

(1997) 01 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Petition No. 1228 of 1987

Sham Sunder Khanna

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 65 DLT 336 : (1997) 40 DRJ 575 : (1997) RLR 101

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : S.P. Kaira and Sumeet Bansal, for the Appellant;

Judgement

Vijender Jain, J.

(1) It has been contended before me by Mr. Kalra, learned counsel for the petitioner, that the case is squarely covered by a Full Bench decision of this Court Roshanara Begum Vs. Union of India reported in 1996 (1) AD 7.

(2) On the other hand, Mr. Bansal, learned counsel appearing for respondent No.4-Delhi Development Authority (in short "DDA"), has contended that the writ petition has been filed at a belated stage and the petitioner must suffer for delay and laches and on this preliminary ground the petition be dismissed. Mr. Bansal has further contended that the Notification was issued u/s 4 of the Land Acquisition Act in the year 1959 i.e. 13.11.1959, whereas declaration was issued under Section 6 of the Act on 21.1.1969 and the award was made in the year 1981-82. According to Mr. Bansal, the possession of the land in question was taken in the year 1986, which is disputed by Mr. Kalra. On the basis of these averments, Mr. Bansal has contended that writ petition was filed in 1987, Therefore, there was delay in filing the writ petition and petition be dismissed.

(3) MR. KALRA has argued that the petitioner had purchased this land in an auction from the Rehabilitation Department and the land is an evacuee property and Notification issued under Section 4 of the Act in turn did not apply to the

land in question. He has relied upon para-193 of Roshanara Begum's case (supra). On the basis of observations made in the case of Roshanara Begum's case (supra), Mr. Kalra has contended that the petitioner's land could not have been the subject-matter of the Notification issued under Section 4 of the Land Acquisition Act and, Therefore, any subsequent proceedings initiated would be invalid and there is no delay and laches as far as the petitioner is concerned. He has also disputed the claim of the respondent that the possession of the land in question was taken in the year 1986, on the other hand, Mr. Kalra has contended that the possession of the petitioner's land was forcibly taken by the respondent-DDA in the year 1993 and the petitioner had filed a contempt petition (CCP No.104/1994) in the year 1994.

(4) I have heard the learned counsel appearing for both the parties at length. The contention of the petitioner that he has purchased the land in an auction from the Department of Rehabilitation, would demonstrate that the land was an evacuee property. The sale certificate was issued to the petitioner on 31st January, 1961. Long after issuance of the notification u/s 4 of Land Acquisition Act, which also shows that for all purposes the land of the petitioner was an evacuee land and was exempted from the operation of the notification. It seems that Dda preferred an appeal against the judgment of Full Bench of this Court in Roshanara Begum's case (supra) holding that the notification on the face of it is not applicable to the land, which is an evacuee property and the said notification is non-est and any proceedings taken for acquiring the land on the basis of such notification issued u/s 4, which does not pertain to the land in question, would be void ab initio and without jurisdiction. That appeal was dismissed by the Supreme Court in liming on 8.11.1996.

(5) That being the situation, the aforesaid Notification was in relation to evacuee property, the said notification could not cover the land of the petitioner as it was evacuee property. Following the ratio of Roshanara Begum's case (supra), I allow the writ petition of the petitioner. No Notification could have been issued in relation to the land of the petitioner. Therefore, subsequent proceedings for acquisition were void. That being the situation, the main objection of the respondent-DDA cannot stand the scrutiny of law that the petition is filed belatedly.

(6) In my considered opinion, once it is shown that there was no notification issued u/s 4 pertaining to the land, which is an evacuee property and the subsequent proceedings being void, the petitioner would not be debarred from challenging such proceedings even belatedly. I allow this petition and direct the respondents to hand over possession of the land in question to the petitioner within four weeks from today.

(7) With this observation this writ petition is allowed and rule is made absolute.