

(1969) 12 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 69 of 1969

Jai Dev and Others

APPELLANT

Vs

The Land acquisition Collector, Mandi

RESPONDENT

Date of Decision : 23-12-1969

Acts Referred:

Citation : AIR 1971 Delhi 35 : (1971) 7 DLT 223

Hon'ble Judges : Prakash Narain, J;P.S. Safeer, J

Bench : Division Bench

Advocate : P. Raj and D.P. Sud, for the Appellant;

Judgement

Pritam Singh Safeer, J.

(1) Part Iii of the Constitution of India enshrines in itself the fundamental rights which all citizens enjoy in this democratic re-public. The right with which we are directly concerned in this petition is one which arises in terms of clause (f) of Article 19 of the Constitution of India. Article 19 is imperative in its opening part and is to the effect that all citizens shall have the rights enumerated therein. There are then limitations placed-inside Article 19 in respect of the rights enumerated in the clauses contained in sub- article (I). Clause (f) is to the following effect: -

"(F)to acquire, hold and dispose of property;"

Sub-article (5) of Article 19 is directly" concerned with clause (f) thereof. That sub-article subjects the conferment contained in clause (f) to the restriction of any existing law imposing any reasonable restrictions on the exercise thereof and also declares that the State shall not be prevented from enacting in the future any fresh law so long it imposes only reasonable restrictions in respect of the rights exercisable in terms of clause (d) (e) and (f) of sub-article (1} of article 19. The "acquisition laws" impose restrictions or the exercise of the fundamental rights protected by clause (f) and whenever their provisions come in for scrutiny the Courts have to determine whether the restrictions are protected by sub-

article (5) of Article 19. In this very context our attention is at once attracted by Article 31 of the Constitution of India. Sub-article (1) of that Article stands by itself and will come in for interpretation in the significant situation with which we are concerned. That sub "article is to the following effect:-

"31.(1)No. person shall be deprived of his property save by authority of law."

(2) One of the questions with which we will be dealing with will be as" to whether the petitioners" in this case are being deprived of their property by the authority of law.

(3) SUB-ARTICLE (2)of article 31 will, in a way, separately come "in " for deriving appropriate support from its provisions. That sub-article is to the following effect:-

"(2)No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given: and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate."

The foregoing article deals with the acquisition of property as well and also talks about the determination and payment of compensation. On a thorough consideration of the foregoing provision it will be imperative for the ultimate sustenance of an "acquisition" that the compensation payable to the citizen mentioned in Article 19 should have been arrived at after a free exercise by him of all remedies open to him to achieve the correct compensation that may be adjudicated upon as payable to him through due process of law The phrase "due process of law" has been used in order to convey that the deprivation of property "by authority of law" means that the citizen and the acquiring authority have had free and unhampered recourse to all legal remedies available to them and the compensation determined as payable in lieu of the acquisition can be held to have been finally adjudicated upon. Sub-article (2) of Article 31, with which we are dealing, will stand satisfied only then

(4) This petition has been filed by five petitioners who are sought to be deprived of their land in terms of the alleged acquisition by virtue of the notification issued by respondent No. 3 We are not inclined to go into all the circumstances of the case arising out of allegations and counter-allegations because of the significant situation arising herein which has attracted us on deeper and appropriate consideration. We are satisfied that this petition is to be determined on the one significant aspect as to whether the petitioners are being deprived of their property in compliance with the provisions contained in Articles 19 and 31 of the Constitution of India It is an admitted case that the compensation to be paid to the petitioners was firstly determined by respondent No. I by award dated the 12th March 1963 and then the Additional District Judge, Mandi, gave his

judgment dated the 29th of November, '967. It is also an admitted situation at law that the petitioners could have filed appeal against the determination made by the Additional District Judge, Mandi. The allegations made by the petitioners in paragraph 4 of the petition to the effect that they had filed on the 2nd of January, 1968 an application for obtaining a certified copy of the judgment of the Additional District Judge. Mandi, for filing the appeal in this Court are not denied. The petitioners farther proceed to level a significant charge against the Government and it is appropriate that the same be reproduced here:-

"BUT the petitioners were prevented from filing the appeal as the Government in the meantime, had started negotiations for returning the land to the petitioners and the petitioners were agreeable to receive back the land is question and as such the petitioners did not file the appeal."

(5) If the reply furnished on behalf of the respondents to this application is immediately adverted to by looking into paragraph 4 of the. written Statement filed on their behalf then it is to be" appreciated that in their exact words the para 4 of the written statement by staling that paragraph I of the petition is also admitted" In the body of the same paragraph their admission stands elaborated. The elaboration on the point with which we are just now dealing is extremely nearer to truth and is to the following effect:-

" IT may ,further be submitted that the negotiations as alleged by the petitioners did not in any way take away the right of the petitioners relating to filing of the respective appeals in the Hon"ble High- Court and the petitioners in fact did not even intend to pursue further remedy as alleged"

There are two significant admissions which emerge out of para 4 of the written statement. The first is that in the opening line paragraph 4 of the petition is stated to be "also admitted." The second is the assertion to the effect that the negotiations were certainly going on but then the respondents seek to allege that the petitioners right of appeal had not been taken away by those negotiations. The Additional District Judge's judgment was made on the 29th November, 1967 and the appeal could have been filed by the 7th of April, 1968. Before making any observations on this aspect it would be appropriate to notice certain letters written by the officers through whom the respondents were acting. The first of these letters has been filed as Annexure "D". That is dated 23rd of August, 1968, and is addressed by the Chief Engineer (North), Himachal Pradesh, Public Work Department, Simla, to the Deputy Commissioner, Mandi. It is significant to notice that by the 23rd of August, 1968 the time for filling the appeal was long over. This letter clearly shows that the negotiations between the parties had eloquently and purposefully gone on. The letter was to the effect that a piece of land measuring 93 Bighas,4 bids was and 16 Kiwanis belonging to Sarvshri Jaidev Ram and Hem Raj, two of the petitioners, had been acquired by the Himachal Pradesh Government in 1962 for the construction of Rest Houses, Tourists Rest House, Cafeteria and other allied buildings. Then the letter proceeded to record firmly that the Government did not propose any longer to construct those buildings and

the question of the de acquisition of that land was under consideration of the Government. The ultimate request exactly made was that the land may not be mutated in the name of the Himachal Pradesh Public Works Department. The second letter which calls for attention is dated 7th September, 1968 and in that letter it is clearly stated as under:-

"IT has been decided by the Government that the land measuring 93-4-16 Eights belonging to Sarvshri Jaidev Ram and Hem Raj at Nagwain may be de-acquired by issuing a notification and the possession thereof restored to the parties concerned".

(6) When we will return to the provisions of Article 31 of the Constitution of India we will have to confine ourselves to the consideration that it was due to the negotiations to which the respondents were a persuading party that the petitioners had been deprived of their choice of filing the appeal in the High Court against the judgment of the Additional District Judge which would have then lost its finality. A reference may be made to Annexure "F" which is more significant than mere correspondence. That is in the nature of summonses, and therein at item Nos. 4,5,6,7 and 10 the names of the present five petitioners stand enlisted. All the persons mentioned in Annexure "F" were called upon to come for the purpose of receiving back the respective pieces of land acquired from them. The five petitioners are out of that group of thirteen persons. Those who had already received compensation were called upon to bring back the compensation amounts with them so that necessary action could be taken to return their "lands" after refunding of the amounts.

(7) So far as the petitioners were concerned it was nobody's case that they had received any compensation. Annexure "F" contained a call to persons of that category also to come to receive back their land which had earlier been acquired. We have firmly held that there were negotiations between the Government and the present petitioners because of which they had been defrauded into not filing any appeal against the judgment of the Additional District Judge. We hold that it was because of the "admitted negotiations" that the petitioners stood deprived of the opportunity of availing of the remedy by way of an appeal to the High Court which through the due process of law may have provided final adjudication in respect of the compensation payable to the, petitioners, "This Court is, in terms of Article 226 of the Constitution of India, both a Court of law As well as of equity and cannot forget the observations made in (The Union of v, M/s Anglo Afghan Agencies etc) That brilliant judgment opens up in the domain of dispensation of justice an era with gester firmness then it was done by the majority view expressed in Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, .

(8) Having held cut to the petitioners that their land was going to be de-acquisitioned, having written the afore-mentioned letters and having issued the summons in the form of Annexure F" the respondents cannot be allowed to perpetuate their fraud by which through negotiations they at least kept the

petitioners away from exercising their right of appeal. With a through probe the truth that becomes visible is that the negotiations had really materialized into a decision to de-acquisition the property and the petitioners were definitely assured that they need not file any appeal. But then a? stated in para 9 of the written statement the proposal to de-acquisition the disputed land was rejected only on the 4th of January, 1969 long after the time to file the appeal was over, because the Lieutenant Governor approved the proposal dated the 28th of November, 1968 made by Shri G.C. Negi contained in Annexure "RD and (filed with the written statement) to utilize the disputed land by setting up a sheep-breeding farm instead of using it for the original purpose.

(9) The question which arises is as to whether the provisions of Article 19(1)(f) read with Article. 31 stand satisfied or not? It is sub- article (1) of Article 31 which comes in first. That has been reproduced above. The Govt could have deprived the petitioners of their property only through due exercise of authority conferred by law That would mean that if the petitioners had in ordinary circumstances moved this Court by way of appeal and the Government had answered the appeal in case it decided to defend and then final adjudication had taken place than the Government on payment of the compensation so determined, could have with authority of law deprived the petitioners of their property. The question of any challenge to any law for determining compensation does not arise in the circumstances of the case. The simple question is as to whether having deprived the petitioners of their right to file the appeal or appeals in the High Court the Government can be allowed to deprive the petitioners of their property by paying the compensation as determined by the Additional District Judge, Mandi. A hearing of the appeal by the High Court would have been in the nature of the re-hearing of the entire claim of the petitioners A reference in this behalf may usefully be made to the law laid down in Lachmeshwar. Prasad Shukal v. Keshwar Lal Chaudhari. That case was relied upon by the Punjab High Court in 1952 P.L R. 176 The Hon"ble Supreme Court of India also approved all the observations made in that case in 1963 SC 553 There, in the Federal Court case. their Lordships clearly held that the hearing of the appeal in terms of the procedural law prevailing in India was in the nature of the re-hearing of the case and the appellant would be entitled afresh to any relief which the appellate Court may give on its own consideration of all the facts and circumstances and even the changes in law that may merit consideration at the time of the recording of the appellate decision. We cannot persuade ourselves that the response Lents can derive the "authority of law" to deprive the petitioners of their property from the adjudication by the Additional District Judge against whose orders the Government "negotiations" and assurances did not permit the petitioners to file an appeal in the appropriate Court. The compensation fixed may have been varied as a result of the appeal. We held that the Government could have deprived the petitioners of the instant property only on payment of compensation that may have resulted from its determination by the High Court on appeals which we hold, the petitioners would have filed but for

the assurances given through negotiations .Only then the Government could have availed of the provisions contained in the Land Acquisition Act without their coming into conflict with the constitutional requirements created by Article 19(1) (f) read with Article 31 of the Constitution of India.

(10) Appreciating Article 31 of the Constitution of India we may say that it may be correct that the property may be acquired in terms of a law which may provide the procedure for determining the compensation. The determination of compensation may follow in accordance with the, provisions contained in any such law for fixing the quantum of compensation. In this case there is law in compliance with which compensation can be determined. That law provides for an appeal to the High Court. As we have said earlier we are fully satisfied that the Government had at one time decided to de acquisition the property and had persuaded the petitioners not to file the appeal. The respondents have caused the non-filing of the appeal and thus the compensation on payment of which they propose to obtain the property cannot be held to have been determined after the petitioners having been allowed to avail of the due process of law. That being so the Government is illegally holding the property in defiance of the petitioners fundamental rights guaranteed by Articles 19(1)(f) and 31 of the Constitution of India: This the respondents arc doing Mala fide. Mala fide arises because the admitted negotiations certainly interfered with the choice on the part of the present petitioners to file or not to file appeal. Once the Government can be held to have put the petitioners out of their right to file the appeal then the Government can not be allowed to reap the profits of its" own fraud and obtain the property subject to payment o.f compensation as determined by the Additional District Judge. It must be recorded that the learned counsel appearing for the respondents frankly conceded that he could not offer any defense to this legal aspect of the case.

(11) On a detailed consideration of the constitutional provisions as well as of the equities which prevail in this case we are of the opinion that this writ petition deserves to be allowed on the grounds which have been elaborated above. The correct position is that the acquisition in this situation would amount to an acquisition without payment of correct just and adequate compensation .The orders of acquisition of the property belonging to the petitioners which is the subject-matter of this writ petition are hereby quashed. The Government will restore the property to the petitioners. The petition is accepted with costs.

Parkash Narain, J.

(12) I agree