

(2005) 02 DEL CK 0059
In the Delhi High Court
Case No : ITA No. 10907 of 2004

Mahender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Citation : (2005) 117 DLT 611

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

Bench : Division Bench

Advocate : N.S. Dalal, for the Appellant; Sanjay Poddar and Sachin, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The Petitioner has approached this Court under Article 226 of the Constitution of India praying for issuance of an appropriate writ order or direction quashing the Notification dated 18.3.2004 issued u/s 6 of the Land Acquisition Act without deciding the objections filed by the Petitioner u/s 5A of the Act in pursuance to the Notification issued u/s 4 of the said Act. The Petitioner also prayed that the Respondents be restrained from proceeding with the acquisition proceedings any further.

2. The Petitioner alleges that he purchased a plot of land measuring 178 sq. yds. situated on the main road leading from Village Karala to Village Mundka in the same Revenue Estate in the year 1995. In the year 1996 the Petitioner raised construction of 6 rooms and 2 shops and got the water and electricity connections in that premises. The Government of NCT of Delhi issued a Notification u/s 4 of the Act intending to acquire land including the land belonging to the Petitioner. According to the Petitioner, he filed objections u/s 5A of the Land Acquisition Act on 25.4.2003 and submitted various documents in support of his objections. It is averred by the Petitioner that no notice was issued to him in response to his objections. He visited the office of the Deputy Commissioner on different occasions to know the fate of his objections but of no

consequence.

3. In view of these facts, the Petitioner prays for grant of the reliefs as afore-noticed.

4. Upon notice the Respondents filed a counter affidavit wherein it was stated that Notification u/s 4 of the Act was issued on 21.3.2003 which was followed by a Declaration u/s 6 of the Act on 18.3.2004. According to the Respondents, they had not received any objections from the Petitioner. Objections were received only from Shri Laxman Chandra Sil within the statutory period which were disposed of in accordance with law. Furthermore, it is stated that the objections allegedly filed by the Petitioner on its own showing were filed beyond the period of 30 days and as such are of no consequences in law. As far as acquisition of a build up area is concerned, the Respondents have relied upon the judgment of the Supreme Court in the case of Shri Bhagwan and Anr. v. Union of India and Ors., 1991 (2) DL 59, Roshanara Begum Vs. Union of India, .

5. There cannot be any doubt that u/s 5A of the Act a valuable right is available to the owner of the land to file objections in regard to acquisition of his land. These objections could be personal to the owner of the land and also could be true in nature including the challenge to the public purpose for which the land is sought to be acquired. It is mandatory for the State to deal with such objections and decide them in accordance with law. The owner of the land is thus under an obligation that he must exercise the right available to him u/s 5A of the Act with sense of responsibility. The onus is on the Petitioner to show that he had filed objections u/s 5A of the Act within the stipulated period. It is imperative for an Objector to show receipt of his objections with the department and in the event the owner of the land is unable to discharge such burden he cannot assert his right in furtherance to the provisions of Section 5A of the Act.

6. In the present case, the Respondents have challenged the very receipt of the objections alleged to have been filed by the Objector. Their case is that no objections dated 25.4.2003 were filed by the Petitioner before the Authorities and the same were never received by the office of the Collector. A typed copy of these objections have been annexed to the writ petition. There is nothing on record before us to show that these objections were duly received in the office of the Collector. It is not even specifically averred in the writ petition as to how these objections were served by the Petitioner by the Respondents. Whether these objections were sent by registered AD post or they were submitted by hand for which a receipt was obtained from the office of the Collector nothing is clear from the writ petition. The allegations in that regard are vague and indefinite. The Respondents have specifically denied in their pleading the receipt of such objections. Even the original record of the Respondent Officer was produced before us, wherein no such objections are available. Faced with this situation, the counsel for the Petitioner could hardly provide any justification in support of his contention.

7. We have no hesitation in coming to the conclusion that in all probability the objections u/s 5A of the Act were never filed in the office of the Respondents.

8. The list of the objections received by the office of the Collector in furtherance to its Notification dated 21.3.2003 for acquiring the land in different villages including Village Mundka shows that no objections except Mundka and Rani Khara shows that no objections were filed and received by the office of the Collector and only one set of objection was received in relation to Village Rani Khara amongst number of other villages in furtherance to which the owners were heard and objections were disposed of in accordance with law.

9. The contention raised on behalf of the Respondents that even if for the purpose of argument it is presumed that the objections were filed in the office of the Collector on 25.4.2003 even they would be of no consequence as they were filed beyond the prescribed period of 30 days in terms of Section 5A of the Act. The reliance placed by the learned counsel upon the judgments of this Court and the Supreme Court as referred to above would squarely applied to the facts and circumstances of the present case. On the own showing of the Petitioner the Notification u/s 4 is dated 18.4.2004 which was published in the Gazette as well as in the newspapers on 21.3.2003. Thus, the objections could be filed on or before 20.4.2003. Admittedly, the objections were filed on 25.4.2003 beyond the period of limitation. Even on this ground the Petitioner cannot succeed.

10. We have already held that the Petitioner has failed to discharge the onus placed upon him in terms of Section 5 of the Act that he had duly filed objections in the office of the Land Acquisition Collector and that too within the period of limitation.

11. We find no merit in this petition and dismiss the same while leaving the parties to bear their own costs.