
(2012) 05 DEL CK 0358

In the Delhi High Court

Case No : Rev. Petition No. 50 of 2012 and CM No. 858 of 2012 and Rev. Petition No. 180 of 2011, CM No. 4586-87 of 2011 in Writ Petition (C) No. 4044 of 1998

Puran Chandra Mathpal

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11A, 4, 6, 9

Citation : (2012) 05 DEL CK 0358

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Ashish Aggarwal, for the Appellant; Mukesh Kumar Tiwari and Mr. Ruchir Mishra for UOI, Mr. R.K. Saini, for Review Applicant, Ms. Sangeeta Chandra, for DDA and Mr. Sanjay Kumar Pathak, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The writ petition was filed impugning the Award No. 4/97-98 dated 5th December, 1997 of the Collector, Land Acquisition, on the ground of

being in violation of Section 11A of the Land Acquisition Act, 1894. The writ petition was allowed vide judgment dated 26th November, 2002,

finding that the Notifications u/s 4 & 6 of the Act were issued on 6th April, 1964 and 7th December, 1966 respectively; Notification under

Sections 9 & 10 of the Act was issued on 22nd August, 1983; W.P.(C) No. 562-563/1983 was filed by the residents of the village and W.P.(C)

810/1984 filed by the predecessor of the petitioner, both challenging the acquisition proceedings and in which writ petitions there was a stay

against dispossession; the predecessor of the petitioner withdrew WP(C)

810/1984 on 25th July, 1989 and accordingly the said stay stood vacated on 25th July, 1989; that the petitioner purchased about 200 sq. yds. of land on 20th September, 1995 i.e. when neither any challenge to acquisition nor any stay was operating; that upon incorporation of Section 11A in the Act w.e.f. 14th December, 1994, since there was no stay, the Award ought to have been made by 14th December, 1996 on which date the acquisition lapsed and the Award made on 5th December, 1997 is of no avail. Review Petition 180/2011 has been filed by certain residents of the said area development of which has since taken place. They were aggrieved from the non-construction by the respondent DDA of the proposed 24 mtr. wide road between Pocket-2, Jasola and Jasola Village. They first filed W.P.(C) No. 4426/2008 for mandamus to the respondent DDA to construct the said road by removing the encroachment by the petitioner herein on the aforesaid 200 sq. yds. of land. The respondent DDA in its response to the said writ petition informed that the said 200 sq. yds. of land of the petitioner which was coming in the way of construction of the said road, though had been acquired but acquisition thereof had been quashed in the present writ petition. They have thereafter filed this petition seeking review of the order allowing the writ petition and quashing the acquisition and the award.

2. While the aforesaid review petition was pending, the respondent DDA also has filed Review Petition 50/2012.

3. Pleadings in both the review petitions have been completed and we have heard the counsels.

4. Though the predecessor in interest of the petitioner had withdrawn W.P.(C) No. 810/1984 (supra) challenging the acquisition, on 21st July, 1989 but as aforesaid, other writ petitions challenging acquisition of other land subject matter of the same Notification were pending consideration.

All the said writ petitions were summoned by the Supreme Court in CW No. 4677/1985 titled M.C. Mehta vs. Union of India. Though W.P.(C)

No. 810/1984 filed by the predecessor in interest of the petitioner stood withdrawn on 25th July, 1989 but the file of the said writ petition was also

sent to the Supreme Court along with other writ petitions on 14th December, 1994. Pursuant thereto the respondent DDA issued Public Notice on

29th November, 1994. The factum that notwithstanding the withdrawal of W.P.(C)

No. 810/1984 the same was also treated as having remained pending is evident from the W.P.(C) No. 810/1984 being also mentioned in the said Public Notice. The respondent DDA was thus under the impression that the said stay in WP(C) No. 810/1984 was continuing.

5. All the aforesaid writ petitions were finally disposed of vide judgment reported as Murari and Others Vs. Union of India (UOI) and Others, dated 1st November, 1996. W.P.(C) No. 810/1984 also, thus has to be held to have been dismissed on 1st November, 1996. If the period of two years is to be counted from the said date then the Award dated 5th December, 1997 was within the period of two years prescribed by Section 11A.

6. We may also notice that a Division Bench of this Court in judgment dated 15th December, 2008 in W.P.(C) No. 2853/1993 and W.P.(C) No. 3180/1993 relying on judgment dated 20-10-2008 in WP(C) 13618-22/2004 and WP(C) 4676-80/2005 has dealt with an identical issue and held the Award to be within time by observing as under:-

16. Had the facts been rested at that, there could not have been any problem in allowing the present writ petition. However, we may point out that when the order dated 21.7.1989 was passed dismissing the writ petition as withdrawn and vacating the stay orders, neither the petitioners nor the respondents or their counsel were present. Of course, that could not be a reason to feign ignorance about the orders. But it is the error crept in thereafter, which has altered the entire position and turned the case in favour of the respondents.

17. We have already noted above that the Supreme Court in M.C. Mehta (supra) passed orders dated 14.12.1994 transferring certain petitions to the Supreme Court. Significantly, in that order WP (C) No. 810/1984 is also mentioned and later on decided along with Murari (supra). It is clear

from the above that all the parties remained under the impression that this writ petition is still pending. Furthermore, along with WP (C) No.

810/1984, another writ, namely, WP (C) No. 811/1984 was also filed. The status quo order passed in the said writ petition, which relates to the

same land, was still under operation. Having regard to such status quo order in another writ petition, which had bearing on the connected writ

petition, Division Bench of this Court in Mohd. Farooq and Another Vs. Union of

India (UOI) and Others, held that the award passed was within time. We may reproduce following observation from that judgment:-

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 are 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 to 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:-

6. 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 11A 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.

That writ petition was also transferred to the Supreme Court and dismissed along with Murari (*supra*). Thus, if the award was not given because of the aforesaid reasons and impression of the Land Acquisition Collector that stay was still operating, this may not be an incorrect impression of the LAC in view of the facts mentioned above.

7. We do not find any reason to take different view in the instant case. We may record that learned counsel for the petitioner in the writ petition has argued that the decision aforesaid was in writ petitions and the jurisdiction in review petition is limited and should not be exercised when no apparent error on the face of the record can be pointed out and for this purpose, he referred certain judgments as well. However, as already pointed out above, when in identical circumstances, relief of quashing of acquisition is denied, the same is ground enough for review. Even otherwise, when this fact is brought to the notice of the Court that writ petition 810/1984 was kept pending and was dismissed only on 1.11.1996 and such a position was not informed to the Court earlier when orders dated 26.11.2002 was passed, it would amount to an error apparent on the face of record as very vital fact which could change the course of the decision could not be brought to the notice of the Court. For the same

reasons as stated above and taking into account the events which took place after filing of the review petition as mentioned, we find that there is sufficient ground for condonation of delay as well. In these circumstances, the applications for condonation of delay are allowed. Review petitions are also allowed and orders dated 26.7.2002 are recalled. The petitions and the CM applications stand disposed of in above terms.

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8. As pointed out above, the petitioner had challenged the acquisition proceedings by filing writ petition 810/1984 which was dismissed by the Supreme Court only on 1.11.1996. The two years period has to be counted from that date. It is clear that the award passed on 5.12.1997 was well within time. Thus, following the decision in writ petition 3180/1993, we dismiss this writ petition. However, since the petitioner has not received compensation, compensation shall be paid to him along with interest calculated at the rate of 9% per annum from 26.11.2002 till the date of realization.