
(2009) 04 OHC CK 0041
In the Orissa High Court

Gobinda Chandra Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 18

Citation : (2009) 108 CLT 96 : (2009) 2 OLR 118 Supp

Hon'ble Judges : B.S. Chauhan, C.J.;I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed challenging the land acquisition proceedings in respect of the land in dispute, i.e. an area measuring Ac.0.130 decimals, plot No. 798(p) in Khata No. 112 in mouza Bhoinagar wherein the notification u/s 4 read With Section 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") was issued on 27.6.1985 also in respect of a very large area of land for having a lake to beautify the city.. Declaration u/s 6 read with Section 17(1) of the Act was published in the official gazette on 19.11.1985.

2. In paragraph 7 of the Writ Petition it has been stated that notice u/s 9 had been issued on 25.4.1987 and the notices for award u/s 11 were issued on 8.2.1995 and 9.2.1995. The Petitioners claim to have purchased the land in dispute vide registered sale deed dated 12.10.1999. Petitioners raised construction on the said land without getting the plan sanctioned from the Bhubaneswar Development Authority as required under the provisions of the Orissa Development Authorities Act, 1982. Thus, there is an order for demolition of the construction. Hence the Petitioners have challenged the land acquisition proceedings.

3. Mr. A.C. Mohanty, Learned Counsel for the Petitioners has raised large number of issues challenging the land acquisition proceedings including that there was no

opportunity to file objections as required u/s 5A of the Act; there was no urgency in such a plan development; proceedings stood lapsed as Award was made after expiry of two years; thus proceedings are liable to be quashed.

4. Per contra, Mr. P.K. Khuntia, Learned Additional Government Advocate submitted that the petition is not maintainable as the Petitioners are purchasers subsequent to the conclusion of the acquisition proceedings; land acquisition proceedings cannot be challenged at a belated stage. In case possession is taken resorting to urgency clause u/s 17(1) of the Act, limitation for making award does not apply. Hence, the petition is liable to be dismissed.

5. We have considered the rival submissions made by the Learned Counsel for the parties and perused the record.

6. The admitted facts remain that the Petitioners are purchasers subsequent to the conclusion of the land acquisition proceedings and the contents of the Writ Petition, particularly in paragraph 7 reveal that awards had been made u/s 11 of the Act on 8.2.1995 and 9.2.1985. In the instant case as the provisions of urgency clause contained in Section 17 had been resorted to and objection u/s 5A had been dispensed with and possession had been taken prior to making of the awards, land vested in the State free from all encumbrances. Petitioners for the reasons best known to them have not revealed as to whether the vendor in this case had taken the compensation or not. But if the land had vested in the State free from all encumbrances, we fail to understand what kind of title of the land stood transferred in favour of the Petitioners. It is settled legal proposition that a person cannot transfer title before he himself possesses the same. If the title had been passed to the State the sale deed itself becomes void and the sale deed in favour of the Petitioners remained invalid and incapable to confer any right and interest in the property.

7. The issue of maintainability of the Writ Petitions by the persons, who have purchased the land subsequent to the notification u/s 4 of the Act, is no more res integra.

8. In Pt. Lila Ram Vs. The Union of India and Others, , the Apex Court has held that anyone who deals with the land subsequent to Section 4 notification, would do so at his own peril. In Smt. Sneh Prabha etc. Vs. State of U.P. and Another, the Apex Court held that Section 4 notification gives a notice to the public that the land is needed for public purpose and it further points out "an impediment to anyone to encumber the land acquired thereunder." The alienation thereafter does not bind the State or beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance had been placed on the earlier Judgment in Union of India (UOI) Vs. Shivkumar Bhargava and Others, .

9. Similarly, in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , the Supreme Court held that purchase after publication of Section 4 notification is void against the State and

at the most the purchaser may be a "person" interested in compensation since he steps into the shoes of the erstwhile owner and may merely claim compensation.

10. However, in subsequent Judgment in Jaipur Development Authority Vs. Mahavir Housing Coop. Society, Jaipur and Others, , the Apex Court, though did not decide the issue finally, expressed doubts on the maintainability of reference u/s 18 by the subsequent purchaser. He can get only compensation as what he has paid.

11. In Meera Sahni Vs. Lt. Governor of Delhi and Others, , the Apex Court held that a purchase subsequent to Section 4 notification does not confer a right to challenge the proceedings.

12. In Gian Chand Vs. Gopala and Others, , Mahavir and Another Vs. Rural Institute, Amravati and Another, ; and Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, ; the Apex Court has categorically held that a person who purchases the land after publication of Section 4 notification, is not entitled to challenge the proceedings for the reason that vendee's title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of Section 4 notification is void and purchaser cannot challenge the acquisition proceedings.

13. In view of the above, we are of the view that this petition is not maintainable. Petitioners being purchasers subsequent to the conclusion of the land acquisition proceedings cannot agitate the matter and they are only entitled to claim the compensation.

14. Even otherwise as explained hereinabove, once the possession had been taken u/s 16 of the Act resorting to the provisions of urgency clause contained in Section 17 of the Act & the land vests in the State, it cannot be divested and in such a situation the statutory limits prescribed u/s 11A that the Award has to be made within a period of two years from the date of Section 6 declaration does not apply. There is no embargo on the competent authority, i.e., the Land Acquisition Collector to make the award even at a later stage after expiry of the statutory period as the limitation does not apply in such an eventuality, & even if decision had been taken for paying the compensation as required u/s 17 of the Act it will not absolve the Collector to make the award.

15. In Satendra Prasad Jain and Others Vs. State of U.P. and Others, , the Hon''ble Supreme Court held that once land vests in the State free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse even if award is not made within the statutory limitation. Even if there has been some irregularity, it would not absolve the Authority to make the Award. In case urgency clause contained in Section 17 is resorted to and possession is taken provisions of Section 11A would not apply. The same view has been reiterated in Awadh Bihari Yadav and Others Vs. State of Bihar and Others, ; U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties

(P) Ltd. Lucknow and others, ; Allahabad Development Authority Vs. Nasiruzzaman and Others, ; M. Ramalinga Thevar Vs. State of Tamil Nadu and Others, ; & Govt. of A.P. and Another Vs. Syed Akbar, .

16. In view of the above, we do not find any force in the submissions made by Mr. Mohanty on this count.

17. It is settled legal proposition that the land acquisition proceedings cannot be challenged at a belated stage.

18. When a person challenges Section 4 Notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count. (Vide Hari Singh and Others Vs. State of U.P. and Others,).

19. A Constitution Bench of the Supreme Court, in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , has observed as under:

...To have sat on the fence and allowed the government to complete the acquisition on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The Writ Petitions are liable to be dismissed on the ground of laches and delay on the part of the Petitioner.

20. Same view has been taken by the Supreme Court in State of Mysore and Others Vs. V.K. Kangan and Others, ; Girdharan Prasad Missir v. State of Bihar (1980) 2 SCC 83; H.D. Vora Vs. State of Maharashtra and Others, ; Bhoop Singh Vs. Union of India and others, ; Ram Chand and Others Vs. Union of India (UOI) and Others, ; State of Orissa Vs. Dhobei Sethi and Another, ; State of Maharashtra Vs. Digambar, ; State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., ; and C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, .

21. In Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , the Supreme Court observed as under:

If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vest in the State free from all encumbrances, the slumbered interested person would be told off the gates of the Court that his grievance should not be entertained when there is inordinate delay in filing the Writ Petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications.

22. Similar view has been reiterated in State of Rajasthan and Others Vs. D.R. Laxmi and Others, , wherein the Apex Court has held that even the void proceedings need not be set at naught if the party has not approached the Court

within reasonable time, as judicial review is not permissible at a belated stage. The Apex Court held as under:

...Delay in challenging the notification was fatal and Writ Petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the Writ Petition and when a)) steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications.... The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable, time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.

23. Similar view has been reiterated by the Supreme Court in Northern Indian Glass Industries Vs. Jaswant Singh and Others, ; and Haryana State Handloom & Handicrafts Corporation Ltd. v. Jain School Society AIR 2004 SC 850.

24. In view of the above, the petition cannot be entertained.

25. Before parting with the case, we would like to point out that this petition was filed on 9.1.2004 and it had never been listed before the Court as notices have not been issued to the Respondents till now. We fail to understand that if a person challenging the action of the State that there has been so much delay on the part of the Opposite Parties authorities, how would the Petitioners justify their own conduct as the Writ Petition is pending for more than five years and three months and no attempt had ever been made by the Learned Counsel for the Petitioners to get the matter listed. In fact old matters are being listed on the direction of the Court itself. In such a fact situation, we do not see any reason to interfere in the matter.

26. The petition lacks merit and is accordingly dismissed.

I. Mahanty, J.

27. I agree.