
(1994) 01 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 611 of 1985

Satyendra Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 48

Citation : (1994) 1 AD 242 : (1994) 53 DLT 181 : (1994) 28 DRJ 264 : (1994) RLR 167

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : S.V. Pathak and K.K. Buchar, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) Petitioners in this petition under Article 226 of the Constitution seek to quash the whole of the acquisition proceedings in respect of their property at IX/3335, Kucha Bajrang Bali, Bazar Sita Ram, Delhi, constructed on a plot of land measuring 853 square yards.

(2) The notification u/s 4 of (he Land Acquisition Act, 1894 (for short "the Act") to acquire this property was issued on 1 July 1965 and declaration u/s 6 issued on 20 September 1966. The award is No. 71/73-74 and is dated 30 March 1974. Because of the controversy involved in this petition it is not necessary to refer to the amount of compensation awarded to the petitioners in the matter except to note that petitioners say that they have, also filed a reference petition u/s 18 of the Act. This fact is though not admitted by the respondents. Be that as it may, the possession of the property has still not been taken by the respondents as required u/s 16 of the Act the petitioners also say that no amount of compensation as awarded has been tendered to them nor deposited in the court. The purpose for which the property was sought to be acquired was construction of a maternity and child welfare centre for the Municipal Corporation of Delhi, the fifth respondent. Petitioners say that the purpose stand frustrated and whole of

the acquisition proceedings become mala fide as more than 28 years having lapsed from the date of notification u/s 4 of the Act the acquisition proceedings have not been completed. Their contention before us is that till the possession in pursuance of the award is taken u/s 16 of the Act and the property vesting in the Government free from all encumbrances, the acquisition proceedings are not complete. Petitioners have also said that their objections u/s 5 of the Act were wrongly rejected inasmuch as the property is not suitable and cannot serve the purpose for which it was sought to be acquired. We, however, find that this objection is too late in the day for the petitioners to allege.

(3) We do not find any counter-affidavit on behalf of any of the respondents on record. However, Ms. Pathak, learned counsel for the petitioners, said that she did receive a copy of the counter-affidavit filed by respondents 1, 2 and 3 which are respectively the Union of India in the Ministry of Works & Housing; Lt. Governor, Delhi; and the Land Acquisition Collector. Fourth respondent is the Delhi Development Authority which perhaps is not concerned with the controversy in this petition, and the fifth respondent as noted above, is the Municipal Corporation of Delhi (M.C.D.). In spite of the fact that the matter was heard on 4 January 1994 and again today no one appeared for respondents 1, 2 and 3 though Mr. Bhuchar put in his appearance on behalf of the M.C.D. We required the registry to trace out the counter-affidavit filed by respondents 1, 2 and 3, but it could not be traced. However, Ms. Pathak brought on record photo copy of the counter-affidavit which had been supplied to her. This was filed by Mr. U.P. Singh, Officer on Special Duty (Lit), Land & Building Department, Government of the National Capital Territory of Delhi, and the affidavit was sworn and verified in August 1993. In this a preliminary objection has been raised that the property was acquired for a public purpose, namely, construction of maternity and child welfare centre, and that the petitioners have challenged the notification u/s 4 and declaration u/s 6 of the Act after 20 years and that the petition suffers from delays, laches and liable to be dismissed on this ground. On merit, it was submitted that the land measured 729 square yards and not 853 square yards. It was then stated that the compensation as assessed in the award was lying in the revenue deposit as unclaimed and that the amount assessed was Rs.86,094.00 as compensation. But as to when this amount was deposited, no date has been mentioned. Nothing has been said in this counter-affidavit as to why possession of the property has not been taken all this period spanning over 20 years from the date of the award. Mr. Bhuchar, learned counsel for the M.C.D., was in helpless position. He was also unable to tell us as to why possession of the property had not been taken when the property had been acquired for the purpose of construction of maternity and child welfare centre in the city. He was also unable to tell us as to when the amount was given to the Land Acquisition Collector for payment to the petitioners. Ms. Pathak challenged the very notification u/s 4 of the Act and said that the delay demonstrated that there was no proper satisfaction on the part of the authorities to acquire the property for the purpose mentioned in the notification. She said the notification and also the

declaration were issued mechanically and without any application of mind, and that the power exercised is colourable and null and void ab initio. We. are unable to agree with this submission coming at this late stage. Merely because there has been inaction for number of years it could not be said that there was no application of mind initially as well. She is, however, right when she says that the inordinate delay and the long lapse of time in the matter of taking possession has had the effect of snapping necessary link between the proposal for acquisition itself and that the acquisition at this stage would be unreasonable and stand vitiated.

(4) In their letter dated 4 June 1974 addressed to the Land Acquisition Collector, the petitioners requested for withdrawal of the amount of compensation under protest. Again they requested on 8 July 1974, but got no payment. On. 20 April 1976 the petitioner wrote a letter to the M.C.D. telling them that the award had been made over 2 years ago and no payment of compensation had been made to them. Then we find there is a letter dated 8 January 1979 of the Land Acquisition Collector to the Secretary to the Chief Executive Councillor, Delhi, informing that though the award was announced on 30 March 1974, the Land Acquisition Collector has not so far made payment of compensation to the interested persons on the grounds that the Government had not so far been able to take possession of the premises. It is mentioned in this letter that certain steps were contemplated to take possession of the property. It was also mentioned that the owner was prepared to hand over vacant possession of some portion of the property and that "we are required to evict the tenants from the other portions of the premises under the provisions of the Land Acquisition Act. It is an anomalous position that the Land Acquisition Collector has been experiencing difficulty either in making payment of the compensation to the interested persons or in taking possession of the premises after the announcement of the award on 30.3.74. Under the provision of law, the interested persons are legally entitled to demand payment of compensation just after the announcement of the award. It is, Therefore, requested that a policy decision may kindly be taken in the matter. Nothing has been done so far. On 27 January 1979 the petitioners wrote a letter to the Chief Executive Councillor, Delhi, telling him that the whole conduct of the respondents showed that there was no urgency and there was a lack of zeal to execute the project of maternity and child welfare centre, and that more than five years have gone by and no compensation had been paid and neither possession taken. The petitioners also wrote that in view of lack of enthusiasm by the Government to move in the matter for more than a decade it appeared that there might not have been any such need for acquisition of the property and that the property be released from acquisition and restored to them. It was also mentioned that the families of the petitioner, have been owning this house for over nearly two centuries. Again a letter dated 12 November 1984 was written by the petitioners to the Lt. Governor praying for dropping of the acquisition proceedings and releasing the property from acquisition. Petitioners complained that in spite of repeated attempts neither the awarded amount paid

to them nor possession taken over by the department. It was mentioned that the M.C.D. for whom the property was acquired has not come forward to accept the property. It was stated that about two decades had passed and acquisition proceedings had not been completed, the delay, it was claimed, was fatal, unreasonable, oppressive and unfair, and that the whole purpose of acquisition proceedings stood frustrated. The petitioners prayed that the notification in question is liable to be quashed and property released from acquisition proceedings. Yet another letter dated 1 February 1985 was written by the petitioner to the Lt. Governor again bringing to his notice the non-payment of awarded compensation and requesting him for release of the property from acquisition proceedings.

(5) No action has been taken by the respondents and no reply sent to the communications received from the petitioners. Ultimately, the present petition was filed on 13 March 1985 as the petitioners, it appeared, were left with no other alternative. It is unfortunate that the authorities remained complacent all these years and the petitioners had to knock the door of the court to get justice. u/s 16 of the Act when the Collector has made an award u/s 11, he may take possession of the property which shall thereupon vest absolutely in the Government free from all encumbrances. Though the section uses the word "may" it would not mean that possession should not be taken for any amount of time. Possession has to be taken within a reasonable period depending though on the facts and circumstances of each case. As to why possession could not be taken in the present case all these years, no Explanation is forthcoming and none could be even imagined. This lends credit to the argument of the petitioners that whole purpose of acquisition has been frustrated. Provisions of section 31 for making payment of compensation have not been complied and again the authorities have failed in their statutory duty. Section 48 of the Act states that except in the case provided in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession had not been taken. In the present case, provision of section 36 do not apply and it is, Therefore, not necessary to refer to the same. The question then arises, if the Government should not have withdrawn from the acquisition in a case like the present one. Ms. Pathak said power to withdraw from the acquisition u/s 48 was a power coupled with a duty and that in the present case, in view of the circumstances that existed, there has been a failure on the part of the authorities to exercise that discretion, and that it was a fit case where mandamus should issue to the respondents to withdraw from the acquisition proceedings.

(6) It does appear to us that when there is an unreasonable delay in making the payment or in taking over possession of the property after the award, it could raise a suspicion about the bona fides of the acquisition proceedings. In this view we get support from the decision of the Supreme Court in Khadim Hussain Vs. State of U.P. and Others, . In Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , the court said where a power was conferred to "achieve a purpose the power must be exercised reasonably and in good faith to

effectuate the purpose. From the facts of the present case, which have been narrated above, it would appear that the powers have been exercised for extraneous or irrelevant considerations or reasons. The respondents have not come forward to explain the delay or non-payment of compensation. That would also show there is no continuity of action as well from the date of notification u/s 4 of the Act and till this date. There has been a deep gap again throwing doubts on the bona fides of the respondents. Reference in this connection may be made to another decision of the Supreme Court in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, . In *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, , the court observed that if a statute invested a public officer with authority to do an act in a specified set of circumstances, it was imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moved in that behalf and circumstances for exercise of authority were shown to exist. In *Ram Chand & others v. Union of India and others*, Jt 1993 (5) S.C. 465, the Supreme Court adversely commented upon the delay in making the award after declaration had been made u/s 6 of the Act, and said that in these circumstances acquisition proceedings could be set aside. This principle would apply to the present case as well where though the award had been made, no compensation was paid nor possession taken over 20 years of making the award. The acquisition proceedings have not been completed. There appears to be no ground why the acquisition proceedings be not withdrawn.

(7) Accordingly, this petition is allowed. The award No. 71/73-74 dated 30 March 1974 and so also the notification dated 1 July 1965 u/s 4 of the Act and declaration dated 20 September 1966 u/s 6 of the Act are set aside. Petitioners would be entitled to costs. Counsel fee Rs. 2,500.00. Rule is made absolute.