

(2008) 08 DEL CK 0163

In the Delhi High Court

Case No : Writ Petition (C) 8059-61 of 2006 and CM No. 5973 of 2008

Pawan Kumar and Others

APPELLANT

Vs

Govt. of NCT and Others

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 16, 17, 17(1), 17(2), 17(3A)

Citation : (2008) 154 DLT 631

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : P.N. Lekhi and Samar Bansal, for the Appellant; Sanjay Poddar, for R-5/LAC, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The present writ petitions have been filed seeking a declaration that the intended possession by the Respondents of the Petitioners' land comprising of Khasras No. 35/9/1 and 35/9/2 admeasuring 3600 sq. yd. situated within the Revenue Estate of Village Samaypur, Delhi (hereinafter referred to as the said land) is not for any public purpose and not required for acquisition. The Petitioners have also sought a prayer of Mandamus directing the Respondent ? Land Acquisition Collector not to interfere with the peaceful possession, use and enjoyment of the said land.

2. Briefly stated the material facts of this case are that the Petitioners, who are father and two sons, are joint owners of the said land.

3. On 27th July, 1984, a notification under Sections 4 read with Sub-sections (1) and (4) of Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as ?said Act?) was issued by the Respondent for acquisition of 2122 bighas and 15 biswas of land, which included the said land, for the purpose of planned development of Delhi.

4. As the proposed acquisition was under the urgency provision of Section 17(4) the right to file objections u/s 5A was dispensed with. On 27th July, 1984, a declaration u/s 6 of the said Act was also simultaneously issued. Pursuant to the notice u/s 9 of the said Act, the Petitioners filed their objections in August 1984 stating that they were carrying on their business on the said land as well as the entire land was built up with the adjoining land being used for industrial purpose.

5. On 27th March 1985, Respondents announced an award wherein it was stated that the Respondents had taken possession of 2119 bighas out of 2122 bighas except for three Khasra numbers out of which two belonged to the Petitioners.

6. According to the Petitioners, thereafter for twenty two years no attempt was made by the Respondents or any other agency to disturb the peaceful, continuous and settled possession of the Petitioners over the said land.

7. It is alleged that on 5th May, 2006 officials of Respondent No. 4 without any notice came to the Petitioners' land and started demolishing the structure thereupon. While the Petitioners alleged that their possession over the acquired land was never taken away, the Respondents in their counter affidavit state that after removal of unauthorized construction carried out by the Petitioners, the Respondents handed over physical possession of Petitioners' land to DDA, which was the ultimate beneficiary of the acquired land.

8. Aggrieved by the Respondents' action to dispossess the Petitioners from their land, the Petitioners filed the present writ petition in 2006 seeking the relief as mentioned hereinabove. On 10th May, 2006, this Court was pleased to direct the parties to maintain status quo with regard to the construction and possession as on that date.

9. Mr. P.N. Lekhi, learned Senior Counsel for the Petitioners submitted that the power to take possession on urgent basis u/s 17(1) of the said Act can be exercised only in the circumstances mentioned in Sub-section (2) of Section 17 of the said Act namely owing to sudden change in the channel of any navigable river or other unforeseen urgency or for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road connection or electricity. Consequently, Mr. Lekhi contended that in the present case there were no facts warranting invocation of Section 17(1) of the said Act.

10. Mr. Lekhi next submitted that as in the present case the Collector had not tendered 80% of the compensation amount to the Petitioners before endeavouring to take possession of the said land, the acquisition by virtue of Sub-section (3A) of Section 17 of the said Act was illegal.

11. Mr. Lekhi further submitted that though the discretion to acquire a land vests in the State, but the said power has to be exercised in accordance with law. He submitted that the power to acquire and to take possession cannot be exercised contrary to the object sought to be achieved by the said Act. He further submitted that as in the present case Respondents sought to take possession of

the said land after twenty two years of the urgency power having been exercised u/s 17 of the said Act, the exercise of said power was arbitrary, irrational, malafide and discriminatory. In this connection, Mr. Lekhi referred to the judgment of the Apex Court in *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others*, wherein it has been held that administrative action of the Government is liable to be set aside if it is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is malafide. Mr. Lekhi also referred to the *Wednesbury* principle, according to which, Court has the power to set aside administrative actions if they were either illegal or irrational or vitiated by procedural irregularity. In this context, Mr. Lekhi relied upon the judgment of Supreme Court in *Om Kumar and Ors. v. Union of India* reported in AIR 2000 SC 3689.

12. Mr. Lekhi also submitted that action of the Respondents in attempting to take possession of Petitioners' land under the pretext of a notification issued twenty two years ago u/s 17 of the said Act amounted to colourable exercise of power and fraud on power. He submitted that Section 17(1) of the said Act empowered the Collector to take possession of the land 15 days after a notification of urgency has been issued. Mr. Lekhi submitted that the legislative intent was to invoke this power only in rare cases of real urgency where public interest does not brook any delay in completing the acquisition. Mr. Lekhi also referred to Sub-section (4) of Section 17 which empowered the appropriate government to direct that provisions of Section 5A of the said Act shall not apply to the notified land. Since in the present case the Government had exercised its power u/s 17(4), the Petitioners were deprived not only of their valuable right of filing the objections u/s 5A but also of their right of hearing before the Collector. Mr. Lekhi laid great emphasis on the importance of rights arising out of Section 5A of the said Act, as according to him the said right was akin to a fundamental right. In this context Mr. Lekhi referred to the judgment of Supreme Court in *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, Mr. Lekhi also referred to the judgment of the Andhra Pradesh High Court in *Chevuru Suryanarayana Reddy and Others Vs. Government of Andhra Pradesh and Another*, . In that case the High Court held that if after dispensing with enquiry u/s 5A, on the ground of urgency, possession was not taken for a period of three years it would certainly lead to a conclusion that there was no real urgency justifying the dispensation of enquiry u/s 5A and that the acquisition authorities had acted mechanically. The relevant portion of para 7 of the said judgment is reproduced hereinbelow for ready reference:

It is therefore clear that the power to dispense with the enquiry envisaged by S. 5-A can be exercised only when there is such an urgency to take immediate possession of the land as not to brook the delay of even 30 days notice being issued to enable the persons interested to file objections to the acquisition itself, and the determination of such objections, by the Collector. If therefore after dispensing with the enquiry under S. 5-A under the plea of urgency, possession is not taken even after a lapse of nearly three years, that would certainly be a

factor leading to the conclusion that there was no real urgency justifying the dispensing with of the enquiry u/s 5-A and that the Acquisition Authorities acted mechanically...

If the person entitled to remain in possession is to be immediately dispossessed there should unquestionably be such an urgency to take immediate possession of the land which alone justifies the invocation of the power under Sub-section (4) of Section 17 as not to brook the delay of even a summary enquiry. That power cannot be lightly exercised.

13. Mr. Lekhi also relied upon observations to a similar effect in Smt. Laxmi Devi Vs. State of Orissa and Others, and Satyendra Kumar and Others Vs. Union of India and Others, Mr. Lekhi also referred to the judgments of the Apex Court in Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others, ; State of Punjab and Another Vs. Gurdial Singh and Others,

14. Mr. Lekhi submitted that as the Land Acquisition Act was an expropriatory legislation, its provisions should be strictly construed as it deprives a person of its land without his consent. In support of this proposition, Mr. Lekhi again relied upon para 29 of the Apex Court's judgment in Hindustan Petroleum Corporation Ltd. referred to hereinabove.

15. Mr. Lekhi lastly submitted that the expression urgency in Section 17(1) cannot be partly good and partly bad like the curate's egg. In this context, Mr. Lekhi relied upon judgments of the Apex Court in Union of India (UOI) and Others Vs. Shakuntala Gupta (Dead) by Lrs., and in Vithal and Ors. v. State of Karnataka and Others reported in : (2004)10SCC162 .

16. In response, Mr. Sanjay Poddar, learned Counsel for the Respondent firstly referred to the prayers in the present Writ Petitions to contend that no relief had been sought for quashing of notification issued under Sections 4, 6 and Sub-sections (1) and (4) of Section 17 of the said Act. Mr. Poddar submitted that in the absence of such a prayer, Petitioners would not be entitled to any relief from this Court.

17. In the alternative, Mr. Poddar submitted that if the notification issued under Sections 4, 6 and 17 of the said Act was presumed to be impugned in the present proceedings, then the present writ petition would be liable to be dismissed on the ground of laches as the said notification had been issued in the year 1984 and the State Government after considering the objections filed u/s 9 of the said Act had passed a detailed Award on 27th March, 1985. According to Mr. Poddar, the Petitioners could not impugn either the notification or the Award after a lapse of twenty two years. In this context, Mr. Poddar relied upon following judgments:

a) State of Rajasthan and Others Vs. D.R. Laxmi and Others,

b) Babu Ram and Ors. v. Union of India and Ors. reported in 125 (2005) DLT 259;

- c) Rajiv Prem (Sh.) v. UOI and Ors. reported in 2006 VIII AD (Delhi) 268; and
- d) Santosh Kumar and Ors. v. Union of India and Ors. reported in 2006 VII AD (Delhi) 7

18. Mr. Poddar further contended that as the Respondents had demolished the structure of the Petitioners on 5th May, 2006 and thereafter not only taken possession of the Petitioners' land but had also handed over the same to Delhi Development Authority, the present writ petition was not maintainable. In this context, Mr. Poddar referred to the counter-affidavits filed by the Land Acquisition Collector and by the Delhi Development Authority. He also referred to the demolition report, demolition photographs as well as the possession proceedings annexed to the said counter-affidavit. Consequently, Mr. Poddar submitted that a writ petition challenging acquisition notification, after possession of the said land had been taken, is not maintainable. He submitted that the effect of taking possession u/s 16 of the said Act is that a curtain is drawn so far as land acquisition proceedings are concerned and the land goes outside the purview of the Land Acquisition Act. In this context, Mr. Poddar referred to and relied upon the judgments of the Apex Court in *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, *Ajit Singh and Others Vs. Union of India and Others*,

19. Mr. Poddar next submitted that assuming without admitting that if the State has not deposited 80% of compensation as mandated by Sub-section (3A) of Section 17 of the said Act, then also the taking of possession by the Respondent would not become illegal as the only consequence of such a default would be that the State would be liable to pay interest u/s 34 of the said Act. In this context, Mr. Poddar relied upon a judgment of a Division Bench of this Court in *Deepak Resorts & Hotels P. Ltd. and Anr. v. UOI and Ors.* reported in (2008) V AD (Delhi) 466.

20. Mr. Poddar further referred to the counter-affidavit and the documents on record to contend that under the impugned notification 2122 bighas and 15 biswas of land was sought to be acquired and taken over for Planned Development of Delhi namely for Rohini Residential Scheme which was meant to give shelter to public in a systematic manner in Delhi. Mr. Poddar referred to the Award dated 27th March, 1985 to contend that out of 2122 bighas and 15 biswas, possession of land admeasuring 2119 bighas was taken and handed over to Delhi Development Authority on 21st August, 1984. The possession of Petitioners' land was immediately not taken over in 1984 as it comprised of illegal built up structures, inasmuch, as the said land was agricultural land and no construction could have been raised thereon. In any event, he referred to DDA's counter-affidavit to state that the said land was urgently required for construction of two major proposed roads of Rohini Project of which one is 45 mtrs wide and other is 60 mtrs. wide.

21. Mr. Poddar further contended that the Petitioners were well aware of the

acquisition proceedings as would be apparent from the objections filed u/s 9 of the said Act. He submitted that even if there was delay in completing the acquisition proceedings and in taking possession of the land, such a delay would not vitiate the acquisition and turn the clock back. In this context, he relied upon a Division Bench judgment of this Court in *Balwan Singh and Ors. v. Land Acquisition Collector and Ors.* reported in 144 (2007) DLT 851.

22. In rejoinder, Mr. Lekhi submitted that the present petition was not barred by laches. He submitted that there was no time limit for filing a writ petition. According to Mr. Lekhi, the test is not the physical running of time but whether due to delay in approaching the court third party rights have been prejudiced. The court is to see whether laches on the part of the Petitioners are such as to disentitle the Petitioners from the relief claimed by them. He submitted that the test to be adopted by the Court is whether it would in all the circumstances be unconscionable for a party to be permitted to assert its beneficial rights. In this context, Mr. Lekhi relied upon judgment of the Apex Court in *State of U.P. and Others Vs. Raj Bahadur Singh and Another, M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, U.P. Pollution Control Board and Others Vs. Kanoria Industrial Ltd. and Another, and Cattley v. Pollard* (2007) 2 All ER 1086.

23. Mr. Lekhi reiterated that the Petitioners were still in possession of the said land and further the Petitioners could not be dispossessed by virtue of Section 17 notification issued twenty two years ago.

24. Mr. Lekhi clarified that the Respondents had not cited even a single judgment condoning the delay in taking possession after issuance of Section 17 notification. Mr. Lekhi clarified that judicial pronouncement by the Apex Court only referred to and condoned the delay in taking possession under Sections 4 and 6 of the Land Acquisition Act and not u/s 17 of the said Act.

25. In our considered view, in the absence of any initial challenge to acquisition notifications issued u/s 4 and 17 as well as the subsequent Award, the Petitioners are not entitled to any relief as prayed for. In fact, the Petitioners due to the long time gap between the filing of the present writ petition and issuance of Sections 4, 6 and 17 notifications were disentitled to challenge the same.

26. As far as the issue of laches is concerned, it is well settled law that when there is inordinate delay in filing a writ petition and when all steps taken in the acquisition proceedings have become final, the Court would be extremely hesitant to quash the notifications. This Court, no doubt, has the discretionary powers under Article 226 of the Constitution to quash acquisition notification but the said power has to be exercised after taking into consideration all relevant factors. Mr. Lekhi's argument that as no third party rights had been created in this case the writ was maintainable, in our view, cannot be the sole ground for interference by this Court. In fact, in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, the High Court had, notwithstanding the completion of the

acquisition proceedings, interfered with the same on the ground that no third party rights had been created. In appeal, the Supreme Court reversed the judgment holding that the High Court should not have exercised its powers to quash the proceedings when the award had been made and the possession of the land had been taken over. Discretionary power of the Court under Article 226 of the Constitution, observed their lordships, had to be exercised taking the relevant facts into pragmatic consideration. The following passage in this regard is apposite:

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 Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.

27. The test regarding laches is also no longer *res integra*. In *Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors.* reported in (2002) 2 SCC 48 where on a petition challenging acquisition of land after twenty one years from the date of notification and sixteen years after making of award and taking of possession, the High Court had cancelled the notification and directed making over of the vacant possession of the acquired land, the Supreme Court set aside the High Court's decision and dismissed the petition only on the ground of delay in filing the same by observing:

...It is now a well-settled principle of law 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 Article 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 Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by 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.

28. In *Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others*, it

has been held that if the writ petitioners' intention was to challenge the acquisition proceedings, they should have done so immediately at least after the publication or declaration u/s 6 or immediately after the receipt of notice u/s 9 of the Land Acquisition Act. Since the petitioners in the said case waited till the Award was passed before filing their petition, the Apex Court held that it only showed that the object of the said petitioners was just to get maximum price for the land acquired.

29. Therefore, the legal position that emerges is that while High Courts have the jurisdiction and power to entertain a petition under Article 226 of the Constitution, it would be sound exercise of that discretion, if the Court refuses to interfere with land acquisition proceedings in cases where the land owners have allowed the authorities to complete the said proceedings and challenge the same at a belated stage. In the present case, the Petitioners have allowed the proceedings to go on under the same notification and award in their neighbourhood thereby accepting, by their silence, the validity of the impugned notification and award. In our view, it is too late in the day for the Petitioners to now turn around and to challenge the same after the Collector has made his Award and dispossessed the owners on the basis thereof. We are of the view that the test of laches is the same in a petition challenging the validity of Section 4 and 6 Notifications or that of a Section 17 Notification.

30. Unlike Andhra Pradesh judgment in C. Suryanarayana referred to hereinabove, in the present case there was no delay in taking possession under the impugned notifications as out of 2122 bighas 15 biswas of acquired land, Respondents had taken immediate possession of 2119 bighas of land or 99.80 per cent of the acquired land. Over the years Rohini Residential Scheme for which the impugned notifications had been issued, has also been implemented. Since all these developments have happened in the Petitioners' neighbourhood under the same impugned notification, it was not permissible to the Petitioners to sit on the fence, allow the Government to complete the acquisition proceedings and develop the area on the basis of notifications issued u/s 4 and 17 of the said Act and then attack the same after twenty two years. Consequently, in our view the present petition is barred by laches and there is no delay on the part of the Respondents in taking possession of land under the impugned notification and Award.

31. In any event, delay, if any, in taking possession of Petitioners' land was primarily on account of illegal construction carried out by the Petitioners and thus the Petitioners cannot take advantage of their own wrong.

32. Moreover, as rightly pointed out by Mr. Lekhi, the expression 'urgency' cannot be partly good and partly bad. Since, possession of more than 99.80 per cent of the land acquired under the impugned notifications had been taken over immediately by the Respondents, it cannot be held that Section 17(1) exercised by the Respondents was a fraud on the statute or a colourable exercise of power or that the acquisition authorities had acted mechanically.

33. From the demolition report, photographs on record as well as the possession proceedings annexed with the counter-affidavits, we are of the view that the Respondents had taken possession of the Petitioners' land u/s 16. Even if we accept Mr. Lehi's contention that the petitioners are in actual physical possession of the property we may note that the Apex Court in *Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others*, and in the case of *Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs.*, has held that it is seen that the entire gamut of the acquisition proceedings stood completed by 17.4.1976 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 the panchas and taking possession and 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. Further, a Coordinate Division Bench of this Court in *Nagin Chand Godha Vs. Union of India (UOI) and Others*, has held that it suffices to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.

34. Consequently, in the present case since the respondents have at least taken symbolic possession, a curtain has been drawn so far as land acquisition proceedings are concerned and the land has gone outside the purview of the Land Acquisition Act.

35. We are also of the opinion that as the said land is urgently required for infrastructure facility and the neighbouring area has been developed by the statutory authorities under the same notifications, leaving out the Petitioners' land would be inequitable. In fact, the Petitioners' land would stick out like a sore thumb in a fully developed colony.

36. We are further of the view that Sub-sections (1) and (2) of Section 17 of the said Act are independent provisions. Sub-section (2) provides that on certain sub-species of urgency, immediate possession of land can be taken without even waiting for the 15 days period as provided for in Sub-section (1). In our considered opinion there is no reason to read Sub-section (2) into Sub-section (1).

37. As far as Mr. Lekhi's submission that the impugned notification is contrary to Sub-section (3A) of Section 17 is concerned, a Coordinate Bench of this Court in *Deepak Resorts & Hotels P. Ltd. and Anr. v. UOI and Ors.* referred to hereinabove

has following a judgment of the Apex Court in Satendra Prasad Jain and Others Vs. State of U.P. and Others, held that if the State has not deposited 80 per cent of the compensation as mandated by Sub-section (3A) of Section 17 of the said Act, then also the taking of possession by the Respondent would not become illegal and the only consequence of such a default would be that the State would be liable to pay interest u/s 34 of the said Act.

38. Consequently the present writ petition is dismissed and the status quo order granted by this Court is vacated but with no order as to costs.