

(2006) 08 DEL CK 0181

In the Delhi High Court

Case No : CM No. 15134 of 2005 in Writ Petition (C) No. 1043 of 1987

Late Bawa Harbans Singh through his L.Rs.

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 3, 151
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2006) 132 DLT 535 : (2007) 94 DRJ 258

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : N.S. Vasisht, for the Appellant; J.J. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The prayer in this application by the writ petitioner (through LR's) reads as under:

It is Therefore most respectfully prayed that this Hon''ble Court may be pleased to:

(a) Recall the Order dated 31.03.1989, in as much as the Petition is dismissed as having become infructuous and allow the Writ Petition in terms of the Specific prayers made therein.

(b) Pending decision of the present application, this Hon''ble Court may be pleased to revive the interim Order dated 20.04.1987 passed by this Hon''ble Court.

2. This application was filed on 25.11.2005 seeking recall of an order dated 31.3.1989 whereby the petitioner's aforementioned writ petition was dismissed. The prayer in the writ petition was for a direction to quash the notification dated 25.11.1980 issued u/s 4 of the Land Acquisition Act, 1894 ("Act") and a declaration dated 27.5.1985 u/s 6 of that Act in respect of the petitioner's land

in Village Satbari, Mehrauli. One of the grounds on which the Notification was challenged was that since the statutory period for issuing the declaration u/s 6 had expired, the petitioner's land automatically stood released from acquisition and that any further steps taken were also invalid. The petitioner claimed that similar questions were pending before a larger bench of this Court. In this regard, the following averments were made in para 12 and ground XXI of the writ petition:

12. That the question regarding quashing of such notification is already under reference to larger Bench in this Hon''ble Court, vide Order dt. 20.2.87, passed by Hon''ble Mr. Justice Y. Dayal & Hon''ble Mr. Justice S.B. Wad. Copy marked Annexure G. It may be submitted that W.P. No. 837 of 1987 of the owner of village Satbari, has also been admitted by this Hon''ble Court.

XXI. That the petitioners submit that this Hon''ble Court in CW No. 1636/05 Balak Ram Gupta v. Union of India has been pleased to refer these questions of law to a full bench of this Hon''ble Court.

3. On 20.4.1987 while directing notice to issue in the writ petition, this Court stayed the dispossession of the petitioner. Thereafter, it appears that the matter kept getting adjourned awaiting the decision of the Division Bench in connected matters. After the judgments dated 25.7.1987 of a Full Bench of this Court AIR 1987 Del 239 and 18.11.1988 of a Division Bench in B.R. Gupta Vs. Union of India and Others, , the writ petition in the instant case came to be dismissed on 31.1.1989 by the following order:

Present: Mr. R.K. Saini for the petitioner.

Mr. A.S. Chadha for the respondent.

CM 1963/88

In view of the Judgment reported as Balak Ram Gupta v. Union of India, reported in Delhi Lawyer, Vol. II, 366, (C.W.P. 1639/85), this petition has become infructuous. The same is hereby dismissed.

4. For many years thereafter, the present applicants took no steps whatsoever. The applicants have placed reliance on a letter dated 31.3.1989 written by one Ms. Gita Sagar , Joint Secretary Land & Building, Delhi Administration to the then Deputy Commissioner in which while referring to the judgment dated 18.11.1988 in the case of Balak Ram Gupta v. UOI, she stated as under:

In this connection I am to inform you that the Administration has not preferred any appeal against the aforesaid judgment of the High Court dated 18.11.1988 and Therefore, you may kindly take necessary action to release the lands.

The legal advice has been that the judgment covers only those lands which have still not been taken over by the Government and Therefore the lands which have been taken over by the Govt. are not to be released. You may kindly issue necessary instructions accordingly.

5. The case of the applicants is that they were under the bonafide impression that their writ petition was covered on all fours by the judgment in the Balak Ram Gupta's case (supra) and that accordingly, the petitioner had no occasion to believe that their land was under acquisition proceedings thereafter.

6. No Explanation, whatsoever, has been given as to why the applicants chose to remain quiet for over 16 years and what prompted the filing of the present application in 2005. The applicants claim that they continue to remain in possession but now realised that order dated 31.3.1989 dismissing their writ petition in fact prejudices them. In para 16 of the present application, it is stated thus:

The applicant is seriously prejudiced by the operation and effect of the Order dated 31.3.1989 in as much as it denies him the direct benefit of Balak Ram Gupta's judgment. It is nobody's case that the applicant is not entitled to the benefit of the said judgment. In spite of being in possession for over two and a half decades, since the Preliminary Notification, the applicants title is under a cloud because of the supposed ambiguity in the said order. It is this cloud which needs to be cleared by this Hon'ble Court in the exercise of its extra-ordinary equity jurisdiction.

7. We heard Mr. Vashisht for the applicants. He submitted that since the applicants were under the bona fide belief that the decision in Balak Ram Gupta's case (supra) was in their favor, they did not think it necessary to move this Court earlier. Mr. Vashisht further maintained that the petitioner should be continued to be protected by the decision in Balak Ram Gupta's case (supra) notwithstanding the judgment of the Hon'ble Supreme Court in Delhi Administration Vs. Gurdip Singh Uban and Others etc.,

8. In reply, Ms. Jhum Jhum Sarkar, learned Counsel for respondent Nos.1 to 4, points out that the position as regards the applicability of the decision of this Court in Balak Ram Gupta's case stands now settled by the judgment of the Hon'ble Supreme Court in Gurdeep Singh Uban (I) (supra). She also points out that the letter dated 31.3.1989 of the Joint Secretary, sought to be relied upon by the applicants, was also considered by the Hon'ble Supreme Court in the said judgment and held to have no binding force. She accordingly submitted that the present application is without merit and ought to be dismissed as such.

9. After hearing arguments on 26.7.2006 this Court permitted the parties to file written submissions before 31.7.2006. While Mr. Vasisht handed over his written submissions on 4.8.2006, the respondents have not filed their written submissions. In the written submissions on behalf of the applicants it is contended that since the petitioner had filed his individual objections u/s 5A of the Act, the judgment of the Hon'ble Supreme Court in Gurdeep Singh Uban (I) would not apply and it is reiterated that the benefit of the order of the Division Bench of this Court in Balak Ram Gupta (supra) would have to be extended. Reliance is also placed on the judgment of the Hon'ble Supreme Court in Sardar

Amarjit Singh Kalra v. Pramod Gupta (2003) 3 SCC 72 to contend that the Court must aim to preserve and protect the rights of the parties rather than deny such rights. Apart from annexing copy of this judgment to the written submissions, Mr. Vasisht has also given us photocopies of 16 judgments running to 150 pages.

10. Upon considering the above submissions, the records of the case and the judgments referred to, we are of the view that the present application is without merit. There are several reasons for our coming to this conclusion. In the first place, this application is itself not maintainable. The applicant seeks "recall" of the order dated 31.3.1989 dismissing the writ petition. There is no provision in the CPC or the Rules of this Court that permits such an application to be filed. This Court has, in a judgment dated 25.7.2006 in CM No. 8513/2006 in W.P.(C) No. 3916 of 1990 [P.U.R. Polyurethane Products (P)Ltd v. Smt. Geeta Bhargava] held that such an application for recall is not maintainable and that it is nothing but a disguised form of a review petition. It has been further held that the Section 151 CPC cannot be pressed into service for justifying such an application when there are specific provisions in the CPC and in this Court's Rules governing the filing of review petitions. The said judgment refers to the specific procedure outlined in Para A(a) of Chapter I Vol. v. of this Court's Rules and Orders concerning the presentation and reception of review petitions and points out that the specific procedure outlined there under cannot be bypassed by resorting to the filing of an application for "recall".

11. The Hon"ble Supreme Court has, in Delhi Administration Vs. Gurdip Singh Uban and Others, , held that such applications for recall are not maintainable. Para Nos. 17 and 18 of said judgment (page 309 SCC) are relevant and read as under:

17. We next come to applications described as applications for ""clarification"", ""modification"" or ""recall"" of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.

Order XL Rule 3 states as follows:

3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party....

In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open Court. However, with a view to avoid this procedure of ""no hearing"", we find that sometimes applications are filed for ""clarification"", ""modification"" or ""recall"" etc. not because any such clarification, modification is indeed necessary but because the

applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, bypass Order XL Rule 3 relating to circulation of the application in Chambers for consideration without oral hearing. By describing an application as one for "" clarification"" or ""modification"", -- though it is really one of review-- a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done detailed order of the then Registrar of this Court in *Sone Lal v. State of U.P.* deprecating a similar practice.)

18. We, Therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for "clarification", "modification" or "recall" if the application is in substance one for review. In that event, the Court could either reject the application straightway with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.

12. This application is accordingly liable to be dismissed on this ground alone. However, with a view to avoiding multiplicity of proceedings, we proceed to treat the present application as a review petition and are disposing it of as such.

13. The second reason why this application should not be entertained is that it is barred by laches. The order of which it seeks a recall/review is dated 31.3.1989. The present application seeking such recall/review was filed on 25.11.2005. In the entire application there is no Explanation for the delay of over 16 years and 8 months in the filing of this application. The application merits dismissal even on this ground.

14. Thirdly, the case of the applicants is that their writ petition which came to be dismissed on 31.3.1989 was no different from the petitions covered by the decision of this Court in *Balak Ram Gupta* (supra). However, it was first explained by the Hon'ble Supreme Court in *Abhey Ram* (dead) by LRs. and others Vs. Union of India and others, that the decision of this Court in *Balak Ram Gupta* was limited to the petitioners in that case. This was thereafter reiterated in *Gurdeep Singh Uban* (I) (supra) and thereafter in *Gurdeep Singh Uban* (II) (supra) when certain applications for recall of the order in *Gurdeep Singh Uban* (I) were filed. Thus it has been firmly settled by the Hon'ble Supreme Court that there is no question of extending the applicability of the judgment in *Balak Ram Gupta* to all similar cases.

15. As regards the plea of the applicants herein that since the petitioner had filed his individual objections u/s 5A of the Act, the decision in the *Gurdeep Singh Uban* (I) would not apply and that Therefore the judgment of this Court in *Balak Ram Gupta* would apply, it requires to be noticed that the Hon'ble Supreme Court has repeatedly stressed that *Balak Ram Gupta* would apply only to the petitioners in that case and that the benefit of that case cannot be extended to others. In *Gurdeep Singh Uban*(I) one of the questions specifically framed was whether the *Balak Ram Gupta*'s judgment "could have quashed land acquisition

proceedings in writ petitions which were not before the High Court" and in answering that question, in para 34 it was held:

Obviously, in law, the order dated 14-10-88 extracted above is the operative order as the rule was made absolute in each of the 73 cases only. Thus, this operative order dated 14-10-88 could apply in each of the 73 writ petitions to the land covered thereby.

This was being followed and reiterated in a decision dated 26.5.2006 of a Division Bench of this Court in W.P.(C) No. 809/1992 and batch (Santosh Kumar v. Union of India). We are accordingly unable to accept the submission of the applicants that the writ petition here should be decided in accordance with Balak Ram Gupta. As regards letter dated 31.3.1989 of the Joint Secretary, upon which the applicants placed reliance, the Hon''ble Supreme Court in Gurdeep Singh Uban (I) (supra) took note of this letter in Para 6 of the judgment and held as under (in para 10, page 49 SCC):

Then coming to the effect of the judgment of the Division Bench dated 18.11.1988 of the High Court, we are of the view that the three-Judge Bench judgment in Abhey Ram case has interpreted or declared the effect of the said High Court judgment dated 18-11-1988. That judgment is binding on us. We cannot go by the two-Judge Bench judgment in Sudan Singh case. Further, the judgment in Abhey Ram case takes notice of Sudan Singh case and it cannot be contended that they have not looked fully into the judgment in Sudan Singh case or fully into the judgment of the Division Bench of the High Court dated 18-11-1988 in B.R. Gupta case. Nor is the dismissal of the SLP in B.L. Sharma case a precedent which can outweigh Abhey Ram. The opinion of the legal department of the Government or the Delhi Development Authority which is relied upon apart from not having binding force, cannot override Abhey Ram case.

In view of the categorical pronouncement of the Hon''ble Supreme Court in the above judgments the plea of the applicants to extend the benefit of the judgment of this Court in Balak Ram Gupta cannot be acceded to.

16. Finally, it may be noticed that the order dated 31.3.1989 dismissing the writ petition was passed in presence of both the counsel for the petitioner and the counsel for the respondents. The applicants, Therefore, cannot be heard to say that they did not understand the true purport of that order which unambiguously states that the writ petition is dismissed. Now that, in any event, the subsequent developments have restricted the applicability of judgment in Balak Ram Gupta's case, applicants are precluded from seeking the same relief as was made available to the petitioners in Balak Ram Gupta's case. We also do not appreciate the submission of the applicants that this is a case where the Court must extend the benefit of an earlier judgment irrespective of the conduct of the party and the subsequent developments. As already pointed out hereinabove not only is this application for recall/review not maintainable as such it is also barred by laches. And further, as discussed hereinabove it lacks merit.

17. For all the above reasons, this application for recall/review of the order dated 31.3.1989 dismissing WP(C) 1043 of 1987 is without merits and is dismissed as such.