

(1999) 03 DEL CK 0096
In the Delhi High Court
Case No : Civil Writ No.714/91

Mehar Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 72 DLT 562

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. C.V.Francis, for the Appellant; Mr. Ravinder Sethi , Mr. Abhijat Verma for DDA and Mr. Chander Shekhar for the Intervener, for the Respondent

Judgement

Devinder Gupta, J.—The case reveals peculiar facts in which land in question, which stood acquired by award made on 30.12.1963 has again been made subject matter of acquisition proceedings, without reference to the earlier acquisition proceedings.

2. This petition was instituted on 26.2.1991 by Mehar Singh son of Rakha Ram praying for quashing of notification (Annexure-E) dated 25.11.88 issued u/s 4 of the Act; the declaration dated 23.12.1988 u/s 6; notification dated 23.12.1988 (Annexure-G) issued u/s 17(1) of the Act and the award (Annexure-I) No.9/90-91 dated 13.12.1990 of village Humayunpur with respect to property known as House No.247, Arjun Nagar, New Delhi; standing on and comprised in land measuring 10 bids was comprised in khasra No.427/328 min situate in village Humayunpur.

3. The petitioner alleged that the land on which House No.247, Arjun Nagar, New Delhi is situated was purchased through deed dated 17.3.1959 registered as document No.1338 in Additional Book No.1, Volume 465 on 23.3.1959 in the name of his mother Smt. Harnek Kaur. Construction was raised thereupon and he had his workshop there upon under the name and style of M/s. Jandu Engineering Company for which appropriate license had been obtained u/s 416

and 417 of the Delhi Municipal Corporation Act. The establishment is also registered under the Delhi Shops and Establishment Act. He had been residing in the property. His mother Smt. Harnek Kaur had filed a suit against him for possession. Claim for possession was given up by her in the said suit and thus all rights, title and interest of Harnek Kaur stood extinguished and the same stood vested in him. It is further alleged that the Delhi Development Authority during proclamation of emergency took possession of lands in the vicinity of the property, which stood acquired by the Government and thereafter prepared a Development Plan for the area. In the Development Plan, this property is earmarked as plot No.113 in Block No.B-17, Safdarjung Development area Scheme. Delhi Development Authority had developed the area in accordance the Development Plan and since the land beneath the petitioner's house and in the vicinity around it already stands developed, according to the development plan, within the ambit and scope of the Delhi Development Authority Act, no further development was required to be made. The only liability of the petitioner was to pay betterment charges in respect of the property to the respondent (D.D.A.).

4. In the aforementioned background, it is alleged that notification (Annexure-E) dated 25.11.1988 notifying the petitioner's property for acquisition for public purpose, namely, Planned Development of Delhi, which purpose already stood achieved, much prior thereto is bad in law and is liable to be quashed. It is alleged that this notification was followed by declaration (Annexure-F) u/s 6 of the Act. Notification u/s 17(1) of the Act was also issued making the provisions of Section 5A of the Land Acquisition Act inapplicable. The Collector, Land Acquisition on 13.12.1990 made his award. Notifications (Annexures-E, F and G) with the award (Annexure-I) made by the Collector Land Acquisition are under challenge by the petitioner in this petition on number of grounds.

5. Before dealing with the petitioner's challenge to the impugned notifications and the award, we would like to take notice of certain other facts, which were brought on record by Smt. Harnek Kaur, the applicant, in her application (C.M.8784/97).

6. Notification dated 3.9.1957 u/s 4 of the Land Acquisition Act (for short "the Act"), was published in Delhi Gazette on 12.9.1957. Considerable land in numerous villages including Humayunpur was sought to be acquired at public expense for public purpose, namely, for the implementation of the Interim General Plan for the planned development of Delhi. It was followed by a declaration u/s 6 of the Act, which was made on 20.2.1963. Award No.1662 of village Humayunpur was made by the Collector Land Acquisition on 30.12.1963. This award also dealt with the claim of Smt. Harnek Kaur with respect to her properties comprised in and standing on land khasra No.427/328 min measuring 10 bids was situated within the Revenue estate of Humainpur.

7. The proceedings for acquisition of her property under the Land Acquisition Act including the award made on 30.12.1963 were challenged by Smt. Harnek Kaur in Civil Writ No.737-D/66. The said writ petition titled as Smt. Harnek Kaur Vs.

Chief Commissioner and others was allowed on 8.4.1970 by learned Single Judge. Declaration u/s 6 of the Act as well the award made by the Collector with respect to the properties of Smt. Harnek Kaur were quashed. Feeling aggrieved an appeal was preferred by Union of India. The said appeal titled as Smt. Harnek Kaur Vs. Union of India and others (L.P.A.161/70) was dismissed on 14.3.1980 by a Division Bench. SLP bearing Appeal (C) No.6118/80 was preferred against the aforementioned decision by the Chief Commissioner, Delhi Administration, which was heard along with number of other matters. The Supreme Court on 10.2.1987 set aside the decision of this Court and thereby upheld the declaration u/s 6 of the Act and the award made by the Collector. Thus the acquisition of the properties including the aforementioned property of Smt. Harnek Kaur became final.

8. The petitioner herein is the son of Smt. Harnek Kaur. Both of them were involved in litigation because of inter se disputes qua the land aforementioned. Suit No.609.74, Smt. Harnek Kaur Vs. Mehar Singh was filed by Smt. Harnek Kaur against the petitioner for possession and for other reliefs. Decree for possession, which was claimed by the plaintiff Harnek Kaur was given up property was stated to have already been taken over by the Government. The suit decided by Shri R. S. Mahala, Subordinate Judge, 1st Class, Delhi holding the property to have been purchased by Smt. Harnek Kaur under a valid sale and that she was the owner of the property and not Mehar Singh. Aggrieved against this judgment and decree, an appeal was preferred by the petitioner, which was allowed on 23.2.1995 by Shri A.K. Garg, Additional Senior Civil Judge. The judgment and decree passed by Shri R.S. Mehla, Subordinate Judge 1st Class, Delhi was set aside. It was held in the said appeal R.C.A.No.383/93 titled as Shri Mehar Singh Jandu Vs. Smt. Harnek Kaur that the trial Court ought not to have gone into the question of ownership when the property already stood acquired and only the question of which compensation was to be distributed could be agitated in appropriate proceedings.

9. Needless to add that nowhere in the petition it was disclosed by the petitioner that the property had earlier been the subject matter of acquisition under the provisions of the Land Acquisition Act for which award had already been made and as per the stand of Smt. Harnek Kaur, the property had been taken over by the Government. He made only a vague mention that there were several litigations between him and Smt. Harnek Kaur, without disclosing any particulars of the litigations. In para 18 of the petition, it is alleged by him that he had not filed a similar petition earlier either in this Court or in the Supreme Court of India questioning the validity and correctness of the acquisition of his property under Article 226 of the Constitution of India or under any other law for the time being in force except this petition. Along with the petition miscellaneous application C.M.1156/96 was also filed by him. On the basis of the averments made in the petition and in the misc. application, notice was issued to the respondents to show cause as to why rule nisi be not issued. On the same day (5th March, 1991) status quo was ordered to be maintained, which has continued to remain

in operation till date.

10. Reply to the petition was filed by respondents 1 and 2 on the affidavit of Shri U. P. Singh, Officer on Special Duty (Litigation) Land and Building Department, Delhi Administration, Delhi stating that the land comprised in khasra No.427/328 measuring 10 bids was notified under Sections 4 and 17(1) of the Act for Planned Development of Delhi for which declaration was issued on 23.12.1988 and award was made on 13.12.1990. Challenge to this award was highly belated. It was further stated that the land had validly been acquired through the notification dated 25.11.1988. After the petitioner filed rejoinder to this reply, additional counter affidavit was filed by respondents 1 and 2 on 3.2.1993. On behalf of the Delhi Development Authority, reply affidavit was filed on 10.2.1994 supported on the affidavit of Shri D. P. S. Nagal, Director, D.D.A., taking same and similar stand that the land in question has rightly been acquired through notification dated 25.11.1988 for which award had been made on 13.12.1990. To this reply also, the petitioner filed rejoinder. An affidavit of Shri V.K. Shingal was also filed on behalf of the Delhi Development Authority on 11.2.1997 reiterating the earlier stand that writ petition was liable to be dismissed summarily on the ground of laches since the land stood acquired through notification issued in the year 1988 for which award had been made on 13.12.1990.

11. The writ petition was still at the stage of admission when Smt. Harnek Kaur sought intervention by filing C.M.7823/97. This application was filed on 24.9.1997 but was dismissed as withdrawn. The prayer for intervention was reiterated by her in C.M.8784/97. It is in this application that Smt. Harnek Kaur disclosed the aforementioned facts that the property already stood acquired through notification dated 3.9.1957; award dated 30.12.1963 was challenged by her in a decision rendered by the Supreme Court on 10.2.1987. The award was upheld. It is stated in the application by her that the petitioner deliberately suppressed material facts and the fact of earlier acquisition to gain advantage for himself and to cause loss and harm to her, who was entitled to the amount of compensation.

12. Despite notice of the said application, reply was not filed by the petitioner or any other respondent. On 7.11.1997 after narrating the facts, as were disclosed in the application moved by Smt. Harnek Kaur, the petition was set down for hearing. Thereafter, we heard learned counsel for the parties.

13. The fact that suit No.609/74 for possession was filed by Harnek Kaur is not disputed by the petitioner in as much as he himself has placed on record copy of decree (annexure-D) and it is on that basis that the petitioner alleged that Smt. Harnek Kaur during the said litigation gave up her claim for possession of the property. The petitioner, however, did not make any mention of the appeal, which was preferred by him against the decree passed in the said suit. The decree which the trial court passed reads:-

"It is ordered that the plaintiff does not claim the possession of the property as

the possession of the property has already been taken by the Government. The plaintiff was the owner of the property in question had purchased the property vide valid sale deed. This was only prayer of the plaintiff in the suit. In view of the nature of the owner and in view of the relationship between the parties, parties are left to bear their own cost."

14. The appeal preferred by the petitioner was allowed and the decree of the trial court was set aside. Para 5 of the judgment of the Appellate Court reads:-

"The property in dispute has been acquired by the government and compensation is yet to be distributed. Learned counsel for the respondent submits that an enquiry into title will be necessary so as to define the rights of the parties. That is no doubt true but the question of title will be properly gone into by the Land Acquisition Authority who is to determine the question of compensation. Since neither party has prayed for a declaratory decree, the civil court need not go into the question of title."

15. It was not disputed during the course of arguments that the petitioner was aware of the earlier proceedings for acquisition of the property. No mention was made by the petitioner of the earlier acquisition or of the fact that the property already stood acquired and acquisition became final in view of the decision of the Supreme Court rendered on 10.2.1987. However, the fact that Smt. Harnek Kaur in view of the acquisition of the property had given up her claim for possession was stated vaguely.

16. Once the property stood acquired and was taken over by the Government, irrespective of the fact that compensation amount has not been paid so far will not make any difference and will not have the effect of divesting the Government of the ownership of the property, which by virtue of Section 16 of the Act vests absolutely in the Government free from all encumbrances. Once the property had vested in the Government, there was no question of the same being acquired or made subject matter of acquisition for the second time through the impugned notification (Annexure-E). All proceedings for acquisition pursuant to the impugned notification (annexure-E) are void and non est including the three notifications and the award. No benefit can be taken or derived on the basis of the impugned notifications and the award either by the Government or anybody else including the petitioner since the property already stood vested in the Government. The Government could not have notified its own property for acquisition. In case actual possession is not with the Delhi Development Authority or with the Government, it will be for the authorities concerned to take appropriate steps for enforcing the award and obtaining actual possession. Reliefs prayed in this petition cannot be granted by quashing the acquisition proceedings since the impugned notifications and the award are non est. Needless to add that it is open to the respondents to take appropriate proceedings in accordance with law for enforcing their rights under the award, which was upheld by the Supreme Court.

17. The fact that the petitioner deliberately did not disclose material facts alone are sufficient to dismiss his petition, which we hereby dismissed with costs quantified at Rs.5,000/-.

18. A copy of this order will be sent to the Chief Secretary, Government of National Capital Territory of Delhi to take appropriate steps for making an inquiry into the circumstances, which led to the initiation of proceedings for acquisition, which had already stood acquired earlier and for taking appropriate action against the erring officials.