

(2005) 03 DEL CK 0098
In the Delhi High Court
Case No : Writ Petition (C) 2221 of 1986

Laxmi Narain Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 03 DEL CK 0098

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ravinder Sethi and A.P.S. Gambhir, for the Appellant; Sachin Nawani, for Respondent Nos. 2 to 4 and M.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Petitioner has prayed for an appropriate writ quashing a Notification dated 13th August, 1981 issued u/s 4 of the Land Acquisition Act, 1894 (for short the Act) as well as a consequent declaration dated 30th March, 1982 issued u/s 6 of the Act. There is also a prayer that Award No. 90/86-87 dated 19th September, 1986 made in pursuance of the aforesaid Notifications should also be quashed. The Petitioner prays that its land measuring 6 bighas 12 bids was in khasra No. 611/408 situated in village Malikpur Chhawani, now known as G.T. Karnal Road is not liable to be acquired.

2. The facts on record show that there was a factory on the land of the Petitioner. The land was sought to be acquired by issuance of a Notification dated 13th November, 1959 u/s 4 of the Act followed by a declaration dated 24th February, 1965 u/s 6 of the Act. The Petitioner challenged the acquisition of his land by filing a writ petition being CWP No. 567-D/1965. By a judgment and order dated 25th February, 1971, the writ petition was allowed by a learned Single Judge of this Court and the Notification u/s 6 of the Act was quashed.

3. The learned Single Judge, while allowing the writ petition held, inter alia, that no inquiry was conducted whether there was any public interest involved in

acquiring the land of the Petitioner for a proposed industrial area, particularly when there was already a factory running on it. Moreover, no satisfaction was expressed that the land was required for the planned development of Delhi, the stated purpose in the Notification issued u/s 4 of the Act.

4. A Letters Patent Appeal, being LPA No. 93 of 1971 directed against the judgment and order dated 25th February, 1971 was filed by the Respondents. However, since the owner of the land, that is, Baldev Raj Bhandari had died in the meanwhile, and no steps were taken by the Respondents to bring his legal representatives on record, the appeal abated and was disposed of as such on 13th November, 1980.

5. Thereafter, on 13th August, 1981, the Respondents issued another Notification u/s 4 of the Act seeking to acquire the land of the Petitioner. Objections u/s 5A of the Act were then filed by the Petitioner but the appropriate Government rejected the objections and issued a Notification dated 30th March, 1982 u/s 6 of the Act declaring that the land was required for the Planned Development of Delhi. Thereafter, notices under Sections 9 and 10 of the Act were issued to the Petitioner and the impugned Award dated 19th September, 1986 was made.

6. The Petitioner filed the present writ petition on or about 9th October, 1986 and on 23rd October, 1986, a Division Bench of this Court passed an ex parte order staying dispossession of the Petitioner from the land in dispute. The ex parte order was confirmed on 21st July, 1987.

7. More than ten years later, the Respondents filed an application being CM No. 10315/1997 in which it was stated that possession of the entire land except 1 biswa had already been taken away back in 1986. Possession of 1 biswa could not be taken due to a shed existing at the site. On 25th November, 2002, the application was disposed of with a direction that the parties will maintain status quo regarding title and possession of the property.

8. In support of his case, the Petitioner has filed a written synopsis in which a list of dates has been given and three contentions have been urged, namely:-

(a) Objections of the petitioner have not been considered and no speaking order has been passed. Thus there is total non compliance of the principles of natural justice.

(b) Action of the respondents in acquiring property of petitioner is entirely in violation of Section 15 of the DD Act.

(c) The area in question is ear-marked as an Industrial Area as per Master plan and the petitioner herein is using it for the same purpose.

9. When learned counsel for the parties were heard on 27th January, 2005, learned counsel for the Petitioner advanced only one contention, namely, that since the area in question is earmarked as an industrial area as per the Master Plan and the Petitioner is using it for the very same purpose, the Respondents

cannot be permitted to acquire the land in dispute, particularly when an earlier acquisition for the same purpose was quashed. Unfortunately, it is not possible for us to accept this contention of earned counsel for the Petitioner.

10. Learned counsel for the Petitioner relied upon *Shanti Swaroop Bhatia Vs. Land Acquisition Officer and Others*, and 965822--> to contend that if the purpose of acquisition is the same as the use to which the land sought to be acquired is already being utilized, then there is no justifiable reason for acquiring the land.

11. Apart from the fact that these two decisions are distinguishable on facts, it is not possible to accept the broad view canvassed by learned counsel for the Petitioner. This is because it has now been conclusively held by the Supreme Court in *Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others*, that the Courts cannot go into the question of comparative utility of the public purpose for which the land is actually being used as against the purpose of its acquisition. This view has been followed by this Court in *Raheja Hospital and Pshychiatric Research Institute Vs. Land Acquisition Collector and Others*, .

12. Learned counsel for the Petitioner then relied upon *Busching Schmitz Private Limited and Another Vs. The State of Haryana and Others*, as well as *Maharishi Dayanand Co-operative Group Housing Society Ltd. Vs. Union of India and Others*, to contend that since the earlier acquisition was set aside, a fresh Notification seeking to acquire the land in question for the same purpose cannot be permitted.

13. It is not possible to agree to such a broad and absolute proposition of law, but at the same time, it is not necessary for us to enter into this controversy. However, we may note that another Division Bench of this Court in *Mandir Sita Ramji Alias Sita Ram Bhandar Vs. Land Acquisition Collector and Others*, has held that there is no bar to the promulgation of successive Notifications for acquisition of land.

14. We are of the view that the writ petition is liable to be dismissed because possession of the acquired land has already been taken by the Respondents. In an application filed by the Respondents seeking interim orders, it has been categorically stated that out of 6 bighas 12 bids was of land sought to be acquired, possession of 6 bighas 11 bids was has been taken over prior to the interim stay granted by this Court. Possession of 1 bigha could not be taken due to a shed existing at the site. Along with application, a possession report dated 23rd September, 1986 has been annexed and also a Notification dated 9th October, 1986 under the provisions of Section 22 of the Delhi Development Act, 1957 wherein it has been notified that 6 bighas 11 bids was of the land in question has been placed at the disposal of the Delhi Development Authority for the purpose of development in accordance with the provisions of Delhi Development Act.

15. It has been held by the Supreme Court in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, that once land vests in the State (after possession is taken u/s 16 of the Act) then the Court is not justified in interfering with notifications published under appropriate provisions of the Act. This statement of law is binding upon us and for this reason it is not possible to entertain the writ petition.

16. A Division Bench of this Court in *Ajit Singh and Others Vs. Union of India and Others*, has independently taken the same view as the Supreme Court. It has been said, a bit dramatically, that the effect of taking possession u/s 16 of the Act is that the curtain is drawn so far as land acquisition proceedings are concerned.

17. Quite apart from the fact that the writ petition cannot be entertained by us, it is necessary to point out that it is not as if that the decision of the learned Single Judge delivered on 25th February, 1971 was final, in the sense that the Respondents had challenged that decision by filing a Letters Patent Appeal. It is another matter that the appeal abated, but the fact remains that quashing of the acquisition proceedings was not accepted by the Respondents and they could, Therefore, have issued fresh Notification to acquire the land in question.

18. We may also note that while it is true that there is a small portion of land (1 bigha) of which possession has not yet been taken by the Respondents but we are of the view that this portion is insignificant compared to the total area of land of which possession is taken by the Respondents as far back as on 23rd September, 1986. The maintainability of the writ petition, according to us, will not be substantially or materially affected by the fact that possession of 1 bigha of land has continued to retain with the Petitioner because of an interim order passed by this Court.

19. For the reasons given above, the writ petition is dismissed. No costs.