

(2001) 04 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Petition No. 2529 of 1988

Romesh Chand Chopra and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Citation : (2001) 4 AD 705 : (2001) 92 DLT 78 : (2001) 59 DRJ 688

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. R.P. Bansal and Mr. S.C. Dhamija, for the Appellant; Mr. Sanjay Poddar, for the Respondent

Judgement

Vijender Jain. J.

1. Late Nanak Chand father of petitioners 1 to 5 and father-in-law of petitioner no.6 purchased land measuring 9 bighas 10 bids was situated in the revenue estate of village Mehrauli, Delhi in an auction held on 5th day of September, 1959 u/s 20 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and was declared the purchaser w.e.f. 7th day of October, 1964. A certificate of sale was issued in favor of Nanak Chand dated 1st December, 1964. Similarly Nanak Chand purchased land bearing khasra No. 1573 measuring 1 bigha 17 bids was situated in the revenue estate of Village Mehrauli in an auction held on 27th day of December, 1960 and was declared the purchaser w.e.f. 28th day of September, 1964. A certificate of sale was issued in favor of Nanak Chand dated 29th September, 1964.

2. It is the case of the petitioner that pursuant to the certificate of sale having been issued Nanak Chand took possession of the aforesaid land. The copies of sale certificates are annexed with the writ petition. Nanak Chand died in the year 1978. Petitioners inherited the rights of the aforesaid land. It is the case of petitioners that when one of the petitioners went to the office of Tehsildar Mehrauli for demarcation of the land for the purpose of fencing the same, as the

area around the land was being encroached by unauthorised occupants, he came to know that the land which was purchased by late Nanak Chand was acquired vide two separate awards on the basis of the notification issued u/s 4 of the Land Acquisition Act on 13.11.1959.

3. It seems that thereafter notices under Sections 6, 9 and 10 was also issued and award was made on 12.1.1983 and 25.3.1983. The petitioners have challenged the issuance of the award in relation to the land in question on the ground that no award could have been made in respect of the land of the petitioners as the said land was an evacuee property and challenged notification u/s 4 and 6 and other subsequent notifications as well as awards under the notification qua the land of the petitioners.

4. It has been contended by Mr. Bansal, learned senior counsel for the petitioner that the notification u/s 4 which was issued by the respondent on 13.11.1959 it was manifestly clear that the notification for acquisition was not in relation to evacuee land. The relevant portion of the notification reads as under:

"It is hear by notified that the land measuring 34070 acres and marked with blocks Nos. A to T and X in the enclosed map (annexure I) and the description of which has been given in Annexure II, excepting the following land in the blocks referred herein.

(a) Government land and evacuee land;"

5. It has been contended by counsel for the petitioner that once the notification itself expressly mentioned that the Government land and the evacuee land were exempted from acquisition the award or notification u/s 6, 9 and 10 by the respondent was of no consequence.

6. In support of his contention he has relied upon Roshanara Begum Vs. Union of India & Ors. AIR 1996 Delhi 206, a Full Bench judgment of this Court. He has further relied upon Sham Sunder Khanna Vs. Union of India 1997 RLR 101 as well as a Division Bench judgment of this Court in Major General (Retd.) Kapil Mehra & Ors. Vs. Union of India & Ors. CPW No. 1134/92 decided on 30.1.1996.

7. Mr. Bansal has contended that once a notification was void ab initio, the arguments advanced by learned counsel for the respondent that there was delay in filing the writ petition is also of no consequence. He has contended that although in this case there was no delay on the part of the petitioners in filing the writ petition when on the petitioners went to the office of revenue authorities for getting the land demarcated, he came to know about the notification and the award having been issued he filed the present writ petition in 1988 itself.

8. Mr. Sanjay Poddar, learned counsel for the respondents has contended that if a notification u/s 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 has been issued the property becomes a compensation pool property and, Therefore, the same no longer remains an evacuee property. In support of his contention, Mr. Poddar has cited Tek Chand Chitkaria Vs. Union of India (1968)

70 PLR 202. He has further contended that there was delay in filing the present writ petition as petitioners participated in the award proceedings and filed the objection that Section 9 and 10 notices could not be issued to them as the land was an evacuee land. It was contended by Mr. Poddar that the award was passed in the year 1983 and the writ petition was filed in the year 1988. In support of his contention, learned counsel for the respondents has relied upon Vishwas Nagar Enclave Plot Purchaser Association & Anr. Vs. Under Secretary, Delhi Admn. & Ors. AIR 1990 SC and State of Rajasthan and Others Vs. D.R. Laxmi and Others, .

9. I have given my careful consideration to the arguments advanced by learned counsel for both the parties. In view of the decision of the Full Bench in Roshnara Begum's case (supra), the question of evacuee property whether can be acquired is no more rest integra. Even otherwise from the bare perusal of the notification issued u/s 4 of the Act it is clear that intention of the respondent was not to acquire the evacuee property. The fact that the predecessor-in-interest of the petitioners had purchased the property in auction u/s 20 of Displaced Persons (Compensation & Rehabilitation) Act, 1954 would also demonstrate that for all intent and purposes the respondents have also considered the property as evacuee property.

10. Learned counsel for the respondent has tried to build up an argument on the basis of Tek Chand Chitkaria's case (supra) that once the property pursuant to notification u/s 12 of Displaced Persons (Compensation & Rehabilitation) Act, 1954 becomes a compensation pool property, it no longer remains an evacuee property. The fallacy in the argument of the learned counsel for the respondent is that once the property of an evacuee is put on the compensation pool for the purpose of dealing that property under Evacuee Property Act, 1950, it loses its character and the same cannot be administered under the Evacuee Property Act, 1950. It cannot be said that that property after coming to the compensation pool under the Act of 1954 ceases to be an evacuee property for other purposes also. The legislative intention in this regard was to take the land of the persons who have migrated to Pakistan under Evacuee Property Act, 1950 and such land or property be used for the people who migrated to India after partition to rehabilitate them in India. For the said objective a compensation pool of such evacuee properties was created under Displaced Persons (Compensation & Rehabilitation) Act, 1954. Once a property was part of the compensation pool, no evacuee could have reclaimed that evacuee property. Therefore, there is no force in the argument of counsel for the respondent that for the purposes of Land Acquisition Act that property was not an evacuee property.

11. In Major General (Retd.) Kapil Mehra's case (supra) a decision before Roshnara Begum's case (supra) came, a Division Bench of this Court held the same view. The Court observed thus:-

"In our view once the land is specifically excluded from the acquisition, there can be no question of any legal and valid acquisition proceedings with respect to such

land...."

12. Coming to the other submission of the learned counsel for the respondent that the writ petition was filed belatedly is also devoid of merit. When the notification itself was not applicable to the land of the petitioners, the same was void ab initio and without jurisdiction. The respondent cannot take the plea that the petition was filed belatedly. No notification could have been issued in relation to the land of the petitioner and all subsequent proceedings qua the land of the petitioner were void. Therefore, the objection of the respondent that the petition was filed belatedly cannot stand scrutiny of law. Even otherwise in the case before me what has been mentioned in the award on the basis of which Mr. Poddar has tried to build up his arguments was a request by the petitioners for withdrawal of the notice under Sections 9 and 10. As a matter of fact, this observation in Award helps the case of the petitioners. Petitioners have been constantly maintaining the stand that the land being an evacuee land, same cannot be acquired in terms of the notification or otherwise. Therefore, the notices issued under Sections 9 & 10 was not valid and the same ought to have been withdrawn. Instead of withdrawing the said notices under Sections 9 & 10 of the Land Acquisition Act in relation to the evacuee land, the respondent announced the award. As I have held that initiation of acquisition proceedings by issuing notification u/s 4 and subsequent notifications were bad in law in terms of the notification u/s 4. Therefore, the same was void. It cannot be said that the petition suffers from delay and laches.

13. It was also contended by Mr. Poddar that the possession of the land was taken by the respondent. When the petition was filed, on 6.1.1989 this Court restrained the respondent from taking possession from the petitioners of the land in dispute. That order was made absolute on 23.10.1989.

14. When the respondent could not have acquired the land of the petitioners pursuant to the notifications. Even otherwise in the writ petition it has been stated that physical possession of the land right from the date of the auction remained with the petitioners. Nanak Chand, predecessor-in-interest of the petitioners had not purchased the land from some private persons. He purchased the land from the Ministry of Rehabilitation, Govt. of India, which is evident from the copies of the sale certificates filed along with this writ petition. In Kapil Mehra's case (supra), a Division Bench of this Court, in a matter when the possession was also taken over by the respondent directed in similar circumstances the respondent to hand over the possession of the land to the petitioner. But in the present case, it is the case of the petitioner that they have been in continuous possession of the land from 1964 till date. Even in the writ petition it has been maintained that the petitioners, in order to fence the land approached the revenue authorities as the area around the land was being encroached by unauthorised occupants.

15. In view of aforesaid discussion, I quash the notifications Nos. F. 15 (III)/59/LSG dated 13.11.1959 and No. F. 4.(998)/64.L.H. dated 2.1.1969 respectively as

well as the awards Nos. 60/82-83 made on 12.1.1983 and No. 83/82-83 made on 25.3.1983 respectively.

16. Petition is allowed. Rule is made absolute.