

(2003) 10 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Petition: 1805 of 1985

M/s. Montari Enterprises Pvt. Ltd.

APPELLANT

Vs

Land Acquisition Collector and Another

RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 226, 32
Delhi Development Act, 1957 — Section 22, 22(1)
Land Acquisition Act, 1894 — Section 17(4), 23, 4, 4(1), 5A

Citation : (2003) 2 ILR Delhi 417

Hon'ble Judges : B.C. Patel, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : N.S. Vashisht with Mr. Shiv Kumar, for the Appellant; Sanjay Poddar with Mr. Sachin Nawani for Respondent No. 1 and Mr. Ajay Verma, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—The petitioner has filed this petition, inter alia, challenging the issuance of notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") dated 24.10.1961, declaration made u/s 6 of the Act dated 4.1.1969. There is an award dated 9.12.1983 with regard to the lands referred to in the petition bearing No. 75/83-84. According to the petitioner, possession is with him. However, on behalf of the respondent contention is raised that the actual possession is taken on 21.12.1983. As per record it is stated that the possession has been taken. In this petition initially when the petition was filed there was no averment about the imaginary line and that the land is not covered by the notification. However, there is an amendment carried out by the petitioner wherein he has taken this contention. Learned Counsel submitted that a notification which does not refer to khasra numbers and refers to an imaginary line it becomes duty of the respondent to produce before the Court a report which was required to be drawn as per the order made by the Court on

13.11.1997. He has also submitted that filing of earlier petition or withdrawal of the petition should not come in the way of the petitioner, as according to him, his lands are not covered. He has relied on the judgment of the Full Bench of this Court in the case of Roshanara Begum Vs. Union of India, wherein the Full Bench has observed in paras 199, 200 and 201 as under:-

199. In these cases, the notifications u/s 4 were issued earlier in 1956 pertaining to the land of the petitioner but those notification lapsed and no further proceedings were taken in respect of those notifications. A Section 4 notification was then issued in 1959 which according to the petitioners did not include the land of the petitioners. The notifications which had been issued u/s 4 in 1959 only had given the blocks which have been delineated on the map attached with the notification.

200. The learned Counsel for the petitioner has pinpointed the land of the petitioners from the map furnished by him which makes it clear that this land of the petitioners is not covered by any of the blocks mentioned in the maps published along with Section 4 notification.

201. Hence, we come to the conclusion that the notification in question issued u/s 4 of the Act did not pertain to the land of the petitioners and thus subsequent declaration issued u/s 6 and the award made on the basis of the said declaration are null and void and thus these writ petitions are liable to be allowed and the acquisition proceedings of the said land of the petitioners are liable to be quashed.

2. Learned Counsel appearing for the petitioner submitted that this decision has been affirmed by the Apex Court and, therefore, there is no reason as to why this decision should not be followed and notifications under Sections 4 and 6 of the Act should not be quashed.

3. It may be noted that the petitioner at the time of argument of the matter drew out attention to the notification issued u/s 6 of the Act wherein some part of the lands belonging to him is referred to by khasra numbers and not by other parcels of land. It may be noted that Section 6 notifications might have been published in various parts. In the instant case, the petitioner challenged the issuance of Section 6 notification as his lands were covered by notification issued u/s 6 in the year 1969. Thus, before the filing of the petition the petitioner was aware that his lands are covered vide notification issued u/s 6 of the Act. If his lands were not covered by the said notification, there was no reason for him to challenge the said notification. After withdrawal of the petition in the year 1969 the petitioner kept quiet. After the possession was taken, according to the respondent, notification was issued u/s 22(1) of the Delhi Development Act. The said notification is dated 6.1.1984 and is on the file. Reading the said notification it is very clear that it is issued u/s 22(1) of the Delhi Development Act and the land referred therein are placed at the disposal of the DDA by the Competent Authority.

4. Learned Counsel for the petitioner submitted that Block No. 13 which was sought to be acquired vide the notification issued u/s 4 reads as under:-

Block No. 13.

Area bounded on the -

North:- by the Mahipalpur Road.

East:- by Gurgaon Road.

West:- by an imaginary line parallel to the Gurgaon

Road at a distance of ? mile.

South:- by an imaginary line parallel to Mahipalpur

Road at a distance of ? mile.

5. On the north side of the area acquired there is Mahipalpur Road. The area acquired is covered on the east side by Gurgaon Road. So far as west is concerned, there is a road known as Gurgaon road. But as per the notification, for the demarcation ? mile parallel to that road was required to be drawn for the purpose of covering the entire land under acquisition. That line is known as "imaginary line." So far as south is concerned, there is Mahipalpur Road and similarly line was required to be drawn as in case of western side. Thus, land in Block No. 13 is covered by these four boundaries. Whatever the khasra numbers are situated in these blocks were sought to be acquired vide notification u/s 4 issued by the Competent Authority. As per the demarcation, whatever the lands were included in Block No. 13 were acquired for which notification u/s 6 was issued and which was challenged by the petitioner much earlier.

6. On behalf of the respondent it is submitted that in view of the Apex Court's judgment in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, this petition is not required to be entertained. He drew our attention to para 9 of the judgment and submitted that this is nothing but an abuse of the process of the Court by instituting a petition again and again on the same cause of action without any good reason. Had he obtained permission to withdraw the petition with liberty for filing fresh petition the matter would have been different. As pointed out by the Apex Court principle underlying Rule 1 of Order XXIII should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy. The Apex Court pointed out that that would discourage the litigant from indulging the bench hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court Article 226 once again. While withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like suit or petition under Article 32 since such withdrawal does not amount to res judicata, the remedy under Article 226 should be deemed to have been abandoned by the

petitioner with respect to the cause of action relied on the writ.

7. It may be noted that in the instant case after withdrawal of petition, the petitioner did not object to continuance of the proceedings under the Land Acquisition Act. This petition is filed after delayed period. It may be noted that after the commencement of the proceedings and after following the procedure, declaration u/s 6 was made which was challenged by the petitioner and that petition was withdrawn in the year 1969 and thereafter this petition is filed in the year 1985. The petitioner approached and abandoned the remedy after a delayed period. Would it be proper for this Court to examine the matter? The Apex Court in the case of *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, quoted HWR Wade's Administrative Law (7th Edn.) at pp. 342-43 as under:-

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiffs lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time-limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produce that result.

8. In our opinion, in a case like this the Court must decline to grant relief and extraordinary jurisdiction should not be exercised. In the case of *State of Haryana and others Vs. Dewan Singh and others*, a notification u/s 4 of the Act was published on 22.1.1981. The Collector after conducting the enquiry made an award and allegedly took possession of the land on even date. The respondent asserted that they were in possession. Writ petition was filed on 13.5.85 challenging the notification on the grounds that dispensing with enquiry u/s 5A, and exercising power u/s 17(4) were bad in law, as there was no urgency and the award was bad on the face of the case. High Court allowed the petition. The Apex Court pointed out that High Court was not justified in interfering with the award dated 19.4.84 made by the Collector and the notification u/s 4 of the Act. The Apex Court pointed out that the notification u/s 4(1) and the declaration were not challenged till 13.5.85, while the award was made on 13.4.84. The Apex Court pointed out that after the award was made the Court would not be justified in quashing the notification u/s 4(1) declaration u/s 6 and for dispensation of an enquiry u/s 5-A. In view of this, in our view, the respondent has rightly submitted that it is too late to interfere with the acquisition proceedings.

9. In the case of *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, the Apex Court pointed out in para 14 as under:

14.....It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Art. 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Art. 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

10. In para 17, the Apex Court pointed out that in any event after the award is passed, no writ petition can be filed challenging the acquisition notice or any proceedings therein. Apex Court has consistently pointed out this aspect. The Apex Court in the case of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, pointed out in para 29 as under:

It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Art. 226 of the Constitution to quash the notification under S. 4(1) and declaration under S. 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Art. 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

11. In the case of M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, the Apex Court in para 21 pointed out as under:-

21. This Court has repeatedly held that writ petition challenging the notification issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification u/s 4 and the declaration u/s 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting premium on dilatory tactics. Writ petition (SCA 5149/89) is thus barred by laches as well.

12. Thus, in view of the pronouncements made by the Apex Court on the ground of delay and laches in the land acquisition matters, it would not be possible for this Court to interfere.

13. It may be noted that powers under Article 226 of the Constitution is discretionary. It will be exercised only in furtherance of interest of justice. The Courts have to weigh the public interest vis-a-vis private interest while exercising powers under Article 226. The powers are to be exercised on a sound equitable principle. The equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. It is also required to be kept in mind that the law would help the vigilant persons who are approaching the Court and not the persons who are sleeping over their rights and waking up after delayed periods. These all are the aspects required to be taken into consideration by the Court.

14. So far as possession is concerned, on behalf of the respondent it was pointed out that the Apex Court in case of Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, pointed out that merely because the appellant retained the possession of the acquired land the acquisition cannot be said to be bad in law. We quote para 4 of the judgment, which reads as under:-

4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt. Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

15. We are not discussing other decision of the Apex Court on these grounds as it is now well-known principle.

16. Suffice it to say that in the instant case after withdrawal of the petition in the year 1969 petitioner permitted the respondents to complete the acquisition proceedings and thereafter he has approached the Court and hence, these grounds itself, amongst others, would be sufficient to dismiss the petition. Accordingly, the petition is dismissed.

A.K. Sikri, J.

17. I have heard the order dictated by Hon"ble the Chief Justice dismissing the writ petition. I agree with the conclusion that writ petition should be dismissed. However, I would like to make certain observations. As noted in the facts stated above, the dispute is as to whether the land of the petitioner is covered by notification issued under 4 or not? It is because of the reason that in the

notification dated 24th October, 1961 issued u/s 4 of the Act in respect of Block No. 13 where areas sought to be acquired are mentioned, on two sides, namely. West and South, the area is bounded by an imaginary line.

18. In this writ petition on 5th August, 1985 while issuing show cause notice this Court stayed dispossession. Thereafter rule was issued on 24th March, 1986 as no reply was filed by the respondent and interim order dated 5th August, 1985 was made absolute till the disposal of the writ petition. Petitioner thereafter filed applications being CM 8577/97. Prayer made in this application was for demarcation of land. This application was disposed of by order dated 13th November, 1997 directing SDM to demarcate the land in question on the Aks Sajara vis-a-vis Section 4 notification dated 24th October, 1961 and also fix all the boundaries of the plot of the petitioner. In this order dated 12th November, 1997 it is specifically noted that the prayer in the application was not opposed by the counsel appearing for the respondent. Thereafter, it appears, SDM complied with the aforesaid direction. However, case was adjourned from time to time as report was not filed. On 20th August, 1998 counsel for the respondent stated that the report is ready but the same has to be signed by the petitioner and the DDA who were present at the time of demarcation of the land. It is not known as to whether report was ultimately signed by the petitioner or the DDA. Fact remains that report has not been filed on record. Thus, the aforesaid fact would show that demarcation has been done pursuant to the orders of this Court by the SDM. What is the outcome of that report is not known.

19. However, in view of the fact that this writ petition is not maintainable and is barred by the principles contained in Order 23 Rule I of the Code of Civil Procedure. I am of the opinion that the writ petition is liable to be dismissed on this short ground. It may be noted that petitioner had earlier filed Civil Writ No. 702/1969 challenging the declaration made u/s 6 of the Act. It is clear, as noted in the order of Hon'ble the Chief Justice also, the land of the petitioner was included in this notification and that is why the petitioner challenged the declaration. The challenge to this notification was on the ground that it was ultra vires the Act and that Section 23 of the Act was unconstitutional. Petitioner by this time had attained the knowledge that his land is also sought to be acquired and that was the only reason that petitioner challenged declaration u/s 6 of the Act. In case the petitioner wanted to challenge on the ground of the boundaries, that there was no demarcation by the time declaration was made or that land of the petitioner is not included u/s 4 of the Act, it was open for the petitioner to raise those grounds also at that time. Having not done so even after the knowledge that the petitioner's lands were also sought to be acquired and after allowing the said writ petition to be dismissed as withdrawn, it would not be open for the petitioner to file fresh petition now challenging Section 4 notification or raising the contention that the land of the petitioner does not come within the imaginary boundary as per Section 4 notification. As already pointed out above even the award was made and the notification u/s 22 of the Delhi Development Act was passed which included the land of the petitioner. This petition is, thus,

barred on the principles of constructive res judicata as held by the Supreme Court in Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others (supra) and I would like to dismiss the petition only on this short ground without going into any other ground.