

(2005) 05 DEL CK 0265

In the Delhi High Court

Case No : Writ Petition (C) No. 19953 of 2004

Sh. Jagdish and Others

APPELLANT

Vs

Land Acquisition Collector/ADM (North East)

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(1), 17(3A), 18, 4, 6

Citation : (2005) 83 DRJ 425

Hon'ble Judges : Swatanter Kumar, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : L.B. Rai, for the Appellant; Geeta Luthra and Jhum Jhum Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—On 23rd June, 1989 the Appropriate Government issued a notification u/s 4 of the Land Acquisition Act, 1864 (for short "the Act"), acquiring the land in the Revenue Estate of Village Garhi Mandu, Delhi. In this notification, the land of the petitioners in Khasra Nos. 90 (2-20, 14 (2-15), 159 (70-4)m 244 (11-4), 247 (7-6), 204 (1-14), 71 (16-60) in the Revenue Estate of the same Village was also covered. Declaration u/s 6 of the Act was issued on 20th June, 1990. The Collector, in accordance with the provisions of the Act, made an award bearing No. 13/92-93 in relation to the land in question on 19th June, 1992. According to the petitioners they had filed an application u/s 18 of the Act on 27th July, 1992 praying for a reference to the Court of competent jurisdiction for enhancement of the compensation awarded to them under the award. Again on 17th September, 2004, the petitioner claims to have written a letter to the respondents, copy of which is annexed to the writ petition as Annexure P-2, which bears endorsement of receipt from the Office of the Additional District Magistrate, dated 17th September, 2004. The concerned authorities responded to this application and treated it as a petition u/s 18 of the Act. The same was rejected being barred by time vide order of the respondents

dated 5th November, 2004, copy of which is annexed to the writ petition as Annexure P-3. It is the contention of the petitioners that this action of the respondents is contrary to law and is factually erroneous in as much as the petitioner had filed an application u/s 18 of the Act as back as on 27th July, 1992. Thus, the application of the petitioners could not have been dismissed on the plea of limitation in terms of the provisions of Section 18 of the Act.

2. The petition has been contested by the respondents by filing a counter affidavit as well as by producing the records in Court. The contention on behalf of the respondents is that the alleged application dated 27th July, 1992 was never received by the respondent as such there was no question of referring the same to the Court of competent jurisdiction. The Department, for the first time, received the petition of the petitioner only on 17th September, 2004 and as the same was patently barred by time, so was rejected by the respondents as they have no power to condone the delay or entertain a belated application. The respondents also said before the Court that the petitioner has misled the Court, in fact, he had earlier filed a petition being Civil Writ No. 2613/2002 which was disposed of as not pressed vide order dated 23rd September, 2003 and as such the present writ petition is an abuse of the process of the Court. It is specifically averred that the petitioner has misrepresented the diary number and no signatures of the Receiving Officer are there on the application. In fact, the petitioner never filed the application on 27th July, 1992 and the averments made in the writ petition are contradictory to the averments made by the petitioner in WPC NO. 2613/2002.

3. At the very outset, we may refer to the order dated 5th November, 2004 impugned by the petitioner in the present writ petition:-

"OFFICE OF THE LAND ACQUISITION COLLECTOR/ADM (NORTH EAST)

D.C. OFFICE COMPLEX, NAND NAGRI, DELHI.

No. F.LAC/NE/2004/384

Dated: 5/11/04

Reference U/s 18 of the L.A. Act made By Shri Om Prakash & Ors, S/o Shri Puran resident of Vill. New Usmanpur, Delhi-53 against Award No. 13/92-93 dated 19/6/92 of Village Garhi Mandu has been considered by the Competent Authority.

The Award was announced on 19-6-92. The reference U/s 18 of L.A. Act was made on 17-09-04. Therefore, the reference was not made within 6 months of Award as provided in the provisions of Section 18 of the Land Acquisition Act. Thus the reference is "Time Barred".

Hence the reference filed by Shri Om Prakash and Ors. is hereby rejected.

(C.R. GARG)

LAND ACQUISITION COLLECTOR/A.D.M. (NORTH EAST)

Shri Om Prakash

S/o Shri Puran

R/o H. No. 164, New Usmanpur,

Delhi-110053."

4. In the application dated 17th September, 2004, which was admittedly received by the Receiving Officer of the Department on the very same day, it has been averred by the petitioner that "he had filed a petition u/s 18 on 27th July, 1992 and the applicant tried to find out the position of the reference from the Office of the present Land Acquisition Collector, Delhi, several times but no satisfactory reply has been given." It is further averred in this letter "that a letter with this regard has also been sent to the Deputy Commissioner, North-East Delhi, on 11th November, 1998 by our counsel, but no reply of that letter was received by the Counsel".

5. These averments made in the application, in the facts and circumstances of the case, apparently seems to be incorrect. It is contrary to the normal conduct of a prudent person, that after having filed the application u/s 18 of the Act, which is undisputedly a very valuable right of the claimant, he would take no steps to find out the fate of his application for a period of more than 12 years. Except the letter dated 17th September, 2004 produced by the petitioner on record no other letter has a receipt or acknowledgement from the respondent-Department. The application dated 17th September, 1992 has no endorsement or stamp of the Department like in the application dated 17th September, 2004. This application was not sent by post. The other reference made in the application is to the letter dated 11th November, 1998 and even a copy of this letter has not been produced before the Court in this writ petition. There is no Explanation in this writ petition as to why the petitioner remained quiet and did not approach the Court of competent jurisdiction in this regard for this long period of 12 years. There is an in-built contradiction in the stand taken by the petitioner before us. On the one hand, he claims to have visited the office of the Collector on various occasions and despite the fact that he got no satisfactory reply, the petitioner failed to take steps in accordance with law; while on the other, the petitioner claims to have written letters which were neither sent by post nor any acknowledgment taken for delivering such letters including the petition u/s 18 of the Act at the office of the Collector. We may also notice here, that admittedly the petitioner was in touch with the counsel since the year 1998 and what could be the reason for the petitioner not to approach the Court of competent jurisdiction, is a question which has been left to the imagination of anyone. Why no acknowledgment was taken from the office of the Collector for submission of the said petition and why it or subsequent letters thereto were not sent by Registered post or under postal certificate is again an unexplained aspect of this case. The only document for which the petitioner care to obtain receipt from the Collector is the letter dated 17th September, 2004. If the petitioner was

so vigilant about his rights that he was visiting the office of the respondent on various occasions, then it was but natural for the petitioner or his counsel to take recourse to appropriate legal remedy without any unnecessary delay.

6. Another very important fact which cannot be ignored by the Court is that petitioner had filed the writ petition (CW 2613/2002) challenging the notification under sections 4, 6 and 17(1) of the Act. This writ petition, as already noticed, was disposed of by the order of the Division Bench dated 23rd September, 2003. It is not clear why the petitioner did not press for the relief prayed for in the present writ petition, in that writ petition, as that relief could be claimed as an alternative relief without prejudice to the principle contentions raised by the petitioner in that writ petition. In fact, the present petition would be barred by the principles of constructive res judicata. The petitioner could have raised the claim for higher compensation in the previous writ petition which he failed to raise. In normal course the petitioner would be deemed to have abandoned the said claim. Admittedly, the award was made in the year 1992. The first writ petition was filed in the year 2002 and the present writ petition has been filed in the year 2004. The petitioner could have claimed the relief in regard to reference of his petition allegedly filed in the Office of the Collector, to the Court of competent jurisdiction, in the previous petition, if not as a principle relief, at least without prejudice in the alternative. It is not that the petitioner made no mention about the relief for compensation in the previous writ petition. Interestingly Paragraph 9 of that writ petition reads as under:-

"9. That the land of the poor farmers were acquired by respondent No. 1 i.e. Land and Building Department on emergent basis in the year 1990 but they have not paid/tendered the compensation of land in question to the farmers. Respondents have violated the mandatory provisions of Section 17(3A) of the Land Acquisition Act Therefore the notification issued u/s 17(1) is liable to be quashed on this ground alone."

7. It is clear from the bare reading of the said paragraph that the petitioner did not even refer to the petition alleged to have been filed in the office of the Collector on 27th July, 1992. The Court must draw adverse inference in the facts and circumstances against the petitioner for not specifically pleading this averment in the earlier writ petition read in conjunction with the fact that the receipt of the said petition is specifically disputed by the respondents.

8. The conduct of the petitioner would certainly disentitle him from claiming any relief under Article 226 of the Constitution of India. After the respondent had denied the fact that the petition u/s 18 was filed in the office in the Collector, the Court had passed the following order on 8th April, 2005 :-

"The learned counsel appearing for the petitioner has produced on record a copy of the application which he had filed u/s 18 of the Land Acquisition Act, for enhancement of the compensation, containing the endorsement of the Department. The same is ordered to be taken on record and be kept in a sealed

cover till further orders.

The petitioner is directed to be present in Court on the next date of hearing.

Renotify on 14th April, 2005.

The records shall be produced by the respondents in Court on the next date of hearing."

9. After passing of the said order, an affidavit was filed after 12th April, 2005 of Shri Chandu Lal Verma, Advocate stating that he was counsel for Jagdish and he had taken up the assignment to file a petition u/s 18 of the Act on behalf of the petitioner. It was further stated in the said affidavit that " I have prepared the petition and filed the same before the Land Acquisition Collector on 27th July, 1992. The Clerk who was sitting in the office of the Land Acquisition Collector had given me the diary No. 1332. The said diary No. is written by my diary clerk in his hand writing". Thereafter another affidavit of the Clerk was also filed to substantiate this fact. On the earlier occasion, the impression given to the Court was that said acknowledgment (Diary No. and date) was recorded by the Office of the respondent but later on the stand was changed and these two affidavits were filed in support thereto. We have already stated that we are unable to believe that the petitioner had filed petition u/s 18 of the Act before the respondent on 27th July, 1992. We hardly, see any justification on the part of the Advocate and the Clerk to file such affidavits in face of the facts aforenoticed. However, we would prefer to leave the matter at that.

10. The respondents have specifically denied that any petition was filed in the office of the Collector on 27th July, 1992 and it was only for the first time on 17th September, 2004 that petition was presented in the Office of the Collector for which an acknowledgment was duly given as per practice of the respondent office to the petitioner. This application was rejected being barred by time and on the ground that respondents have no jurisdiction to condone the delay in filing the said petition.

11. The award was in relation to the land in question was made on 19th June, 1992. As per the case of the petitioner himself, he had been visiting the office of the Collector on various occasions for pursuing the petition, allegedly filed on 27th July, 1992. Apparently, he had the knowledge of the contents of the award. If the petitioner had no knowledge of the contents of the award, he could not have filed the petition u/s 18 of the Act as per his own version. Thus, the prescribed limitation of six weeks in terms of section 18(2) would commence from that date. But the receipt of the petition u/s 18 alleged to have been filed by the petitioner on 27th July, 1992 is specifically disputed by the respondents which we are quite willing to believe that no such petition was filed on that date; as the petition was filed only on 17th September, 2004 which obviously, is barred by limitation. Since we are holding that the petitioner has failed to prove by any cogent or reliable documentation or otherwise that he had actually submitted the petition on 27th July, 1992, we would give advantage to the petitioner on that

account and we would believe that contents of the award were known to the petitioner only subsequently thereafter and admittedly the petitioner had received compensation for the acquired land on 13th July, 2003 i.e. the date on which the petitioner actually received the cheque payable to him on account of compensation of the acquired land. Therefore on that date, the petitioner knew the contents of the award i.e. the area acquired, compensation paid and the basis for determining the market value of the land. The petitioner had complete knowledge of the award and its contents at least on 13th July, 2003 and ought have filed the petition for enhancement of compensation in accordance with the provisions of the Land Acquisition Act within six weeks. But the petitioner filed the petition only on 17th September, 2004 i.e. more than a year after receiving the amount of compensation. The cumulative effect of the pleadings of the parties before us, examined in the light of the fact that petitioner had received the compensation on 13th July, 2003, we would hold that the petition was filed beyond the prescribed period of limitation and as such has rightly been rejected by the respondents.

12. The Collector has no power to condone the delay in filing a petition u/s 18 of the Act is an issue which is no more rest integra has been finally settled by the Supreme Court in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, . The petitioner had received the compensation on the basis of the award of which he claims to have knowledge already, on 13th July, 2003, when the petitioner received the payment of the awarded compensation. On that date, he would have the knowledge of the essential contents of the award. Under no circumstances, the petitioner can relieve himself of the consequences that the limitation would start running against him w.e.f. 13th July, 2003 in all events. In this regard, reference can be made to a recent Division Bench judgment of this Court in the case of Sh. Bale Ram v. Land Acquisition Collector (CW No. 1179/2005) decided on 12th May, 2005 where the Court while relying upon the judgment of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, , held as under :-

"These documents clearly show that the petitioners had complete and full knowledge and information about the passing of the award and essential contents thereof for the purposes of upholding their remedy u/s 18 of the Act in accordance with law. The limitation for filing an application by the petitioner u/s 18 thus would commence at best from 23rd March, 2001 and even if any liberal attitude, which is not called for, is given to the petitioners, then the limitation would commence from 3rd December, 2001 and would expire on 23rd September, 2001 and 3rd June, 2001 while admittedly the application u/s 18 of the Act was filed on 30th May, 2002 and 3rd June, 2002.

The Supreme Court in the case of Msmt. Qaisar Jehan Begum (supra) had granted relief to the petitioner because their Lordships of the Supreme Court as a

finding of fact held that the claimants had no knowledge of the contents of the award and did not know the amount of compensation which have been awarded. This judgment, Therefore, is of no help to the petitioners as they themselves had submitted all necessary documents for payment of compensation including all essential contents required for that purpose."

13. Conduct of a party is a relevant factor to be considered by the Court in every proceedings before the Court. Every party when approaches the Court, should approach it with complete facts and clean hands. Withholding of facts or misrepresentation before the Court would normally disentitle a party of a relief which he may be otherwise entitled to, more particularly when the Court is exercising its discretionary powers under Article 226 of the Constitution of India. Equity follows law and it acts on the conscience. To obtain an equitable relief, the party must himself be prepared to do equity. It is a settled principle of law that where, even by analogy, the rule of law did not apply, equity, formulated and applied its own routes to avoid injustice and prevent abuse of the process of law. "To obtain equitable relief the party approaching the Court must be prepared to do equity in its popular sense and what is right and fair, not only to the other side but even before the Court." He who comes to the Court for equitable relief must approach the Court with clean hands. This maxim is related to *ex turpi causa non oritur actio* of the common law. Though, very similar to the maxim, it differs from it in looking to the past rather than the future" (Snell's Equity, 29th Edition, page-31)

14. The maxim "Delay defeats Equity" as it aids the vigilant and not the indolent, is also a well-established norm which applies with equal force to exercise of extraordinary jurisdiction of the High Court in the nature of prerogative writs. The relief claimed by the petitioner being *jura in personam* suffers from the defect of delay and latches as well as not doing the equity which is expected of the petitioner in all fairness. The petitioner has made an obvious attempt to mislead the Court and infringe the cardinal principles of basic rule of law. In the case of *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , the Supreme Court applied the doctrine of "Delay defeats latches" to the cases under the Land Acquisition Act and held that "21 years long delay after issuance of the notification and 16 years from the date of making over possession and passing of the award, the relief was belated" and dismissed the writ petitions. The principles established in this case are squarely applicable to the facts of the present case.

15. In view of the facts and circumstances of the case, going through the conduct of the petitioner and the fact that the petitioner did not even disclose in the present writ petition about the factum of his having filed the earlier writ petition (CW 2613/2002), after pronouncement of the award in the year 1992, we are of the considered opinion that the petitioner is not entitled to grant of any equitable relief in exercise of powers of this Court under Article 226 of the Constitution of India. Hence, we would dismiss this writ petition with costs of Rs.

10,000/-.