
(2005) 11 DEL CK 0045
In the Delhi High Court
Case No : WP (C) 3184 of 2000

Sardar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 33, 34, 4, 5A

Citation : (2005) 125 DLT 376 : (2005) 85 DRJ 544

Hon'ble Judges : T.S. Thakur, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : L.P. Dhir, for the Appellant; Sanjay Poddar and Amita Singh, in WPC 7839/99, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—These three writ petitions are taken up for hearing together as the petitioners are co-owners of the land comprised in Khasra No. 10/30 of Village Sahipur. The extent of their land is 13 Bighas and 9 Biswas. In CWP 3184/2000 several grounds have been raised for challenging the Notification u/s 4 dated 13.11.1959 and the Declaration u/s 6 dated 12.7.1966. One of the grounds taken was that the petitioner's agricultural land/nursery could not be acquired and that the possession alleged to have been taken on 18.1.2000 was merely a paper possession and should not be taken as possession within the meaning of Section 16 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act"). Similar is the position in CWP 4101/2000. In CWP 7839/1999 similar grounds have been taken but additionally it has been urged that the Government did not have any definite plan or proposal for development and it is for this reason that the acquisition proceedings were not being completed despite the pronouncement of the Award in 1986. It was suggested that the land, in fact, was never required for the purpose of "Planned Development of Delhi".

2. The factual background is as follows:-

3. Large tracts of land totalling 34070 acres were sought to be acquired under the notification dated 13.11.1959 u/s 4 for "the planned development of Delhi". It also included the petitioner's land. The declaration u/s 6 was issued on 12.7.1966 and even the Award had been announced on 19.9.1986. The present writ petitions were filed in 1999 and 2000, i.e. roughly 40-41 years after the Section 4 notification and 33-34 years after the Section 6 declaration. The award itself was announced on 19.9.1986 and it is only after about 13-14 years thereafter that these writ petitions have been filed. In two of the writ petitions, as indicated above, it is urged that the possession that was taken on 1.8.2000, was merely a paper possession and that too by a person-Shri Kartar Singh- who was not even the Land Acquisition Collector on that date. He was appointed as such ten days later. Two points were urged before us by Mr Dhir the learned counsel who appeared on behalf of the petitioners. Firstly, he submitted that the possession of the lands, in question, was merely paper possession and was taken by a person, who was not then the Land Acquisition Collector. Therefore, according to him possession as contemplated u/s 16 of the said Act had not been taken and, consequently, the land continued to vest with the petitioners. Accordingly, he submitted that the paper possession that was taken deserves to be quashed by this Court. The second point that was urged by Mr Dhir was that the under the said Notification of 13.11.1959, 34070 acres of agricultural land were notified. It included the petitioner's land/nursery of 13 bighas 9 bids was which being a miniscule green area, it was submitted that, no useful purpose would be served by acquiring such an area in the wake of large scale deforestation and environmental difficulties. Accordingly, it was submitted that the petitioner's land was serving the larger public interest and, Therefore, the same ought to be excluded from the acquisition proceedings.

4. On the other hand, Mr Sanjay Poddar, who appeared for the respondents, submitted that these writ petitions were liable to be dismissed at the threshold on account of two factors. The first being the inordinate delay in the filing of the petitions. He submitted that these petitions were filed 40-41 years after the initial Notification u/s 4 and 33-34 years after the Declaration u/s 6. Even the Award had been passed as far back as in 1986. He further submitted that no Explanation, whatsoever, has been offered by the petitioners for approaching this Court after such a great lapse of time. The second point urged by him was that the petitioners had not, in fact, challenged the acquisition proceedings. He contended that this would be evident from examining the prayers contained in CWP 3184/2000 itself where there was no challenge to the acquisition proceedings as such. He also drew the attention of the Court to page 49 of the paper book in CWP 3184/2000. The said page is a part of the Award No. 2119-A (Supplementary) dated 19.9.1986 wherein it is clearly indicated that the petitioners had participated in the Award proceedings and had claimed compensation, clearly implying thereby, that they did not oppose or challenge the acquisition in itself. Even on merits, Mr Poddar submitted that the grounds

raised by the learned counsel for the petitioners were clearly untenable. He submitted that even if it is assumed that possession had not been taken on 18.1.2000, nothing would turn upon it. This is so because possession can be taken at any time after the Award. Although, according to him, possession, in point of fact, had been taken and the land vested absolutely in the Government in terms of the Section 16 of the said Act. Insofar as the other point of the petitioner's land being a green area and already serving a public purpose was concerned, he submitted that this ground was clearly untenable as the entire lands were required for the planned development of Delhi and was to be developed as per the Master Plan.

5. Before dealing with the merits of the matter, we feel that the delay in this case would be fatal to the present writ petitions. With regard to this very notification of 13.11.1959 a Constitution Bench of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, observed:-

"Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration u/s 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. 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 under S. 4 is a sine qua non 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 (see *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, and *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, .

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"As regards the second contention that there was inordinate delay in finalizing the acquisition proceedings, and that the appellants and writ petitioners were deprived of the appreciation in value of the land in which they were interested, it may be noted that about 6,000 objections were filed under S. 5A by persons interested in the property. Several writ petitions were also filed in 1966 and 1967 challenging the validity of the acquisition proceedings. The Government had necessarily to wait for the disposal of the objections and petitions before proceeding further in the matter. Both the learned Single Judge as well as the Division Bench of the High Court were of the view that there was no inordinate delay on the part of the Government in completing the acquisition proceedings. We are not persuaded to come to a different conclusion."

6. From the aforesaid it becomes clear that the petitioners cannot be permitted to challenge the acquisition now after so many years have elapsed. As pointed out by the Supreme Court entertaining these petitions at this late stage would be putting a premium on dilatory tactics. The above observations of the Supreme Court also foreclose any objections that the petitioners may raise for the delay in the acquisition proceedings being a legitimate ground for the delay in filing of the writ petitions. The decision of the Supreme Court in the case of *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, on the point of delay also needs to be noted. The Supreme Court observed:-

"14. The High Court has thus misplaced the factual details and misread the same. It is now a well-settled principle of law and we need not dilate on this score to the effect 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 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 to 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. The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for public purposes of a school playground and roads in the development plan and by reason Therefore, the notification to acquire the land has, Therefore, been issued under the provisions of the Act as stated above."

Therefore, in our view, these petitions are liable to be dismissed on the ground of delay and laches alone. The added circumstance of the petitioners' participating in the proceedings and claiming compensation makes the matter much the worse for the petitioners. Having succumbed to the acquisition proceedings they cannot now turn around and challenge the same and that too after an inordinate and unexplained delay.

7. In view of the foregoing discussion, we need not examine the matter any further. However even on merits, the arguments of the learned counsel for the petitioner noted above are not tenable. Firstly, as rightly pointed out by the learned counsel for the respondents, nothing really turns on the question of possession which is said to have been taken on 18.1.2000. Secondly, we are not impressed by the argument that since the petitioners' (tm) land is a green area and that too, a very small portion of the total acquisition, they are entitled for exclusion from the acquisition which was for the planned development of Delhi. There is no gainsaying that the land acquired will be used for the planned

development of Delhi according to the Master Plan. In any event, as noted above the main thrust of the petitions is a challenge to the taking of possession, which according to them, was a paper possession and by an officer who had no authority. This issue is of no consequence as, in point of fact, there is no challenge to the acquisition itself. Indeed, there could not be, as the petitioners had participated in the proceedings for compensation. Therefore, on the ground of delay and laches, acquiescence as well as on the merits, these writ petitions are liable to be dismissed and are dismissed as such.

10. No orders as to costs.