

(2011) 08 DEL CK 0045
In the Delhi High Court
Case No : Writ Petition (C) 5838 of 2011

Santosh Rani

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 48, 6

Citation : (2011) 08 DEL CK 0045

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Yashovanta Das, Rahul Sharma and Pooja Sharma, for the Appellant; Amit Chaddha, for R-1 UOI and Ajay Verma, for R-2 DDA., for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition seeks mandamus for considering the representation dated th 28April, 2011 of the Petitioner for release of her land acquired in pursuance to a Notification u/s 4 of the Land Acquisition Act, 1894 of the year 1959 and declaration u/s 6 of the Act of the year 1966.

2. The Petitioner had challenged the acquisition by filling a writ petition in this Court but without any success. The Petitioner thereafter in the year 1996 filed representations for release of her land and in 1997 again filed a writ petition in this Court seeking direction to the Respondents to consider her th representation. Such directions were issued and vide letter dated 27June, 1997, the representation of the Petitioner was rejected.

3. The Petitioner filed yet another writ petition challenging the said rejection of the representation but which writ petition was withdrawn. Thereafter another writ petition was filed in the year 2002 seeking direction either for release of the land or for allotment of an alternative plot. The said writ petition was also disposed of with a direction to the Respondents to consider the case of the Petitioner for alternative plot. Upon her application for alternative plot being

rejected, yet another writ petition was filed seeking compensation and solatium.

4. The senior counsel for the Petitioner has contended that the representation of the Petitioner for release of land was rejected earlier solely on the ground that the surrounding lands were also being acquired. It is contended that now from the reply to the RTI query it has been learnt that the proposal for acquisition of surrounding land has been dropped. The contention of the Petitioner is that though the land of the Petitioner was acquired for planned development of Delhi but has for the last so many years been not used for the said purpose; rather unauthorized colonies have come up on the neighbouring land and regularization thereof is under consideration; it is contended that thus there is no possibility of use of the land for any planned development and the Petitioner should not be deprived of her land when the purpose of acquisition stands frustrated.

5. The counsel for the Respondent No. 2 DDA appearing on advance notice has contended that upon the acquisition being completed and the possession of land having been taken over, there is no right left in the Petitioner in the land to make any such representation. He has contended that Section 48 is the only provision in the Act for de-notification but which can also be invoked only till the acquisition is not complete and possession has not been taken over.

6. The senior counsel for the Petitioner also does not controvert the said position. His claim is however on the premise of the Petitioner being deprived of her property without the purpose of acquisition being achieved.

7. If the contention of the Petitioner were to be accepted, no acquisition would ever attain finality and challenge thereto would be made at any time averring that the purpose of acquisition has not been achieved. It is not as if the said aspect has not been considered in the present case. As aforesaid, the Petitioner had unsuccessfully challenged the acquisition. The Petitioner has thereafter also filed several litigations and after 50 years cannot say that the land should be restored and/or the acquisition scrapped.

8. As far as the contention of the Petitioner, of the land having not been used for the planned development of Delhi is concerned, the counsel for the Respondent No. 2 DDA has invited attention to the letter dated 27 June, 1997 rejecting the earlier representation of the Petitioner and where it is stated that the said land upon acquisition stands transferred to the Horticulture Department of the DDA for maintenance as "green"; it is a part of the green belt as per MPD-2001 and as per directions of the Apex Court in W.P.(C) No. 4677/1985 titled Sh. M.C. Mehta v. Union of India, no construction activity is permitted on the said land. The counsel for the Respondent DDA has contended that the maintenance of the land as green is also part of the planned development of Delhi and it cannot be said that the land is not being used for the purpose for which it was acquired.

9. The aforesaid part has not been controverted by the Petitioner in the petition. There can be no dispute with the proposition that maintenance of such green

land in the city is a part of the planned development of Delhi.

10. The senior counsel for the Petitioner has however invited attention to Hari Ram and Another Vs. State of Haryana and Others, where relief was granted for the reason of land of others similarly situated as the Petitioners therein having been released from acquisition. However a perusal of the said judgment shows that upon challenge to the acquisition having been made, a committee had been constituted to go into the question and the said committee was found to have released some land and not other, without any rationale and on this ground the acquisition was quashed. The said judgment cannot be a precedent for enabling challenge to acquisition after acquisition has attained finality.

11. There is also merit in the contention of the Respondent No. 2 DDA that the Petitioner, after seeking fruits of acquisition cannot ask for release of land from acquisition.

12. The senior counsel has contended that the Petitioner is only seeking consideration of her representation.

13. A direction for consideration of representation can be issued only when the Petitioner has a right to consideration of his/her representation and the "authority" owes a duty/obligation to consider such representations and pass speaking orders thereon. The "authority" cannot be mandated to deal with representations, without any obligation to do so. If such directions were to be issued without even the "authority" owing such duty, the precious time of governmental authorities will be wasted in such wasteful exercise only.

14. There is thus no merit in the petition; the same is dismissed. No order as to costs.

CM No. 11861/2011 (for exemption)

Allowed, subject to just exceptions.