

(1995) 02 DEL CK 0060

In the Delhi High Court

Case No : Civil Writ Appeal No. 376 of 1973

Gulab Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-02-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1995) 1 AD 1164 : (1995) 58 DLT 19 : (1995) 32 DRJ 467

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : S.P. Aggarwal, Sandeep Agarwal, J.K. Seth, Shalini Kapoor, K.C. Mittal and Rina Bhatia, for the Appellant;

Judgement

K. Ramamoorthy, J.

(1) This writ petition is filed challenging the notifications issued by the first respondent on 13th of November 1959 u/s 4 of the Land Acquisition Act and the declaration dated 27th of January 1966 issued u/s 6 of the Land Acquisition Act with reference to 36 bighas and 2 bids was of the land situated in a place called Village Wazirpur, Delhi. On 29th of March 1973 the petition was presented and the rule was issued on 5th of April 1973. There was no reply filed by the respondents. Subsequently, there was an amendment of the writ petition bringing to the notice of this Court notification issued by the Government on 21st of December 1911. The amended writ petition with all the annexures were served on the respondents and no reply has been filed. On 25th of January 1995 Mr. K.C. Mittal with Ms. Rina Bhatia appeared and prayed for an adjournment. On their request, the matter was adjourned to 27th of January, 1995 after hearing the learned counsel for the petitioners to enable the counsel for the respondents to make their submissions. On 27th of January 1995 again the petitioners were heard because none appeared for the respondents. However, Ms. Rina Bhatia appeared on 27th of January 1995 and stated that Mr. K.C. Mittal was not the counsel for Union of India and Mr. H.K. Sharma is the counsel for the Union of

India. No one appeared on behalf of the Union of India, even though as stated above, no reply had been filed to the writ petition in spite of several opportunities given.

(2) The learned counsel for the petitioners 1,3,4,5,, Ii, L/Rs. of 13, 15 to 19, 21, 24 to 28, L/Rs of 29 and 30 made his submissions and Mr. S.P. Aggarwal Sr. Advocate argued on behalf of petitioners 2 and 23. I place on record my appreciation of attitude of the learned counsel for the petitioners. In spite of the fact that no one appeared for the respondents they brought to my notice all the relevant records and also the relevant cases pertaining to the matter. With their assistance, I could comprehend the issues involved and come to some definite conclusions.

(3) As stated above, the notification u/s 4 of the Land Acquisition Act was issued on 13th of November 1959 and part 2(c) of the notification is relevant and it read as follows:-

"2(C)The land already notified, either u/s 4 or u/s 6 of the Land Acquisition Act, for any Government scheme;"

(4) The petitioners are interested in only 13 bighas and 2 biswas, as shown in annexure F shown red in the plan. It is stated at the bar that 5 bighas make one acre. It is submitted on behalf of the petitioners: (1) that the land covered by the notification u/s 4 dated 13th of November 1959 is excluded by virtue of para 2(c) therein and the land now described in the notification u/s 4 cannot affect the petitioners; (2) the land of petitioners, who are 30 in number, were situated in Wazirpur. The declaration u/s 6 covers an area of 835 acres. No steps were taken by the Government of India then pursuant to the declaration u/s 6 of the Land Acquisition Act. The families of the petitioners continued to be in possession of the land inasmuch as no compensation was paid to the predecessor-in-interest of the petitioners and possession had not been taken by the Government of India, that the land had not vested in the Government by virtue of section 16 of the Land Acquisition Act; (3) In C.M. 3577/82 the petitioners had accepted that the Government could put up a police station in one of the khasras 533/1 in an area of 686 sq. yds. marked as Xyz in annexure F, in the plan filed by the petitioners and inasmuch as the Government had put up the police station. The petitioners had surrendered that land to the Government and they do not make any claim in that land where the police station is located. Therefore, according to the petitioners excluding the land occupied by the police station the rest of the land in possession of the petitioners should be outside the purview of the notification; (4) There has been delay of six years in issuing the notification u/s 6 and that would vitiate the acquisition proceedings.

(5) So far as the first point is concerned, there is force in the arguments of the petitioners. Once the notification itself excludes from its purview in respect of the land which was subject matter of the acquisition in 1911 the land of the petitioners made subject to the acquisition in 1959. The petitioners counsel

brought to my notice the judgment of the Supreme Court in *The Ramjas Foundation and Others Vs. Union of India and Others*, wherein the very notification dated 13th of November 1959 issued by the Chief Commissioner, Delhi was considered by Their Lordships. The question that was mooted out before Their Lordships was that the writ petitioner was guilty of laches in having filed the writ petition in 1978 because neither award was passed nor owner was dispossessed from the property. The land situate in chowkri Sadhurakhurd was the subject matter of the notification. This Court took the view that the petitioner was guilty of laches and that was affirmed by the Supreme Court. I went through the judgment of Their Lordships but this point whether the land situate in that place was subject matter of the notification issued u/s 4 on 21st of December 1911 was not put forth. Therefore, the decision of Their Lordships of the Supreme Court cannot be put against the petitioners.

(6) The learned counsel also brought to my notice the decision of Their Lordships of the Supreme Court in *Aflatoon and others vs. Lt. Governor of Delhi and others* 1974 Sc 2077 .with reference to the very notification dated 13th of November 1959. There the point raised was the public purpose . mentioned in the notification as vague and, Therefore, it is vitiated. Their Lordships rejected that contention. Therefore, the learned counsel for the petitioners fairly contended that they do not press the point that the notification is vitiated on this ground. The learned counsel also brought to my notice the judgment of the Supreme Court in *State of Tamil Nadu and another Vs. A. Mohammed Yousef and others*, wherein Their Lordships of the Supreme Court has again been pleased to consider the question of vagueness. On that score, the learned counsel for the petitioners do not invite this Court to consider this question. In the case reported in *Delhi Administration and others vs. Friends Housing Society and others* Air 1981 Delhi 30 the Division Bench of this Court also took the view that the notification seeking to acquire thousands of acres of land for purposes of planned development of Delhi is sufficient to declare the public purpose and it cannot be held to be vague. In *Delhi Chemical and Pharmaceutical Works and Another Vs. Union of India and Others*, , a Division Bench of this Court took the view that acquisition for planned development of rapidly growing city of Delhi is public purpose sufficient enough sustained the notification. The learned counsel for the petitioners brought to my notice *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, , a decision by the Full Bench of that Court, for the proposition that inordinate delay in finalisation of the proceedings would vitiate the acquisition proceedings. The learned counsel for the petitioners also brought to my notice *Avtar Singh Vs. Union of India and Others*, , a decision by Division Bench of this Court to support their contentions that section 48 of the Land Acquisition Act is not only provision for withdrawal from the acquisition and withdrawal from the acquisition could also be inferred from the conduct of the authorities. The learned counsel also brought, to my notice *Doongarsee and Sons and Others Vs. State of Gujarat and Others*, for the purpose of showing that inordinate delay in issuing the declaration u/s 6 would vitiate the proceedings.

(7) I can straight away say that the petitioners cannot contend that there has been inordinate delay in issuing section 6 notification inasmuch as the notification u/s 4 would cover a very large extent of land and naturally authorities have to consider many many aspects before finalising the acquisition process. Their Lordships of the Supreme Court rejected the very contention in The Ramjas Foundation and Others Vs. Union of India and Others, . Therefore, it is not open to the petitioners to contend that the acquisition proceedings are vitiated on the ground of delay.

(8) The respondents have not been able to explain as to how they can rely upon the notification u/s 4 dated 13th of November 1959 with reference to the land of the petitioners in Village Wazirpur. In view of para2(c) in that notification and when after having issued the declaration u/s 6 dated 21st of January, 1966 the Government had not taken any steps, the respondents cannot rely upon the later notification for acquiring the land of the petitioners. The land of the petitioners, as stated above, is only 13 bighas and 2 bids was wherein, according to the petitioners, they have put up puce structures and they are in possession enjoyment of the property putting up construction after obtaining permission from the authorities. Reliance was also placed u/s 16 of the Land Acquisition Act and the decision of the Supreme Court reported- in Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, . I am of the view that the land of the petitioners, who are 30 in number, cannot be subject matter of acquisition proceedings now started by the respondents. They have to be excluded from the purview of the notification. Accordingly, a writ will issue forbearing the respondents from proceeding further with the acquisition of the land to the extent of 13 bighas and 2 biswas, as shown red in the plan annexure F, and to that extent the notifications would stand quash and the respondents will be at liberty to proceed with acquisition of the land except the land of the petitioners. The writ is allowed and there will be no order as to costs.

(9) Before that it is also made clear that the place where police station is situated in 686 sq. yds., shown Xyz in the plan, shall be in the possession of the respondents and the petitioners shall have no claims whatsoever in respect of that property.