

(2008) 04 DEL CK 0031

In the Delhi High Court

Case No : Writ Petition (C) 7423 of 2007

Ravi Dutt and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2008) 04 DEL CK 0031

Hon'ble Judges : T.S. Thakur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : N.S. Vashist, for the Appellant; S.P. Sharma and Munish Kumar for R-1, Sanjay Poddar, H.P. Sahu and Ramesh Ray for LAC and Yatinder Chaudhary, for Gaurav Sarin, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—This petition is barred by inordinate and unexplained delay and laches on the part of the petitioner. It challenges the legality of a preliminary notification issued more than 27 years back and a declaration issued nearly 22 years ago in respect of an area admeasuring 43 Bighas 12 bids was situated within the Revenue State of Village Chhattarpur, Tehsil Hauz Khas in the National Capital Territory of Delhi. An earlier petition challenging the preliminary notification was filed in the year 1984 but was dismissed as withdrawn by an order dated 5th March, 1985 with liberty to the petitioner to file a fresh petition as and when advised. No challenge, however, was thrown to the preliminary notification or declaration u/s 6 of the Land Acquisition Act for more than 2 decades since the passing of the said order nor is there any Explanation for the failure of the petitioners to do so. The writ petition is blissfully silent as to the reason why the petitioners remained content with the notifications all these years even when the issue of a declaration u/s 6 of the Act had given them the cause of action to challenge the same. The legal position as to the approach to be adopted by the writ Courts while dealing with belated challenges to land

acquisition proceedings is settled by a long line of decisions rendered by their lordships of the Supreme Court and those delivered by this Court from time to time. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, the challenge to the validity of the notification u/s 4 was delayed by 13 years. Dismissing the petition on the ground of delay and laches, the Court observed:

...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 non qua 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.

2. In *Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors.* (2002) 2 SCC 48, the petitioner challenged the acquisition proceedings after 21 years from the date of preliminary notification and 16 years from the date of the making of the award. The High Court interfered with the acquisition proceedings but setting aside the order passed by the High Court, the Supreme Court cautioned that the Courts ought to give effect to the doctrine of "delay defeats equity". Setting aside the view taken by the High Court, their lordships observed:

...It is now a well-settled principle of law that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favors a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

3. To the same effect are the decisions of the Supreme Court in *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, ; *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, ; *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, , *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , *Vishwas Nagar Evacuee Plot Purchasers Association and another Vs. Under Secretary, Delhi Admn. and others*, .

4. In *Santosh Kumar and Ors. v. Union of India and Ors.* 2006 VII AD Del 7 a division bench of this Court had while dealing with similar fact situation dismissed the writ petition on the ground of delay and laches and observed:

30. The legal position that emerges from all the above decisions is that while the High Courts have the discretion to entertain a petition under Article 226 of the Constitution, it would be sound exercise of that discretion if the Court refuses to interfere with land acquisition proceedings in cases where the land owners have allowed the authorities to complete the said proceedings and challenge the same at a belated stage. The land owners cannot allow the proceedings to go on, accepting by their silence, the validity of the notifications under Sections 4 and 6 of the Act and then turn around to challenge the same after the Collector has made his award or dispossessed the owners on the basis thereof. Even if the period post-Balak Ram Gupta's judgment is deemed to have been explained, there is no Explanation for the pre-Balak Ram Gupta period of three years, which is sufficient to justify the dismissal of these petitions on the ground of delay and laches.

5. To the same effect is the decision in *Rajiv Prem (Sh.) v. UOI and Ors.* 2006 VIII AD 268 where this Court declined to interfere with acquisition proceedings long after the issue of the declaration u/s 6 of the Act. The Court held that even in cases where the declaration u/s 6 and the subsequent proceedings culminating in the making of a award were void, the aggrieved party must approach the Court within a reasonable time to get the same invalidated, he cannot wait until he was threatened with dispossession. The Court declined to accept the view that just because affected party was in possession, he could challenge the acquisition proceedings at any time even belatedly. The following passage is, in this regard, relevant:

Even if the declaration u/s 6 and subsequent proceedings culminating into passing of award were void, the petitioner was in any event required to move the Court within a reasonable time to get the same invalidated and could not have waited until he was threatened to be dispossessed. Thus, possession of the land in question being not taken pursuant to the award dated 4th December, 1987, cannot be a ground to overcome the adverse effect generated on account of belated challenge to the acquisition proceedings by the petitioner.

6. Reference may also be made to *The Ramjas Foundation and Others Vs. Union of India and Others*, where neither a award had been made nor possession of the land under the process of acquisition taken. The Supreme Court, however, held that the same could not be used to explain the delay in challenging the notifications under Sections 4 and 6 of the Act. Their lordships observed that the grounds of challenge to the notification under Sections 4 and 6 of the Act were available to the petitioners at the time of publication of the said notifications but since the petitioners were sitting on the fence and did not take any steps to challenge the same, he could not do so at a subsequent stage. To the same effect is the decision of the Supreme Court in *Delhi Development Authority Vs.*

Shyam Sundar Khanna and Others where the writ petitions challenging the acquisition proceedings were filed before the High Court after about 18 years of issue of declaration u/s 6 on the ground that the petitioner's property being evacuee property was excluded from the purview of notification u/s 4 of the Act. The High Court had, in that case, interfered and set aside the notifications. Their lordships of the Supreme Court, however, referring to its earlier decisions in Vishwas Nagar Evacuee Plot Purchasers Association and another Vs. Under Secretary, Delhi Admn. and others, and in Ramjas Foundation's case (supra) set aside the order passed by the High Court and dismissed the writ petition holding that the High Court was in error in entertaining such belated writ petitions. Reference may also be made to the decisions of this Court in Bina Modi Vs. Union of India (UOI) and Others, and Rajiv Prem v. Union of India and Ors. 2006 VIII AD 268 where this Court has declined to interfere with the acquisition proceedings if the challenge is belated.

7. In the light of what we have stated above, we find no merit in this petition which fails and is hereby dismissed with costs assessed at Rs. 10,000/-.