
(1971) 01 DEL CK 0011
In the Delhi High Court
Case No : Civil Writ No. 235 of 1967

Harkartar Kaur and Others

APPELLANT

Vs

The Lieutenant Governor and Others

RESPONDENT

Date of Decision : 14-01-1971

Acts Referred:

Citation : AIR 1971 Delhi 195 : (1971) 1 ILR Delhi 238

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : G.S. Vohra and M.S. Vohra, for the Appellant; Deepak Chaudhry, Sr. Central Govt. Counsel and S.P. Aggarwal, for the Respondent

Judgement

1. The acquisition of the land of Petitioner No. 1 under the provisions of the Land Acquisition Act (hereinafter called the Act) was challenged in this writ petition on various grounds. In the light of the subsequent case-law, however, Shri M.S. Vohra, learned counsel for the petitioners has confined his challenge to the acquisition to the following two grounds only, namely:-

(1) The notification dated 24th October 1961 issued u/s 4 of the Act was published in the official gazette. But u/s 4(1) of the Act, "the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality". This was not done by the Collector, and

(2) The petitioner No. I alleged that she was away from Delhi when the notification u/s 4 was published. She, Therefore, filed objections to the said notification late, namely, on the 2nd of July 1963. A copy of the objection is at Annexure E to the writ petition. In a note at the end of the objection she said that she had no knowledge about the notification u/s 4 and that she came to know about it only four days back and Therefore, the delay in filing the objections be kindly condoned. In spite of this the Collector did not give her an opportunity of being heard either in person or by a pleader u/s 5-A(2) of the Act.

2. The defense by the Union of India was that the Collector acting u/s 4(1) duly

caused public notice of the substance of the notification u/s 4 to be given at convenient places in the locality in which the lands, subject of the notification, were situated. Further the objections, if any, were required to be filed by the petitioner No. I within 30 days u/s 5-A(1) of the Act. She did not do so. As the objections were filed long after the expiry of 30 days, they could not be considered by the Collector.

3. Before considering the petitioners' contentions on merit it seems to me that the petitioners have disintitiled themselves to relief in this Court by the enormous delay in raising these objections. The first objection could have been raised by the petitioner No. 1 soon after 27th November 1961 when due publicity was given to the notification u/s 4(1). The second objection should have been raised by the petitioner No. I soon after 2nd July 1963 when the objections were filed. It was not necessary for the petitioner to wait for the issue of the notification u/s 6 at all. The writ petition was filed in 1967 which was after the expiry of the period of limitation during which a suit raising the above objections would have been required to be filed. The rule laid down by the Supreme Court in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, affirmed by the majority in *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, that when a writ petition is filed after the expiry of the prescribed period of limitation for the suit it would be regarded as unduly delayed unless there are exceptional circumstances which would justify the entertainment of such a petition after so much delay. There are no such special circumstances justifying the delay in this case. I hold, Therefore, that the present writ petition is liable to be dismissed on this preliminary ground alone.

4. If I am wrong in my finding on this preliminary question, then the objections urged by the petitioners above are considered as below:

(1) The affidavit sworn by petitioner No. 2 on behalf of the petitioner No. 1 is met by the affidavit sworn by the Secretary (Land and Buildings) Delhi Administration on behalf of the respondents. The former says that the public notice of the substance of the notification issued u/s 4 was not given as required by Section 4(1). As a rule, it is the petitioner who will fail, if no further evidence on this question is adduced before the Court by either party. There are, moreover further indications to show that the public notice of the substance of the notification u/s 4(1) has been given by the respondents. Firstly, the present Land Acquisition Collector Shri. V.K. Bhall has filed an affidavit to the effect that though the original proceedings regarded publicity of notification u/s 4 are not readily traceable, from the other Government record it transpires that the substance of the said notification was given due publicity on 27th November 1961. It is true that the deponent of this affidavit does not have personal knowledge about the publicity had been given. On such document filed by the respondents is the letter dated 27th September 1963 by Shri. Nand Kishore the then Land Acquisition Collector (I) Delhi in which he asserted that the substance of the notification was given by due publicity on 27-11-1961. Secondly, there is a

presumption u/s 114 of the Indian Evidence Act exemplified by Illustration (e) there under that judicial and official acts have been regularly performed. Lastly, the original file No. F. 4 (19)/65 L & H Vol. 2 produced by the respondents shows that various other persons whose land was covered by the same notification u/s 4 of the Act filed objections but none of them contended that publicity had not been given to the first contention of the petitioners has no substance and the notification u/s 4 had been given due publicity in the locality in which the land of the petitioner No. 1 was situated as required by S. 4(1).

(2) The objections filed by the petitioner No. 1 were not in accordance with the requirements of Section 5-A(1) inasmuch as the objections had to be filed within 30 days after the issue of the notification u/s 4 there under. The Collector acting as the statutory authority was only bound to act precisely in accordance with S. 5-A. The original objections filed by the petitioner No. 1 were produced before me from the file referred to above. A note has been made on this file as below:

"The objection is time-barred File". It is clear, Therefore, that the Collector did not consider these objections simply because they were time-barred. Shri M.S. Vohra, learned counsel for the petitioners, contended that the Collector was nevertheless bound to consider the objections. In my view the only duty cast upon the Collector to consider the objection was by the terms of Section 5-A. This provision did not require the Collector to consider any objections which was not filed within 30 days. The Collector would be taking upon himself a responsibility not warranted by Section 5-A if he were to consider the objections which were not filed in accordance with Section 5-A(1) within 30 days as required there under. No statutory authority could be expected to act contrary to the statute.

5. It is not necessary to consider here whether Section 5 of the Limitation Act would apply and whether delay in the making of the objections could have been condoned by the Collector there under. In *Hiralal Harijivandas v. State of Gujarat* (1964) 5 Guj Lr 924, a Division Bench of the Gujarat High Court speaking through Shelat, C. J. (as he then was) in paragraph 14 of the judgment was of the view that the function of the Collector u/s 5-A was an administrative one and not a judicial one as he was not to decide any rights as between the person objecting to the acquisition and the State Government but was only to make a report, not only after hearing the objections of such a person but after such further enquiry as the Collector thinks fit. The report is only intended to help the Government to come to its decision u/s 6(1). The implication was that the limitation Act did not apply. Secondly, even if it is assumed that the provisions of Section 5 of the Limitation Act could apply to the filing of objections (copy of Annexure E to the writ petition) do not make out any case whatsoever as to why the delay should be condemned. The notification u/s 4 was published on 24th October 1961, The Local publicity was given to it on 27th November 1961. The objections were filed on 2nd July 1963. The only reason given for the delay was that the petitioner was away to West Bengal and came to know before 2nd July

1963. She did not say when she went to West Bengal. She did not say why the petitioners Nos. 2 to 5 did not inform her about the notification nor have the petitioners Nos. 2 to 5 any Explanation to give why they could not file the objections. The mere absence of the petitioner No. 1 from Delhi, even if it is assumed to be true, would not be a sufficient reason for the condensation of delay particularly when the delay is so much. The publication of the notification in the official gazette was at any rate notice to everybody concerned and the petitioner No. 1 cannot deny knowledge of the said notification, as ignorance of such gazette notification cannot constitute any excuse for delay.

6. Even if it is assumed *arguendo* that the Collector should have given a personnel hearing in the petitioner, the failure of the Collector to do so by itself does not entitle the petitioner to the remedy by way of *certiorari* or *mandamus*. The judicial discretion in granting these prerogative remedies will not be exercised in favor of the petitioner No. 1 were totally untenable. The constructions made by the petitioner No. 1 on her land were unauthorised and, Therefore, non-existence in the eye of law. The land of the petitioner was Therefore to be regarded legally as vacant land for the acquisition of which the planned development of Delhi was sufficient public purpose. There would be no point Therefore in setting aside the acquisition and remanding the case back to the Collector for consideration of the objections made by the petitioner. For, even thereafter the objections are bound to be rejected by the Collector. As observed in *R. v. Senate of the University of Aston*, (1969) 2 All Er 964.

"this court does not legally exercise its discretion to grant prerogative orders - not only is real injustice a necessary ingredient before any such application is granted, but it should, in my view, be granted only where diligence is shown by an applicant in real need of the remedy"

Similarly in *A.M. Allison Vs. B.L. Sen*, their Lordships of the Supreme Court observed at pp 369-370 (of SCR) = (at p. 23) of AIR) as follows:

"Whatever infirmities might possibly have attached to the orders passed by the Deputy Commissioner, Sibsagar, on the score of want of jurisdiction, we feel that having regard to the circumstance that the matters have been pending since September 1952, right up to the end of the year 1956, no useful purpose will be served by our interfering at this stage, as the Deputy Commissioner, Sibsagar, and the High Court both came to the same conclusion, a conclusion which we also have endorsed above The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Article 226 we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favor of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere".

7. Prof. S.A. de Smith in his *Judicial Review of Administrative Action*, 2nd Edition (Page 582) also states the law as follows:

"A court will also refuse an application for mandates if it is of the opinion that no conceivable benefit will accrue to the applicant, as where mandamus is sought to compel the hearing of an appeal against the granting of a license which has already expired by the time the matter comes to court, or where it is sought to secure the hearing of an applicant by a tribunal, a reference to arbitration or the statement of a case and, on the facts disclosed to the Court, there is no possibility that any subsequent proceedings will terminate in the applicant's favor".

This is not, Therefore, a case which calls for interference with the orders of the Collector.

8. The writ petition is, Therefore, dismissed but without any order as to costs.

9. Petition dismissed.