
(2007) 04 DEL CK 0194

In the Delhi High Court

Case No : Writ Petition (C) No. 2117 of 1992

Rajinder Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2008) 148 DLT 502 : (2007) 95 DRJ 638

Hon'ble Judges : Vikramajit Sen, J;J.P. Singh, J

Bench : Division Bench

Advocate : Ravi Gupta, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—In this Petition it is prayed that a Writ, Order and/or direction in the nature of Certiorari be issued for quashing the Notification dated 25.11.1980 u/s 4 of the Land Acquisition Act bearing No. F-9(16)/80/L&B and Declaration dated 18.6.1985 u/s 6 of the Land Acquisition Act bearing No. F-9(28)/85/L&B and for quashing the Award bearing No. 10/87-88 in respect of land measuring 15 bighas 16 bids was in Village Satbari and to restore possession/reverse revenue entry in the records.

2. We have heard Sh.Ravi Gupta, learned Counsel for the Petitioner and Mr. Sanjay Poddar, learned Counsel for the Respondents.

3. Perusal of the order-sheet dated 22.9.1994 indicates that the matter was to be heard with another batch of Petitions. Rule DB was issued. The Registry put up a note that a batch of Petitions for quashing the same Notifications and the Award was dismissed and Therefore the matter was fixed for hearing but none appeared on behalf of the petitioner and since the matter stood covered by the judgments passed by the Division Bench of this Court in WP (C) No. 809/1992 titled Santosh Kumar v. Union of India decided on 26.5.2006 and also by the judgment in the matter titled Ajit Singh v. Union of India reported in Vol. 89 DLT

495, it was dismissed. The said dismissal order dated 11.9.2006 was recalled because the name of the counsel for the Petitioner was not shown in the Cause List and now the matter has been heard.

4. The petitioner has now filed an additional affidavit alleging that Objections dated 24.12.1980 u/s 5A of the Land Acquisition Act were filed but the Notification/Declaration u/s 6 of the Act was issued without taking note of the said objections. Further the Petitioner continues to be in physical possession and has not lifted the compensation but still the respondents changed the revenue records and brought the land under the name of Land & Building Department.

5. It has been argued by learned Counsel for the Petitioner that the matter titled Smt. Chatro Devi Vs. Union of India (UOI) and Others, was referred by the DB to the third Hon'ble Judge as there was divergence of opinion and ultimately it has been held as under:

49. In the result, I would agree with the view taken by my esteemed brother M.B. Lokur J. that the impugned acquisition proceedings are liable to be quashed for violation of the provisions of Section 5A of the Land Acquisition Act. A formal and effective order to that effect can however be passed only by the Division Bench keeping in view the majority opinion.

6. On this basis learned Counsel for the Petitioner has argued that the proceedings carried out by the respondents u/s 5A of the Act in regard to Village Satbari including the land in dispute are vitiated and are ultra-vires and Therefore all subsequent proceedings are null and void and so there is no question of bar of delay and latches. Further that void and ultra-vires proceedings can be challenged at any stage and even in collateral proceedings.

7. As against this Sh. Sanjay Poddar, learned Counsel for the respondents has argued that after the Declaration u/s 6 of the Land Acquisition Act, the Petitioner filed his claim for compensation before the Land Acquisition Collector, which means that the petitioner had accepted the Declaration and had acquiesced and waived his pleas, if any, about the Objections u/s 5A of the Land Acquisition Act but when he found that the rate of compensation was not as per his demand, the Petitioner as an after thought has filed the present Petition. Further, admittedly the possession has changed hands in the revenue records and as per established law the land vests in the Government free from all encumbrances and thereafter the acquisition cannot be challenged.

8. Learned Counsel for the Respondents has differentiated that Chatro Devi decision is on the Petitions filed prior to the passing of the Award and also prior to decision in Balak Ram's case and, Therefore, the said decision cannot be extended to the present case which was filed in May, 1992 and moreover the Petitioner is estopped from raising the so-called plea of Objections u/s 5A of the Land Acquisition Act.

9. Learned Counsel for the respondents has vehemently argued that the

Declaration u/s 6 can by no stretch of imagination be said to be void or ultra-vires specially when the Petitioner admits that formal possession was taken and the name of ownership was changed to that of the Government. It is added that the Petition was filed after a period of 7 years from the date of declaration in the year 1985. Formal possession was taken in 1987. Names in the revenue records were accordingly changed.

10. In these facts and circumstances, in our view, a Constitution Bench Judgment of the Hon"ble Supreme Court in the case titled *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, is relevant, wherein it has been held as under:

11, Nor do we think that the Petitioners in the Writ Petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration u/s 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification u/s 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see *Tilokchand Motichand v. H.B. Munshi and Rabindranath Base v. Union of India*).

11. The main basis of the Petition was that since the Division Bench of the High Court of Delhi vide judgment dated 18.11.1988 in the case titled *Balak Ram Gupta v. UOI* the Acquisition proceedings were quashed, Therefore, the entire Acquisition proceedings covered by that Notification also stood quashed, though the Petitioner himself had not challenged the same. The position was, however, clarified by the Hon"ble Supreme Court in the matter titled *Delhi Administration v. Gurdeep Singh Uban and Ors.* reported in AIR 2000 SC 3737 that Balak Ram Gupta's case would apply only to 73 Writ Petitions and the land covered by them and thereafter the Division Bench of this Court in WP (C) No. 809/1992 titled *Santosh Kumar and Ors. v. UOI and Ors.* decided on 26.5.2006 dismissed the batch of Writ Petitions with which in a way the present petition was tagged. Therefore, Balak Ram Gupta's case is of no help to the petitioners.

12. There is no specific plea in the Petition that Objections u/s 5A of the Land Acquisition Act were filed and that no hearing was given on the said objections. The plea of the Objections u/s 5A of the Land Acquisition Act is also suspect and doubtful and more so because the petitioner acquiesced and accepted the process of disposal of Section 5A objections, if any, filed by him, because he applied for the compensation after the declaration u/s 6 of the Land Acquisition

Act and participated in the Award proceedings. After several years he cannot be permitted to take an about turn and start challenging the legality of the Declaration u/s 6 of the Land Acquisition Act and the Award or term the same as void and ultra-vires. The matter stands fully covered by the judgment in Santosh Kumar's case (Supra).

13. Considering all the facts and circumstances and the established law, we do not find any merit in the Petition. The same is, Therefore, dismissed. Copy of the judgment of WP(C) No. 809/92 titled Santosh Kumar v. Union of India and Ors. be placed on this file.