
(2012) 06 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No. 345 of 2004

Pushpa Mayur Grih Nirman Sahakari Samiti Maryadit and
Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(1), 4(1), 6

Citation : (2012) 06 MP CK 0049

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Riyaz Mohammed, for the Appellant; Sudesh Verma, Advocate for The Respondents 1 to 3, Shri Rakesh Saxena, Advocate for The Respondent No.4, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Alok Aradhe

1. In this petition the petitioners inter alia, seek direction to the respondents to extend the benefit of the order dated 20.8.1999 passed in W.P. No.3150/1995. The petitioners also seek quashment of the notification dated 4.12.1992 issued u/s 4(1) of the Land Acquisition Act, 1894 (in short "the Act") as well as the award dated 9.2.1995. In order to appreciate the petitioners' grievance few facts need mention which are stated infra. The petitioners claim to be owner of the land bearing khasra numbers 119/2, 120/1, 120/2 and 121 situate at village-Nishatpura, tahsil - Huzur, district - Bhopal. The aforesaid land initially belonged to the petitioner No.2. The petitioner No.2 has transferred the land in question to the petitioner No.1 which is a cooperative society registered under the provisions of the M.P. Cooperative Societies Act, 1960. It appears that the respondent No.4 required the land for its activities therefore it approached the Land Acquisition Officer. Thereupon the proceedings under the Act were initiated for acquisition of

the land belonging to the petitioners and several other persons. A notification u/s 4 (1) of the Act was published on 18.11.1992. The Land Acquisition Officer obtained permission of the competent authority, namely, commissioner to invoke power u/s 17 (1) of the Act. Thereupon on 14.10.1993 the possession of the land in question was taken from the petitioners. The award htereafter was passed on 30.11.1994 by the Land Acuisition Officer which was approved by the Commisioner on 9.2.1995.

2. Some land owners whose lands were covered under the aforesaid notifications filed the writ petition, namely, thereafter was passed on 30.11.1994 by the Land Acquisition Officer which was approved by the Commissioner on 9.2.1995. W.P. No.3150/1995 before this Court which was allowed vide order dated 20.8.1999 and it was held that since the award was not passed within a period of two years from the date of publication of declaration u/s 6 of the Act, the land acquisition proceeding in relation to land bearing khasra numbers 110/1 to 110/11 situate at village-Nishatpura, tahsil-Huzur, district - Bhopal have lapsed. Accordingly, the award dated 9.2.1995 was held to be invalid. Thereafter the respondents once again initiated proceeding from the stage of Section 6 of the Act and eventually the award was passed on 8.3.2004 in respect of the land bearing khasra numbers 110/1 to 110/11. In the aforesaid factual background the petitioners have approached this Court.

3. Learned counsel for the petitioners submitted that the case of the petitioner is similar to that of the petitioners in W.P. No.3150/1995 therefore, the petitioners are entitled to benefit of the order dated 20.8.1999 passed in W.P. No.3150/1995. In support of his submissions, learned counsel for the petitioners has placed reliance on the decision in Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, and M/s. Moghul Travels and Transport Co. (P.) Ltd., v. Union of India and Others, AIR 1990 Delhi. It is further submitted that the writ petition does not suffer from delay and laches as subsequently the award was passed in the year 2004 with regard to the petitioners in W.P. No.3150/1995 and thereafter the petitioners promptly filed the writ petition.

4. On the other hand, learned counsel for the respondents while opposing the contentions raised by learned counsel for the petitioners submitted that since the powers u/s 17 (1) of the Act were invoked after obtaining permission of the competent authority therefore it is not necessary to pass an award within a period of two years. In support of their submission learned counsel for the respondents have placed reliance on the decision in AIR 1993 SC 2517. It is, therefore, submitted that the order dated 20.8.1999 passed in W.P. No.3150/1995 is per incuriam. In support of aforesaid submission reference has been made to the decision in United India Insurance Co. v. Mahila Ramshree and Others, 1996 J LJ 691. It is further submitted that the order passed by the Land Acquisition Officer is in personam and not in rem. In support of the aforesaid proposition, reliance has been placed in Pratap Rao Krishnarao Phalke v. Krishi Upaj Mandi Samiti, Gwalior and Others, 1998 (1) MPLJ 241. It is also submitted

that the petitioner No.2 had participated in the proceeding before the Land Acquisition Officer and was fully aware of the award which was passed in the year 1995 therefore, the writ petition suffers from delay and laches, as the same has been filed after a period of nine years from the date of passing of the award. In this connection reliance has been placed on the decision of the Supreme Court in Ram Awadh and others v. Achaibar Dubey, AIR 2000 SC 671.

5. I have considered the submissions made on both sides. In The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, the Supreme Court after taking note of the decisions in Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, held that if there is inordinate delay in filing the writ petition and all steps were taken in the acquisition proceeding have become final, the Court should be loath to quash the notifications. It has further been held that when the award has been passed and the possession has been taken, the Court should not exercise its power under Article 226. Similar view has been taken in Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others, . In Delhi Administration Vs. Gurdip Singh Uban and Others etc., , the Supreme Court after taking note of decision rendered in Abhey Ram (dead) by LRs. and others Vs. Union of India and others, , held that quashing of the notification in case of individual writ petitions cannot be treated as quashing the whole of it. Similar view has been taken in Tamil Nadu Housing Board Vs. L. Chandrasekaran and Others,

6. In the backdrop of the aforesaid well settled legal position, the facts of the case may be seen. The petitioner No.2 who is the owner of the land in question had knowledge of acquisition proceeding. The petitioner No.2 had participated in the proceedings which were initiated under the Act. The notification u/s 4 (1) of the Act was issued on 7.8.1992. The possession from the petitioners was taken on 14.10.1993 and the award was passed on 30.11.1994 which was approved by the competent authority on 9.2.1995. The said award was challenged by some of the land owners in W.P. No.3150/1995. This Court vide order dated 20.8.1999 held that the acquisition proceeding in respect of land bearing khasra numbers 110/1 to 110/11 had lapsed of which the petitioners in the said writ petition were owners. The petitioners have filed the instant writ petition after inordinate delay of nine years after the award was passed. Instead of explaining the delay in paragraph 4 of the writ petition, the petitioners have stated that there is no delay in filing the writ petition. The writ petition suffers from unexplained delay and laches. The respondent No.4 has already taken the possession of the land. The benefit of the order passed by this Court in W.P. No.3150/1995 cannot be extended to the petitioners as in the said writ petition this Court confined the benefit to the petitioners of the said case only. Apart from this the Supreme Court in Gurdip Singh Uban (supra), Abhey Ram (supra) and L. Chandrasekaran (supra) has held that quashing of the notification in case of individual writ petitions cannot be treated as quashing the whole of it. For the aforementioned reasons, I do not find any merit in the writ petition. The same fails and is hereby dismissed.