

(2005) 05 DEL CK 0260

In the Delhi High Court

Case No : Regular First Appeal 249 of 2005 and CM 5639/05

Rampat

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Constitution of India, 1950 — Article 32
Delhi Land Revenue Act, 1954 — Section 110
Land Acquisition Act, 1894 — Section 10, 12, 16, 18, 4

Citation : (2005) 122 DLT 643

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Kirti Uppal, Adv Rajiv Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

CM No. 6859/05

Allowed. Delay in filing the deficit Court Fee stands condoned.

RFA No. 249/05 and CM 5639/05

1. This appeal is filed by the appellant/plaintiff and is directed against the judgment and decree passed by the learned Addl. District Judge, Delhi on 21st March, 2005 in Suit No. 146/04. The subject matter of the aforesaid suit was the acquisition proceedings in respect of property bearing No. 51, Khasra No. 32 measuring 3 Bighas and 4 bids was and Khasra No. 8, measuring 4 Bighas and 16 Biswas, total measuring 8 Bighas situated in Village Samaipur, Delhi which was allegedly acquired by the respondents on 21st December, 1911 by issuing a notification under Sections 6 and 7 of the Land Acquisition Act (for short the Act). It is also stated that thereafter another notification u/s 4 of the Act was issued by the respondents/defendants on 24th October, 1961 acquiring the lands

in question along with other lands of the same area. Section 6 notification was also issued in the form of a declaration. An award was passed by the Land Acquisition Officer by his order dated 4th July, 1983 whereby he assessed the compensation for the aforesaid lands including the lands of the appellant.

2. Being aggrieved, the appellant filed a civil writ petition in the High Court which was registered as Writ Petition No. 3545/82, challenging the acquisition proceedings. The said writ petition was referred to a Full Bench of the High Court which dismissed the writ petition. A SLP as against the said decision rendered by the High Court was also dismissed by the Supreme Court. Thereafter the present suit was filed challenging the acquisition proceedings on the ground that the suit lands stood already acquired under the Notification of 1911 and, Therefore, the lands of the appellant stood exempted from the acquisition proceedings which were initiated in the year 1961 under Notification issued u/s 4 on 24th October, 1961. In this case the award was also passed vide Award No. 19/83-84 and finally physical possession of the suit property was also handed over to Delhi Development Authority on 19th March, 1997. A preliminary objection was raised regarding the suing barred by Section 11 of the Code of Civil Procedure, which was heard and upheld. The suit was consequently dismissed being barred under the aforesaid provision. Hence this appeal.

3. The specific issues which, Therefore, arise for our consideration are whether the suit filed by the appellant is barred by principles of res judicata and whether the Civil Court has no jurisdiction to try and decide the present suit. Lengthy argument were advanced on behalf of counsel for the parties by making reference to various documents on record and also to various decisions, reference to which would be made during the course of our discussion hereinafter.

4. It is not disputed that in respect of the lands which are the subject matter of the suit, a notification u/s 4 of the Act was issued by the State Government on 24th October, 1961 showing the boundaries of the lands to be acquired for a distinct purpose, namely, planned development of Delhi. The said boundaries set out in the notification include specifically the lands of the appellant which were the subject matter of the suit. In the said notification issued u/s 4 of the Act, the Government had specifically stated that objections could be filed by the land owners as against the acquisition as provided for u/s 5A of the Act. A declaration was also issued in respect of the said lands u/s 6 of the Act. In the said declaration the lands of the appellant were shown by giving Khasra Nos. and Therefore, the lands of the appellant were also included in the said declaration specifically. The Land Acquisition Collector thereafter following the procedure as laid down under Sections 9 and 10 of the Act passed the award bearing No. 19/83-84 in respect of the acquired land including that of the appellant whereby he finally determined the area of the lands sought to be acquired and also assessed the compensation of the lands including the lands of the appellant. The appellant, however, filed a civil writ petition bearing No. 3545/82 which was ultimately dismissed and the SLP filed against it was also dismissed. A suit was

filed by the appellant before the Court of Addl. District Judge, Delhi contending, inter alia, that the lands of the appellant should be deemed to have been exempted from the purview of the notification issued u/s 4 of the Act in 1961 in view of the fact that the same lands stood acquired under Notification issued in 1911. In that context two preliminary issues were framed by the trial court which were decided against the appellant and in favor of the respondents.

5. Mr. Kirti Uppal, Advocate appearing for the appellant, vehemently submitted that the lands of the appellant stood exempted from the purview of the notification of 1961 and, Therefore, the award passed consequent thereto and the actions taken for taking possession on the basis of the said award was illegal and without jurisdiction and, Therefore, liable to be set aside and quashed. It was also submitted that since the issue which is raised now pertains to the suit lands having been acquired under notification issued in 1911 and, Therefore, exempted from the purview of notification issued in 1961 having neither been urged nor decided in the earlier writ proceedings, the said issue cannot be said to be barred under the principles of res judicata. It was also submitted by learned counsel for the appellant that since possession was taken by the respondents pursuant to the award, a fresh cause of action has accrued in favor of the appellant and, Therefore, it could not have been held by the learned trial court that the suit is barred by the principles of res judicata. It was also submitted that in the earlier writ petition filed by the appellant, the validity of the notification of 1961 was involved whereas in the present proceedings exemption of the suit land from the purview of the said notification is the subject matter which is altogether a different subject matter and, Therefore, it cannot be said that the suit out of which the present appeal arises is barred by the principles of res judicata. It is however, submitted that if the notification in question of 1961 itself exempted the lands notified, Therefore, jurisdiction cannot be taken out by taking the plea of res judicata nor the plea of estoppel would be available to the respondents. In support of the aforesaid contention reference was made to the notification issued as also to various decisions.

6. The counsel appearing for the respondents refuted the aforesaid submissions contending, inter alia, that the suit is barred by the principles of constructive res judicata and that a civil suit is not maintainable and the civil courts jurisdiction is barred particularly in view of the fact that the Land Acquisition Act is a self contained code and, Therefore, the rights and obligations of the parties are governed by the said Act. In the light of the aforesaid submissions of the counsel appearing for the parties, we proceed to decide the two issues which are raised for our consideration. Suit barred by the principles of res judicata.

7. According to the appellant, the lands of the appellant could not be the subject matter of the notification u/s 4 issued on 24th October, 1961 and also of acquisition as the said lands stood exempted in view of issuance of an earlier notification in respect of the same lands in the year 1911. There is, however, no dispute to the fact that the present lands which are the subject matter of the suit

were included in the notification for acquisition of the lands which was issued by the respondents on 24th October, 1961. The declaration u/s 6 of the Act which was issued by the respondents as stated herein before, clearly included the suit property which was shown in the said declaration by Khasra Nos. Therefore, there is no dispute and there could not be any dispute that the lands of the appellant were included in the aforesaid notification issued u/s 4 and also in the declaration u/s 6 of the Act. The appellant was also fully conscious of the said act. Consequently he also challenged the legality of said acquisition proceedings by filing a writ petition in this Court by raising various grounds. He clearly and in unequivocal terms admitted in the writ petition that their lands were covered by the said notification. On various grounds the said writ petition was dismissed by a Full Bench of this Court. The SLP filed by the appellant against it was also dismissed. Therefore, challenging the same acquisition proceedings pursuant to the notification issued in 1961 on another ground, namely, that the lands should be deemed to have been excluded from the purview of the said notification as earlier another notification was issued in the year 1911 cannot be allowed to be raised by filing a fresh suit. The aforesaid plea which is sought to be raised by the appellant is clearly barred by the principles of constructive res judicata. When we look at the reliefs sought for in the writ petition and when they are also pitted against the reliefs sought in the present suit, it would be obvious and crystal clear that the reliefs in both the proceedings are the same but may be on different grounds. Only because the appellant has been able to find out another ground to make a challenge to the notification would not make him entitled to file a different and a fresh proceeding challenging the legality of the same notification. The contention that a fresh cause of action has accrued due to the fact of taking steps for acquiring possession by the respondents is without any merit for challenge to a particular proceeding can be made only once which by the decisions rendered by the High Court as also by the Supreme Court has been made final and binding. Thereafter no challenge to the same proceedings could be made on different pretext which is made clearly barred by invoking the provisions of Section 11 of the Code of Civil Procedure. In this connection we may appropriately refer to the decision of the Supreme Court in "The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others", wherein the Supreme Court has held that a judgment of the High Court under Article 226 passed after hearing on the merits must, Therefore, bind the parties till set aside in appeal as provided by the Constitution and the same cannot be permitted to be circumvented by a petition under Article 32 by making an attempted change in the form of the petition. It was also held that a change in the form of the grounds can not be allowed to defeat the plea of res judicata. It was further held that the binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice rests and that the said adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation.

According to the Supreme Court, such an attempt would bring in the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure. The aforesaid principles of law which were laid down by the Supreme Court in paragraphs 35 and 47 of the judgment are squarely applicable to the facts of the present case. We may also appropriately refer to the decision of the Supreme Court in Dr. Das Rao Deshmukh Vs. Kamal Kishore Nanasaheb Kadam and others, and also the decision of the Supreme Court in Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others, . In paragraph 2 of the said judgment, the same position is reiterated by the Supreme Court.

8. The contention that was sought to be raised in the suit in question was a ground and plea which was available to the appellant herein at the time of filing the earlier writ proceedings. The said adjudication pertaining to the acquisition proceeding of 1961 has become conclusive and final after the decision is rendered by the High Court and also by the Supreme Court. The same is binding and conclusive and final not only in respect of the actual matter determined but also on all grounds which the parties might and ought to have litigated and which stood decided as incidental or essentially connected with the subject matter of the litigation. The plea that is sought to be raised is a matter coming in the legitimate purview of the original action both in the matters of claim and defense and, Therefore, the same stood decided conclusively by the decision rendered by the Full Bench of this Court and also by the Supreme Court in SLP. Since the challenge to the same acquisition proceedings as negated by the Full Bench of this Court and thereafter by the Supreme Court, the appellant would, Therefore, be barred from taking up the pleas that are sought to be raised now only because allegedly the appellant has come to know of a judgment delivered by this Court in respect of a similar issue regarding exemption of the lands from the purview of a subsequent notification issued by the State Government. The plea raised is that the appellant subsequently came to learn about the decision of a Single Judge holding that such exemption would be applicable for land which stood acquired by an earlier notification issued in respect of the same land. The said plea is without any merit as the appellant had pleaded knowledge about the said alleged notification of 1911 at the time of filing of the writ petition itself. This is clear on reading of the pleading of the appellant in the memorandum of appeal itself. The plea that is now raised by the appellant was, Therefore, available and could have been raised and urged, which was not done. During the entire proceedings when it was pending either before the High Court or before the Supreme Court, no such statement was made that the suit lands which were the subject matter of Notification issued in 1961 were also the subject matter of the Notification issued in 1911. A bare perusal of the 1911 Notification would also indicate that no particulars of any land of a particular village are set out therein and, Therefore, it cannot be distinctly stated that the lands of the appellant were acquired by the said Notification of 1911. The notification is vague as no Khasra No. and no particulars of boundaries of the lands are set out in the said notification except for stating the area of the lands acquired.

9. Be that as it may, the said contention which is sought to be raised now was available to the appellant and could have been raised by him. But knowing fully well that the same was without any merit was rightly not agitated. A final opinion on the said acquisition proceedings has been rendered and the same cannot now be re-opened through a proceeding filed in the civil court on a ground which although was available was not agitated by the appellant. Another contention which was raised was that the decisions of the High Court and the Supreme Court rendered in the earlier writ petition should be considered and held as having been passed without jurisdiction as the lands of the appellant stood exempted from the purview of the notification issued in 1961 in view of their inclusion for acquisition in the earlier notification of 1911. The said plea is also found to be untenable and cannot be raised being also barred by the principles of *res judicata*. The appellant in the present suit has nowhere pleaded and prayed for setting aside the judgment and order passed by this Court and upheld by the Supreme Court in the earlier writ petition and the Special Leave Petition. Maintainability of Suit in Civil Court.

10. Having held thus, we may now decide the other issue which arises for our consideration regarding the maintainability of the suit in the civil court. It is no longer *res integra* that the Land Acquisition Act is a self contained Code and is a complete Code in itself. The acquisition proceeding comprises of various steps and on completion of the steps, finality and conclusiveness is provided to said steps by operation of Section 6(3) of the Act. The declaration is deemed to be a conclusive proof of acquisition of the land in question. Similarly by virtue of Section 12 of the Act, the award is final and conclusive subject to the exception as to the measurement of the land, true amount of compensation and the person entitled to the compensation. It is also statutorily provided that after communication of the award, the Government is entitled to take possession of the land covered under the award. Upon taking over the possession of the land u/s 16, the same vests in the Government free from encumbrances and, Therefore, the acquisition proceedings cannot be questioned on any ground whatsoever. Consequently, after the acquisition proceedings have been upheld by this Court as also by the Apex Court, the only other subject that was left out was to take possession of the land u/s 16 of the Act. It is also clearly established from the nature of the challenge made in the present suit that the appellant is seeking for a declaration that his lands are not covered by notification issued u/s 4 and declaration u/s 6 of the Act and, thus, free from acquisition. It is also prayed that consequently the award is also without jurisdiction and null and void. Thus, the appellant is in fact challenging the act of the Government whereby his lands have been included in the declaration and the award which is an act under the Act which has reached finality after dismissal of the writ petition and the SLP. A detailed procedure having been laid down for challenging the various actions contained under the Act, remedy is to be sought for as provided for in the said Act or under the writ Court which exercises such jurisdiction. Such a remedy cannot be looked into and sought for in the civil court merely because the

appellant in the suit cleverly did not seek for a relief about quashing of the declaration and the award but what is sought for in the suit clearly amounts to seeking for quashing of the declaration and the award in respect of the lands of the appellant. In our considered opinion, no relief could also be granted to the appellant in the suit without quashing the declaration and the award which already stands upheld even by the Supreme Court in the writ proceedings filed by the appellant. Therefore, it was appropriately held by the learned trial court that the aforesaid civil suit is not maintainable. The findings and conclusions that we have arrived at also find support from the decisions of the Supreme Court in S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, , Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, , State of Bihar Vs. Dharendra Kumar and others, and Narayan Prasad Agrawal Vs. State of M.P. and Others, . Effect of taking possession by D.D.A.

11. In this case possession was also taken over by the respondent-DDA. Therefore, another issue requiring consideration would be as to whether when the lands have been acquired, award made, compensation given and thereafter possession of the lands has been taken over, it would be permissible for the appellant to fight both with the nature of acquisition and the process of taking possession.

12. A similar issue came up for consideration before this Court in the case of Union of India (UOI) and Others Vs. Parshadi and Others, . In para 71 at page 791, it was held as under:-

" In such a case when the land has been acquired, award made, compensation given and thereafter physical possession of the land has been taken, it would not be permissible for the respondents herein to find fault with the process of taking possession, that too in collateral proceedings, on the alleged ground of non-completion of certain formalities. Even if we assume that there were any irregularities or non-completion of any formality, no right would vest in favor of the respondents herein. Non-compliance of any technicality would not render the factual physical possession as illegal when the respondents herein had accepted the physical possession of the DDA. In so far as legal possession is concerned, as per the mandate of Section 16 of the Land Acquisition Act once award is passed the land vests in the State free from all circumstances. In the present case the award No. 205/86-87 was passed in respect of the land in question, and Therefore, the legal possession in any case, vests in the State absolutely free from all encumbrances. This is the legal position as conclusively been held by the Supreme Court in the cases of: (1) Satendra Prasad Jain and Others Vs. State of U.P. and Others, , (2) H.M. Kelogirao and Others Vs. Govt. of A.P. and Others, , (3) Osmania University represented by its Registrar, Hyderabad, A.P. Vs. Abdul Rayees Khan and Another, . So much so as even the symbolic possession is sufficient compliance in the eyes of law. [Refer: Brahm Sarup and Others Vs. The State of Haryana and Others, and Paramount Foods Corporation and Another Vs. Delhi Development Authority and Others, .

It was argued on behalf of the Land and Building Department that Section 16 does not prescribe any mandatory provisions or procedures for taking over the possession. It was submitted that there was no specific frame under the Land Acquisition Act, nor there was any specific provisions connected as to how the possession has to be taken. Under the CPC specific provisions have been enacted for taking possession. If no provision is made for the mode of taking possession, non-compliance with maintenance of record by the Halqua Patwari u/s 110 of the Delhi Land Revenue Rules can hardly be ground to vitiate the legitimate exercise undertaken by the acquisition authority. The records maintained by the Halqua patwari only for the purpose of revenue.

We find force in the aforesaid arguments. In view of the aforesaid legal position, specious plea of the respondents herein to the effect that the possession of the land was not taken in a legal manner in the present case, is either available not accepted.'''

The Apex Court in the case of Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others, , also considered the question of symbolic possession taken by the Officers."

As a result of taking of possession, the land in question statutorily vests in the acquiring authority.

We may also appropriately refer to be decision of the Supreme Court in S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, . In paragraph 4 of the said judgment the Supreme Court observed as follows:-

" In view of the settled legal position that the notification had become final and the proceedings had attained finality, the civil suit was not maintainable. This Court has repeatedly held that a civil suit relating to acquisition proceedings is no maintainable and by implication, cognizance u/s 9 CPC is barred. The Court cannot issue mandatory injunction against the State to denotify the acquisition u/s 48. Therefore, the question of granting an injunction against the authority from proceedings in accordance with the law does not arise. The High Court, Therefore, was right in refusing to grant injunction. The Court cannot compel the Government to withdraw the notification u/s 4(1) of the Act. It is for the government to consider the same on merits keeping in mind subservience of public interest. In view of the fact that notification was upheld by this Court and has become final, the Government cannot retract from the steps taken."

Reference may also be made to the decision of the Supreme Court in Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, . In the said decision it was observed by the Supreme Court as follows:-

"..... The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public

purpose. The notification u/s 4 and declaration u/s 6 of the Act are required to be published in the manner contemplated there under. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made u/s 11 as envisaged there under. The dissatisfied claimant is provided with the remedy of reference u/s 18 and a further appeal u/s 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated u/s 8 requires to be adhered to. If possession is taken, it stands vested u/s 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act..."

We may also appropriately refer to the afore stated decision in Om Prakash's case (supra) wherein this Court had also observed as under:-

"22. Possession having been taken, as per section 16 of the Land Acquisition Act, land vests in the authorities free from all encumbrances. This question has been considered in several decisions of this Court which we hereby discuss.

23. The Court has held that in such a situation the legal position is that the land owner had no right in the land after acquisition is complete. The role and right of a beneficiary of acquisition proceedings is settled law: [Ref: (1998) 4 SCC 87 - Larsen and Toubro v. State of Gujarat; 2000 (9) AD (SC) 412 -State Houseless Harijan Employees Association v. State of Karnataka; Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce,"

This being the position in law, the land stood vested in the respondents to the exclusion of all persons claiming title thereto.

13. In view of the aforesaid findings recorded by us it is not necessary to decide the other issue, which is decided as preliminary issue regarding the Court Fee by the learned trial Court. Consequently, we find no merit in this appeal and the same is dismissed but without any costs.