

(1990) 08 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Petition No. 2762 of 1986

Ram Kishan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1990) 42 DLT 384

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Advocate : Ramesh Chandra, Anand Yadav, Manmohan Goel, H.S. Phoolka and V.P. Khandpal, for the Appellant;

Judgement

Arun B. Saharya, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioner has challenged, inter alia, the notification dated 13th of November, 1959 u/s 4, a declaration dated 2nd of January, 1969 u/s 6 award No. 150/86-87 dated 19th of September, 1986 u/s II of the Land Acquisition Act, 1894 (hereinafter referred to as the Act.)

(2) The petitioner has averred that he is a co-owner of land bearing Khasra No. 1125/1060/248, measuring 21 bighas 4 biswas, situated in village Haiderpur, Delhi. The said land was evacuee property at the time when the notification u/s 4 of the Act was made. The petitioner purchased it from the Custodian of Evacuee Property at an auction held on 31st of October 1960.

(3) The land in question is a part of 34,070 acres of land in respect of which the notification dated 13th of November, 1959 had been issued. Para 2 of the notification expressly excluded from applicability thereof, inter alia, "Government land and Evacuee land". Despite this, declaration and award were made in respect of the said land.

(4) The acquisition proceedings were challenged on various grounds. At the time

of hearing, however, the petitioner has pressed only one ground, namely, that his land is not covered by the notification u/s 4 and Therefore, further acquisition proceedings are invalid.

(5) The basic fact that the land of the petitioner was evacuee property at the time when notification u/s 4 of the Act was issued, has not been controverted by the respondents. The issue of a notification u/s 4 is a condition precedent to the exercise of any further power under the Act.

(6) In *B.S. Tolani v. Union of India and others* (1986) 1 Del 555 while dealing with the same notification u/s 4 of the Act, the petitioner had purchased evacuee land on 7th of June 1960. Mahinder Narain, J. held :

"THERE is no, notification covering the land belonging to the petitioner u/s 4 of the Act. Section 6 notification cannot be sustained nor can any subsequent proceedings taken thereafter by the authority under the Land Acquisition Act be sustained either."

(7) In *Angira Devi Gupta Vs. The Land Acquisition Collector, Delhi*, a question arose with regard to validity of proceeding for the acquisition of land in that case also on the basis of the same notification that is set up in the present case. There also, the petitioner had purchased the land in a public auction held on 3rd March, 1960 under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Thereafter, a declaration u/s 6 and Award u/s 11 of the Act were made. It was held by S.S. Chadha J. as follows :-

"THE process of acquisition must start with the notification u/s 4 and the notification u/s 4 is a sine qua non. In the absence of Section 4 notification no acquisition proceedings can subsist as neither the Collector can enter upon the property for the purposes mentioned in sub-section (2) of Section 4, nor can the Collector hear the objections u/s 5A, nor can it submit the report to the appropriate Government for consideration and issue of the declaration u/s 6. The essential mandatory requirement of initiation of acquisition proceedings is the issuance of notification u/s 4 of the Act covering the land proposed to be acquired. The award of the compensation is on the basis of the market value as on the date of Section 4 notification. Where there is no notification u/s 4, the machinery provided by the Act for determination of compensation obviously cannot apply".

(8) The present case is squarely covered by the principles laid down in the case of *B.S. Tolani* and *Angira Devi*. It is, Therefore, held that the notification dated 13th of November, 1959 u/s 4 of the Act is not applicable to the petitioner's land, and that no declaration u/s 6 and Award u/s 11 of the Act could be made in respect of the said land.

(9) Along with the writ petition, a miscellaneous application was filed by the petitioner for an interim order to restrain the respondents from taking possession of the land in question. Notice of that application was issued on 19th of

December, 1986 and dispossession of the petitioner was stayed, in the -
meanwhile. On 9th- of February, 1987, it was reported that the petitioner had
been dispossessed and, Therefore, the interim application was dismissed as
infructuous . Later, on another application, being. C.M. 5362/88, in order to
preserve the garden existed on the land, the petitioner was permitted to manage
the same as a licensee. He was allowed to collect fruit and was required to keep
an account of the sale proceeds and file the same in this Court. It was clarified
that the petitioner would not claim legal possession till the disposal of the
petition. Thus, the petitioner has been in permissive possession of the said land.

(10) Since the notification u/s 4 of the Act is not applicable to the petitioner's
land, the declaration u/s 6 and award u/s 11 of the Act in respect of the said land
are quashed; and it is hereby declared that the petitioner's possession of the
land is now lawful and in his own right.

(11) The Rule is made absolute. The writ petition is allowed. No costs.