

(2010) 04 DEL CK 0382

In the Delhi High Court

Case No : Writ Petition (C) No. 1645 of 2007

Sh. Mahender Singh and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 10, 12, 4, 5A, 6

Citation : (2009) 1 ILR Delhi 68

Hon'ble Judges : Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Anand Yadav and Anita Tomar, for the Appellant; R.N. Singh and A.S. Singh for Respondent No. 1 and Sanjay Poddar and Sandeep Anand, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioners have filed the present petition under Article 226 of the Constitution of India seeking quashing of the notification dated 25.10.2002 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), the declaration dated 9.6.2003 u/s 6 of the said Act and the Award dated 12.4.2005 in respect of the land of the petitioners comprising of Khasra No. 50/3 min (0-14) and 50/8 min (4-10) situated in Revenue Estate of Village Rithala, Delhi.

2. There has been some past history to the land in question on account of the fact that earlier also, a notification was issued under the said Act but the land of the said petitioners was left out. The petitioners had purchased the land from the recorded owners of the property and a decree was also passed in favour of the petitioners on 14.1.2004 by the Civil Judge, Delhi against dispossession from the suit property. However, these aspects are not germane for the controversy in question as undisputedly the notification u/s 4 of the said Act on the basis of which the land of the petitioner is sought to be acquired is dated 25.10.2002.

3. It is not in dispute that there is no infirmity with the said notification in terms of its due publication. The petitioners sought to file no objection u/s 5A of the said Act and a declaration was issued u/s 6 of the said Act. The grievance of the petitioners is that no notices were issued or served on the petitioners u/s 9, 10 and 12 of the said Act.

4. In respect of the aforesaid, learned Counsel for the LAC has produced records to show dispatch of notice to petitioner No. 2 which has not been received back by the department. Petitioners No. 3 to 5 are brothers of petitioner No. 2 while petitioner No. 1 is the father all living at the same address. However, the material aspect in the present case is the settled legal position arising from the Full Bench judgment of this Court in *Roshanara Begum v. Union of India* 67 (1996) DLT 206 which has affirmed by the Supreme Court in *Murari and Others Vs. Union of India (UOI) and Others*, to the effect that the consequence of non-compliance of Section 9 and 10 of the said Act, cannot be that the Award becomes defective or non-est. Learned Counsel for the LAC has also drawn our attention to the observation in *Nasik Municipal Corporation Vs. Harbanslal Laikwant Rajpal and Others, etc.*, where the plea arising from the information not being given u/s 9 of the said Act was found not to make the Award invalid.

5. Despite the aforesaid clear enunciation of legal principles, learned Counsel for the petitioner still pressed ahead on the same point and sought to rely upon a much earlier judgment of a learned Single Judge of the Madras High Court in *Periya Angammal and Ors. v. The State of Tamil Nadu* 1982 MLJ 98. The learned Counsel contends that if the collector perversely or willfully or fraudulently omits to serve the notice to the person concerned, the proceedings which follow culminating in the Award can be characterized to be fraudulent, in-operative and ineffective.

6. In the present case, in our considered view, firstly, in view of the subsequent legal position enunciated the issue no more remains res-integra. There is no such separate category of notices carved out either by the Full Bench of this Court or by the Supreme Court. Secondly, in the facts of the case also, we find no such willful or fraudulent action. The notice was sent only to petitioner No. 2 and to no other but then as observed above these are the brothers and the father who were residing at the same given address. Further, we are dealing with the parties who have not availed of the opportunity u/s 5A of the said Act to object to the notification u/s 4 of the said Act.

7. Learned Counsel for the petitioner sought to raise the issue about the acquisition itself not being really for planned development of Delhi for the reason that possession of other lands acquired has not been taken over and even land which was acquired and after development handed over to third parties is not being used in accordance with law.

8. We find these are no reasons to defeat the acquisition proceedings under the said Act and it is not even open to the petitioner to raise all these issues having

not deemed it appropriate to file objections u/s 5A of the said Act which is the opportunity given to the land owners to put force to their point of view so that the competent authority may not issue the declaration u/s 6 of the said Act in case it finds any merit in the objections.

We find the present Writ Petition without any merit and argued against all principles settled in law.

9. The Writ Petition is consequentially dismissed with costs quantified at Rs. 10,000/-. Interim orders stand vacated.