mehrauli, New Delhi is illegal, unlawful, arbitrary and unwarranted and to re-transfer the aforesaid land in the revenue record in the name of the petitioner.

2. Briefly stated the facts set up by the petitioner are that he is claiming himself to be the purchaser of the aforesaid two parcels of land by a registered sale deed dated 24th April, 1980 from the previous owner. It is alleged by the petitioner that on 25.11.1980, a notification u/s 4 of the Land Acquisition Act, 1894 in respect of land situated in 13 Villages in South Delhi included the Village in question was issued. On 20th May, 1985, a declaration u/s 6 was issued and thereafter an award was made on 19th May, 1987 bearing No. 10/87-88 in

respect of Village Shayoorpur. Before the award could be passed, the petitioner along with some other residents of the aforesaid Village had filed a writ petition being W.P.(C) No. 304/1987 challenging the acquisition proceedings. However, due to some inadvertent mistake, the land falling in the aforesaid Khasras i.e. Khasra Nos. 192/1 (0-10) and 192/2 (4-06) total measuring 4 bighas 16 biswas was not included in the said writ petition.

3. It is further stated by the learned Counsel for the petitioner that in another writ petition bearing No. 1639/1985 titled as Balak Ram Gupta Vs. Union of India (UOI), the aforesaid award No. 10/87-88 dated 19.5.1987 of the same Village in question was quashed by the Division Bench vide order dated 18th November, 1988.

4. On 2nd May, 1989, a Writ Petition bearing No. 2478/1985 titled as Mughul Travels and Transport Co. Pvt. Ltd. v. Union of India and Ors. further clarified Balakram Gupta's case (supra) to the effect that the acquisition in respect of the entire land of 13 Villages at South Delhi has been quashed. As a necessary consequence of this decision in the aforesaid two cases the writ petition bearing WP(C) No. 304/87, in which the present petitioner was also one of the petitioner, was allowed on 20.9.1988 in which the petitioner was also one of the petitioner. The petitioner has alleged that on 1st October, 1993 when he obtained Khatoni from the revenue record, he was surprised to find that in the said Khatoni, the land was shown to be acquired land whereupon he made inquiries and found that the earlier writ petition bearing WP(C) No. 304/87 filed by him along with other petitioners, did not contain the details of khasras numbers of the land belonging to the petitioner. This is the reason which has necessitated the filing of the present writ petition seeking a writ of mandamus and writ of certiorari declaring that the land falling in Khasra Nos. 192/1 (0-10) and 192/2 (4-06) total measuring 4 bighas 16 biswas respectively in Village Shayoorpur does not stand acquired by virtue of the award bearing No. 10/87-88 dated 19th May, 1987. The petitioner has, as necessary concomitant to this also sought reversal of the entries purported to have been made by the revenue authorities.

5. The respondents 2, 3 and 5 have filed a common counter affidavit wherein, they have contested the claim of the petitioner that the petitioner is the owner of the aforesaid land in question or that he is in possession thereof. It is stated by them that the possession of the land in question is with the revenue department and it is so entered in the revenue record. It was also disputed by them that khasra numbers of the aforesaid land were inadvertently omitted by the petitioner from the earlier writ petition.

6. The petitioner filed rejoinder to the counter and denied the stand of the respondents.

7. We have heard the learned Counsel for the parties and perused the records. Learned Counsel for the petitioner Mr. N.S. Vashisht, has contended that since the notification bearing No. 10/87-88 dated 19th May, 1987 has been quashed in

Balak Ram Gupta's case (supra) by virtue of which the acquisition in respect of 13 Villages of land which includes the land belonging to the petitioner also, therefore, the land in question could not be acquired by the respondents. It is urged by him that on account of inadvertent mistake, the petitioner did not mention the details of his land in earlier writ petition bearing No. 304/87 and which necessitated the filing of the present writ petition. The learned Counsel submitted that entries which have been made by the respondent showing the land has been acquired needs to be reversed.

8. It is admitted by the learned Counsel for the petitioner that though there has been some delay in filing the writ petition but it has been stated that this delay has been occasioned on account of the fact that the petitioner learnt about the actual status of the land being shown as belonging to the respondents only when he obtained copies of Khatoni on 1st October, 1993 and therefore, the delay could not be said to be fatal to the case of the petitioner. Learned Counsel for the petitioner in support of his case has also placed reliance on a case titled as State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, in support of his submission to the effect that in case on account of inadvertent mistake, details of land of the petitioner were not included in the first round of litigation that would not foreclose the right of the petitioner to seek the present remedy. In this regard, the learned Counsel for the appellant has drawn our attention to para 8 of the aforesaid judgment, which reads as under:

8. It is true that the Government having realized that the lands were initially notified to be acquired but did not cover the survey numbers being situated in the adjacent villages, the errata notification was published and inclined to lands in Survey Nos. 2/5, 2/11 and 2/12. Once errata was published, it dates back to the date of initial Section 4(1) notification, namely, 26-6-1978. It cannot be considered to be a fresh notification issued u/s 4(1). It is not in dispute that the respondents, in fact, filed their objections to the notice issued u/s 5A and Rule 3 of the rules made by the State Government. Shri Sivasubramaniam, is unable to place before us the nature of objections raised by the respondent-petitioners. But the fact remain is that the respondents had the opportunity and, in fact, they did participate in Section 5-A enquiry .Therefore, the declaration made u/s 6 does not get vitiated.

9. A perusal of the aforesaid judgment would show that in the facts of the said case certain surveys in the adjacent Village were not mentioned in the notification issued u/s 4(1) of the Land Acquisition Act, 1894 though the land was acquired for public purpose. The Government of Tamil Nadu issued an errata notification including the land which was left out in the said notification. It was the "errata" to the notification issued u/s 4 of the Land Acquisition Act, 1894, which was challenged by the respondents before the Hon"ble High Court of Tamil Nadu which culminated into the pronouncement by the Hon"ble Supreme Court wherein it was held that once an "errata notification" is issued, it dates back to the date of initial Section 4(1) notification and cannot be considered to be afresh

notification. The respondents in the said case had participated in the enquiry u/s 5(A) conducted by the LAC, the declaration which was issued u/s 6 and the award which was passed thereafter, therefore, the Hon''ble Supreme Court held that the notification was not vitiated.

10. While as the facts of the present case are totally different and the ratio of the above decision not applicable at all. It will be pertinent to refer to the observations passed by the Supreme Court in case titled as Haryana Financial Corporation v. Jagdamba Oil Mills 2003 (2) SCC 496 wherein the Hon''ble Supreme Court has laid down that the judgments are not to be applied like theorems. Further before applying the ratio laid down in a judgment the Court must co-relate the facts of the two cases because the judgment is given in the peculiarity of the facts of the each case.

11. So far as the present case is concerned, no doubt the notification bearing No. 10/87-88 dated 19th May, 1987 was quashed so far as 13 Villages are concerned but the petitioner having become a party to the challenge of the acquisition proceedings in the first round of litigation bearing W.P. (C) No. 304/87 could not now rake up the said challenge again by taking a plea that on account of inadvertent mistake, the petitioner had forgotten to mention the details of khasra numbers or the measurement of the land belonging to him. As a matter of fact, it could not be said that this was a mistake much less the same could be said to be inadvertent. In our view the petitioner is a fence sitter who was watching the proceedings all these years and has come now to challenge the acquisition. There are two more hurdles in the way of the petitioner. The first is that by way of relinquishment of a part of claim and the second of constructive res judicata. The relevant provisions of the CPC reads as under:

Order II Rule 2 of the CPC

2. Suit to include the whole claim.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. Where a plaintiff to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs. A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Section 11 CPC

11. Res judicata. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former

suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation IV. Any matter which might and ought to have been made ground defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

12. Thus, we find it difficult to agree with the submission made by the learned Counsel for the petitioner that merely on account of inadvertent mistake of not mentioning khasra numbers and details of land of the petitioner in the earlier writ petition would enable the petitioner to file the second writ petition in the form of the present writ petition. As a matter of fact, the petitioner seems to be a fence sitter and waiting the outcome of the earlier round of litigation and then trying to reap the fruit of the result of the earlier writ petition by filing an independent writ petition, notwithstanding the fact that he was a part and parcel of the earlier round of litigation. Accordingly, this submission of the learned Counsel for the petitioner must fail because it is not by the principle of Order 2 Rule 2 is constructive res judicata.

13. The second submission made by the learned Counsel for the petitioner is to the effect that the land in question belonging to the petitioner is landlocked and therefore, it cannot be gainfully utilized by the respondents and would also not serve any public purpose. In our considered view, merely on account of fact that the land in question is landlocked or that it cannot be gainfully utilized by the respondents for any public purpose, it is for the respondents to see how best it can be used now. We feel that this submission is devoid of any merit at this belated stage. Further it is for the respondents to see how best can be utilized for the public purpose for which it was sought to be acquired.

14. In view of the aforesaid facts and circumstances of the case, we feel that the petitioner does not deserve the relief which has been set out by him in the writ petition and accordingly the writ petition is dismissed as it does not have any merit. No order as to costs.