

(1992) 08 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ Petition No. 155 of 1983

Harbans Kaur and Others

APPELLANT

Vs

Land Acquisition Collector etc.

RESPONDENT

Date of Decision : 01-08-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1992) 23 DRJ 518 : (1992) RLR 430

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : M.L. Dhingra and A.K. Jain, for the Appellant;

Judgement

J.K. Mehra, J.

(1) Shri Har Charan Singh had purchased property known as Kaziwala Eagh Mehrauli, Delhi measuring approximately 80.10 bighas at an auction held on 19.5.60 by Rehabilitation Department of Government of India. This property was an evacuee property. After the auction certain disputes arose resulting in the filing of C.W.994/ 70 which was decided on 20th April 1977 whereby the Department of Rehabilitation was directed to transfer the said property to said Shri Har Charan Singh on the basis of the conditions contained in the terms for the said auction where after the relevant sale certificate dated 29.7.78 was issued in favor of Shri Har Charan Singh, which was duly registered with the Sub Registrar, Kashmere Gate, Delhi. The possession of the suit property was duly handed over to Shri Har Charan Singh on 5th October 1978.

(2) The said Shri Har Charan Singh died on 27.4.82 and was survived by the petitioner in the present writ petition who has filed the present petition.

(3) The petitioner received two notices, one u/s 9 and another u/s 10 of the Land Acquisition Act addressed to the said late Har Charan Singh. In the said notice, some of the lands in the said Kaziwala Bagh were mentioned. It is the case of the petitioner that there was no Notifications under Sections 4 and 6 of the Act in

respect of the said land. It is also contended by the petitioner that notice u/s 9 of the Land Acquisition Act had mentioned that the acquisition proceedings are being carried out in pursuance to Notification No.F.15(iii)/59LSG dated 13.11.59 issued u/s 4 of the Act. This notification in terms did not apply to evacuee land. Apart from this there is no other notification issued u/s 4 of the Act in respect of any part of Kaziwala Bagh. The Land Acquisition Collector, Delhi he proceeded to announce his award on 17.1.83 notwithstanding such objections. The award was a composite award.

(4) The respondents have neither filed any counter affidavit to this petition nor did any assistance become available despite notices. I have seen the notification dated 13.11.59 which specifically excludes, inter alia, evacuee land. Thus. it could not have included in its ambit the land in question.

(5) In the light of the above exclusion a separate notification was required to be issued in case the intention was to acquire the land in question. But no such notification was issued. Assuming that there is any Section 6 Notification the same cannot be sustained nor can any subsequent proceedings taken thereafter by the authority under the Land Acquisition Act be sustained since there is no notification covering the land belonging to the petitioner u/s 4 of the Act. The facts of this case are similar to and are covered by the facts prevailing in the case of Angira Devi Gupta Vs. The Land Acquisition Collector, Delhi, . In that ruling it was held by S.S. Chadha, J. as follows:. Is 1

"THE issue of a Notification under section 4(1) is a condition precedent to the "exercise of any further power under the "Act. The notification u/s 4 is "a sine qua non. In the absence of S.4 "Notification no acquisition proceedings "can subsist as neither the Collector can "enter upon the property for the purposes "mentioned in S.4(2). nor can the Collector hear the objections u/s 5A, nor can it "submit the report to the appropriate "Government for consideration and issue of "the declaration u/s 6. The award "of compensation is on the basis of the "market value as on the date of S.4 notification .In absence of S.4 notification, "the machinery provided by the Act for "determination of the compensation ob""viously cannot apply."

(6) The present case is squarely covered by the principles laid down in the above. It is Therefore held that the Notification dated 13.11.59 u/s 4 of the Act is not applicable to the petitioner's land covered by the present writ petition known as Kaziwala Bagh, Mehrauli, New Delhi and that no declaration u/s 6 and the award u/s 11 of the Act could be made in respect of the said land. For that reason, the declaration u/s 6, if any, and the award u/s 11 of the Act in respect of the land in dispute in the present writ petition are quashed and it is hereby declared that the petitioner's possession of the land is lawful in her own right. Rule Nisi issued earlier is made absolute. Writ petition is allowed. No order as to costs.