
(1985) 08 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 136 of 1974

Kapoor Ghand and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 23-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 4, 5(A), 6, 7, 9

Citation : (1985) 14 ILR HP 657

Hon'ble Judges : V.P. Gupta, J;H.S. Thakur, J

Bench : Division Bench

Advocate : B.B. Vaid, for the Appellant; M.R. Chaudhary, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—The Government of Himachal Pradesh was likely to acquire premises known as "Victoria Palace Estate" of Station Ward Chhota Shimla for a public purpose, namely for the construction of houses for government servants and accordingly a notification u/s 4 of the Land Acquisition Act (hereinafter the Act) was issued on 2-9-1970. A copy of this notification was affixed on the Municipal Board Shimla on 7-9-1970 and copies were also affixed at convenient places in the locality of Victoria Palace Estate premises. This notification was also published in the Rajpatra dated 19-9-1970 and the interested persons could file their objections regarding acquisition of the property within thirty days.

2. Objections were filed on behalf of the owners before the Land Acquisition Collector on 7-10-1970. After hearing the objections the Land Acquisition Officer submitted his report on 30-12-1970, to the Government. He recommended that the objections filed on behalf of the owners be ignored and the property be acquired. He also suggested that notifications under sections 6 and 7 of the Act be issued. The Government thereafter issued notification under sections 6 and 7 of the Act on 20-2-1971 which was also published in the gazette.

3. After issuance of notification under Sections 6 and 7 of the Act, the Land Acquisition Collector ordered that notices u/s 9 of the Act be issued to the interested persons. During the pendency of these proceedings, the present Petitioners appeared through their counsel Shri R.N. Vaid, Advocate on 18-5-1971 before the Land Acquisition Collector and prayed that they may be allowed time to file their claims. The Land Acquisition Collector allowed time till 14-6-1971 and on this date objections were filed on behalf of the present Petitioners before the Land Acquisition Collector claiming that the proceedings for acquisition of property in question and specially in respect of the built construction in occupation of the Petitioners be dropped and the notification be cancelled.

4. The Petitioners had been appearing before the Land Acquisition Collector through their counsel on various hearings upto 21-8-1971, but thereafter they absented themselves on several hearings. Again during some subsequent hearings Shri R. N. Vaid, Advocate, was appearing before the Land Acquisition Collector, when the evidence regarding the objections u/s 9 of the Act was being recorded for determination of the payment of the compensation to the interested persons. The Land Acquisition Collector finally announced the award on 5-10-1972.

5. The Petitioners are now claiming to be in possession of the various parts of the acquired property as tenants and have filed this writ petition under Articles 226/227 of the Constitution of India on May 21, 1974. They pray that the notification u/s 4 (Annexure A) and notification/declaration under sections 6 and 7 (Annexure C) for acquisition of the property be quashed and a writ of mandamus be issued against the Respondents not to dispossess the Petitioners from the respective portions of the property occupied by them.

6. The Petitioners allege that being tenants of portions of the property, they are interested persons. The notification u/s 4 of the Act was not advertised at convenient places in the locality where the property is situated or where the Petitioners reside. They allege that the mandatory provisions of law were not complied with and they could only file their objections on June 14, 1971. It is alleged that individual notices were not sent to them although they were occupiers of the property and for this reason the acquisition proceedings are liable to be quashed. The Government did not apply its mind on the objections of the Petitioners and the acquisition was not for a public purpose. Now after completion of the acquisition proceedings, the Respondents are threatening to evict the Petitioners, although they are not liable to be evicted. It is further alleged that notices u/s 9 of the Act were not served on the Petitioners.

7. Reply affidavit was filed on behalf of the Respondent No. 2 and the allegations of the Petitioners are denied. It is further alleged that the petition is belated one and the acquisition proceedings were legal and valid.

8. We have heard the learned Counsel for the parties.

9. Shri B. B. Vaid, the learned Counsel for the petition-erg frankly and rightly admitted that the property was acquired for a public purpose. He further admitted that a notification u/s 4 of the Act was issued on 2-9-1970, copies of which were affixed on the Municipal Committee Notice Board and the Victoria Palace premises on September 7, 1970 (Annexure RB). The main contention of the learned Counsel is that there was no proper and valid notice to the Petitioners although they were the interested persons.

10. The learned Assistant Advocate General contends that notices were duly published in accordance with the provisions of the Act and the Petitioners cannot ask for quashing the acquisition proceedings. The award was announced on 30th of March, 1972 and the compensation was paid to the owners of the property who received the same. For quashing of the acquisition proceedings, the owners of the property are necessary parties. He further contends that the present petition was filed on May 21, 1974 while the notification u/s 4 was issued on September 2, 1970. The petition is thus liable to be dismissed on the ground of delay and laches. The relevant acquisition file was also produced in the Court.

11. We have considered the contentions of the learned Counsel for the parties and have also perused the acquisition file.

12. We find that a notification u/s 4 of the Act was issued on September 2, 1970 and its copies were affixed on the Municipal Board, Shimla and in the locality of "Victoria Palace" premises on September 9, 1970. It was also published in the Rajpatra dated 19th September, 1970. No objections were filed on behalf of the Petitioners but objections were filed by the owners. After considering the objections of the owners, the Land Acquisition Officer submitted his report on December 30, 1970 with a recommendation that the objections be ignored and the property be acquired. Thereafter, notification/declaration under sections 6 and 7 of the Act was issued on February 20, 1971. Notices u/s 9 of the Act were also issued. The Petitioners appeared before the Land Acquisition Officer on May 18, 1971, through their Advocate Shri R.N. Vaid and they filed objections on June 14, 1971, when the Land Acquisition Officer was hearing the claims u/s 9 of the Act.

13. From these facts it is evident that the Petitioners came to know about the acquisition proceedings latest by May 18, 1971, when they appeared before the Land Acquisition Collector through an Advocate and had the knowledge regarding issuance of the notifications under Sections 4, 6 and 7 of the Act. They, however, never took any steps to challenge the acquisition proceedings before an appropriate authority. The Land Acquisition Collector had no authority to consider any objection u/s 5(A) of the Act after the notifications under Sections 6 and 7 of the Act. The Petitioners were appearing before the Land Acquisition Collector till the date when award was announced on March 30, 1972. They, however, did not challenge the acquisition proceedings and allowed the same to proceed.

14. In view of the aforesaid circumstances, the present petition has been filed at

a belated stage and suffers from delay and laches.

15. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, a notification u/s 6 of the Act was issued in 1966 and the writ petitions were filed in 1972. In these circumstances, it was observed as follows:

nor do we think that the Petitioners in the writ petition should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration u/s 6 in 1966. Of the two writ petitions, one is filed by one of the Appellants. There was apparently no reason why the writ Petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification u/s 4 of the Act is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the 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 on dilatory tactics. The writ petitions are liable to be dismissed on the grounds of laches and delay on the part of the Petitioners.

In para 23 it is observed that:

Even assuming that the Chief Commissioner of Delhi was not authorised by the Central Government to issue the notification u/s 4 of the Land Acquisition Act, since the Appellant and the writ Petitioners are precluded by their laches and acquiescence from questioning the notification, the contention must in any event be negatived and we do so.

16. In *Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others*, the Hon'ble Judges of the Supreme Court reiterated the view expressed in (*supra*) and refused to quash the notification u/s 4 on the ground of delay and laches.

17. In the present case also, the Petitioners cannot be allowed any relief, because they have allowed the proceedings under the Act to be completed. They came to know about the issuance of the notifications under Sections 4, 6 and 7 of the Act and also that proceedings u/s 9 of the Act were in progress. They allowed the same to continue till the announcement of the award and also payment of compensation to the owners. In these circumstances, the present petition is liable to be dismissed on the ground of delay and laches.

18. Besides delay and laches, the petition is also to be dismissed for non-joinder of necessary parties. The Petitioners pray that all the proceedings of acquisition including notification u/s 4 of the Act be quashed. In case such a relief is allowed to the Petitioners then the Respondents are entitled to the repayment of compensation which was paid to the owners of the property. For such an adjudication, it was necessary for the Petitioners to have joined the owners or

any other persons (who have received the compensation in terms of the award dated March 30, 1972) as parties so that in the case of the quashing of acquisition proceedings, such parties could be asked to return the compensation amount.

19. On merits too, we find that the Petitioners cannot succeed. A notification u/s 4 of the Act was issued on September 2, 1970, which was published in the Rajpatra dated September 19, 1970. The Petitioners had a right to file the objections within 30 days from the date of the publication of notification but they never filed the objections within this period. The owners filed objections u/s 5(A) of the Act but the same were rejected. The Petitioners were not recorded in possession of the property in the revenue records and, therefore, there was no question of issuing any separate notices to the Petitioners. According to the various reports it is evident that a public notice of notification u/s 4 was given at convenient places in the locality, because copies of the same were affixed on the Board of the Municipal Committee, Shirnla, as also on the acquired premises, that is, Victoria Palace.

20. In view of the above discussion, we find that there is no merit in this petition, which should be dismissed. The Petitioners claim themselves to be tenants in portions of the disputed acquired property and, therefore, keeping in view the various facts and circumstances it is desirable that they may be allowed to remain in possession of these occupied portions of the property for a period of three months from today within which period they may vacate the premises and deliver its vacant possession to the Respondent.

21. As a result of the above discussion, except for the relief that the Petitioners will be allowed to occupy the various portions of the acquired premises for a period of three months from today, the writ petition is otherwise dismissed with no order as to costs.