
(2005) 05 DEL CK 0156
In the Delhi High Court
Case No : WP (C) No. 2681 of 1984

Mohd. Farooq and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11A, 4, 5A, 6

Citation : (2005) 123 DLT 377 : (2005) 82 DRJ 276

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

Bench : Division Bench

Advocate : N.S. Vasisht, for the Appellant; Sanjay Poddar and Sachin Nawani for LAC and L and B, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Petitioners claim that they are the co-owners of the land measuring 6 bids was in Khasra No. 124 situated within the revenue estate of Village Okhla, Delhi. This land was notified for acquisition vide notification dated 4.4.1964, issued u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act). In furtherance to this notification, declaration u/s 6 of the Act was issued on 7th December, 1966. This land was acquired for planned development of Delhi. The Collector had issued notices u/s 9 and 10 of the Land Acquisition Act in the year 1983 in furtherance to which the Petitioners had filed claims. An award relating to the lands adjacent to the Petitioners' land was announced by the Land Acquisition Collector on 20th July, 1983 but the land of the Petitioner was left out. It is also averred by the Petitioners in the Writ Petition that the land of the Petitioner which is now sought to be acquired was earlier left out from award No. 95/83-84 relating to Village Okhla. While relying upon the judgment of the Supreme Court in the case of *The State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma and Ors.* 1966 SC 1593 and in the case of *Ambalal Purshottam etc., v. Ahmedabad Municipal Corporation of the City of Ahmedabad and Ors.* 1968 SC 1223, the Petitioners have stated that the Government cannot

drift the acquisition proceedings indefinitely after issuance of notification u/s 4 of the Act and take in hand the proceedings for assessment of compensation whenever they think it appropriate to do so. The notification as well as the acquisition proceedings are stated to be misuse and abuse of power vested in the appropriate Government. Though the notification u/s 4 of the Act was issued on 4th July, 1964 but till the time of filing of the writ petition no award had been made by the Respondents. Inordinate delay on the part of the authorities in completing the acquisition proceedings and the planned development of Delhi is not a public purpose for which the land of the Petitioner could be acquired and in any case is not in conformity with the master plan which has already expired. Denial of payment of compensation for all this period according to the Petitioners have seriously prejudiced their interests. For these reasons the Petitioners pray in this Petition under Article 226 of the Constitution of India for quashing of the notification u/s 4 and 6 of the Act and of the notices issued u/s 9 and 10 of the Act. They further pray that their land measuring 6 bids was be released from the acquisition.

2. Short counter affidavit has been filed on behalf of the DDA wherein it has been stated that notification u/s 6 of the Act has already been issued though the award was not pronounced so far.

3. At the very outset, we may notice that there is no averment made in this Writ Petition that Petitioner had filed objections u/s 5(A) of the Act. The averments which have been made in the Writ Petition could be of any help to the Petitioner only if he had raised appropriate objections before the Competent Authority at the appropriate stage. On the one hand the Petitioner did not file any objections u/s 5(A) of the Act while on the other he filed his claim u/s 9 and 10 of the Act without any protest or objection. In fact the Petitioner claimed a higher value for acquisition of his land @ Rs. 2,000/- per square yard. In view of the law laid down by the Supreme Court in the Case of Anil Hada Vs. Indian Acrylic Limited, the land owner or a claimant who did not file objections u/s 5(a) of the Act cannot be stopped from raising a challenge to the validity, legality and correctness of the notifications issued u/s 4 and declaration issued u/s 6 of the Act. On this short ground the present Writ Petition is liable to be dismissed.

4. However, we will proceed to discuss the merit of the other contention raised before us by the Petitioner. It is vehemently contended on behalf of the Petitioner that the acquisition proceedings in the present case have lapsed in view of the order passed by the Court on 17th July, 1985 in the present case and as such the petitioners are entitled to release of their land from the acquisition proceedings in question.

5. There is no dispute to the fact that the notification u/s 4 was issued on 4.4.1964 and no award has been made by the Respondents even till date. The Petitioner had filed the present Writ Petition in the year 1984. Vide order dated 21st March, 1985 the Court had directed the parties to maintain status quo as to possession as of that date. However, this order of the Court was modified by the

Court vide its order dated 17th July, 1985 passed in CM No. 3879/1984 which reads as under:-

"17.7.1985

Present : Mr. N.S. Vasisht, Adv. for the Petitioner

Mr. Rajinder Dutt for respondent No.1

C.M. 3879/84

It is the common case that the Award has not been made though the declaration u/s 6 of the Land Acquisition Act has been issued and the acquisition proceedings are in progress in the office of the Land Acquisition Collector. I had already granted that the status quo as to the possession be maintained. Since the Award has not been made it is obvious that the possession is with the petitioners. The acquisition proceedings may go on and the Award announced but the petitioners shall not be dispossessed from the land in dispute till the disposal of the writ petition. C.M. 3879/84 is disposed of in the above terms.

JUDGE"

6. On the strength of the above order the contention of the Petitioner is that as the Respondents, despite a specific liberty being given by the Court to pass an award, failed to pass an award till date and possession of the land has not been taken. In such circumstances, the appropriate Government cannot be permitted to take advantage of their own wrong. As a result thereto, the acquisition proceedings would be deemed to have lapsed in view of the provisions of Section 11(A) of the Act.

7. The order of the Court had certainly permitted the Respondents to continue the acquisition proceedings and announce the award but at the same time it has restrained the Respondents from dispossessing the Petitioner from the land in question. The order of the Court had not permitted the Respondents to complete the acquisition proceedings in all respects admittedly at the time of the passing of the orders, declaration u/s 6 had already been made, notices u/s 9 and 10 have been issued and the Petitioners have filed his claim. The material steps which were to be taken for completion of the proceedings were announcement of the award and taking of possession. According to the Respondents passing of the award would serve no effective purpose as neither they can take possession and unless they take possession of the land, compensation could not be dispersed to the claimants. The obvious result was non-completion of two important and final stages of the acquisition proceedings. If there is impediments arising from an order of the Court in the way of the respondents to complete the acquisition proceedings in all respects and effectively use the acquired land for the purpose for which it was acquired, it could hardly be said that the acquisition proceedings would be liable to be quashed on the ground of delay and expiration of the specified period u/s 11(A) of the Act. Order of restraint from dispossessing the Petitioner from the land in question would not permit the Respondents to

complete the acquisition proceedings. The order of stay which effectively stalls the acquisition proceedings particularly at material stages, the period for which such order continues would be liable to be excluded under the provisions of Explanation Section 11(A) of the Act. In fact this question is not mere *res integra* and has been settled by the Supreme Court in the case of *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*, where the Court held as under :-

"As per the Explanation the period of exclusion from the time is the period during which "any action or proceedings" to be taken in pursuance of the said declaration is stayed. We have no doubt that one of the actions contemplated pursuant to the declaration is taking possession of the land, though such action is a post-award step in normal circumstances and in emergent circumstances it can as well be a pre-award step. Nonetheless, taking possession is one of the actions to be adopted as a follow-up measure pursuant to the declaration envisaged in Section 6 of the Act. The consequence mentioned in Section 11-A is a self-operating statutory process and, Therefore, it can operate only when the conditions specified therein conjoin together. The consequence would step in only when there is fusion of all the conditions stipulated therein. If there is any stay regarding any of the actions to be taken pursuant to the declaration then the consequence of lapse would not happen."

8. In view of the above settled position of law we find no merit in this argument raised on behalf of the Petitioner. The period from 21st March, 1985 till passing of this judgment would have to be excluded in terms of the Explanation to Section 11(A). The important fact that the respondents were permitted to make an award but still restraining the respondents from dispossessing the Petitioner from the site cannot be construed against the Respondents and would not vitiate the entire acquisition proceedings.

9. Other contention raised on behalf of the Petitioner that the planned development of Delhi is not a public purpose or that the master plan on the basis of which notification was issued has already lapsed. Planned development of Delhi has repeatedly being held to be a public purpose as contemplated u/s 4 of the Act. Furthermore, when the notification in question was issued the master plan was in force even thereafter the master plan for the subsequent period was notified by the Delhi Development Authority under the provisions of the Delhi Development Act of which the Court even take the judicial notice. In any case there are no details given in the Writ Petition which could in any way demonstrate that the public purpose is different than the purpose user of the land as indicated in the master plan. In this regard, the Petition is totally vague and is devoid of any specific averments in that regard which could persuade the Court even to dilate of such discussion. For the reasons aforesaid we find no merit in this Petition, the same is dismissed. The interim order dated 17th July, 1985 is hereby vacated. There shall be no order as to costs.