

(2002) 02 DEL CK 0137

In the Delhi High Court

Case No : CM 1499/99 and 1404 of 2001 in LPA No. 82 of 1978

Shri Avtar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151
Land Acquisition Act, 1894 — Section 11, 4, 48, 6

Citation : (2002) 2 AD 797

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Valmiki Mehta and N.S. Negi, for the Appellant; Sandeep Sethi and Sushil Salwan, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The appellant in this Letters Patent Appeal had challenged Order dated 10th October, 1978 passed by the learned Single Judge of this Court dismissing the Writ Petition of the appellant. In the writ petition the appellant had prayed for quashing of notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act, for short) as well as for quashing the award dated 27th July, 1973 made u/s 11 of the Act. The learned Single Judge had dismissed the writ petition principally on the ground that section 48 of the Act provided the only way by which the Government could withdraw from the acquisition of any land.

2. The aforesaid Letters Patent Appeal was ultimately allowed by the Division Bench of this Court vide judgment dated 23rd March, 1992 whereby and whereunder notifications dated 13th November, 1959 and 1st January, 1969 in respect of the Suit land were quashed and so also the award dated 27th July, 1973. The Division Bench noted in the judgment that notwithstanding the notification under Sections 4 and 6 of the Act and the Land Acquisition Collector acquiring the land in question, the respondent had sanctioned the building plans

of the appellant. The Court also noted the background under which Delhi Development Authority (hereinafter referred to as DDA, for short) had sanctioned the building plans. The Court also recorded the submission of the appellant to the effect that after the sanction of the plans, the appellant had constructed a building on the land in question.

3. Seven years after the aforesaid judgment, Maharani Bagh Residents Welfare Association (hereinafter referred to as applicant, for short), which was not party to the proceedings, filed CM.1499/99 for recalling of judgment and Order dated 23rd March, 1992. In this application it is alleged that the appellant has played fraud on this Court.

4. It may be mentioned at this stage that when the matter was taken up for final hearing on March 23, 1992 none of the respondents or their counsel appeared in this case and Therefore after hearing the counsel for the appellant the judgment was rendered. The applicant, as afore-mentioned, was not a party in the Writ Petition or in the Letters Patent Appeal. In fact the applicant is not otherwise concerned with the dispute in respect of the land which is essentially the subject matter between the appellant and the official respondent.

5. Notice of this application was issued on 14th May, 1999 for 22nd July, 1999. Respondent no.4-DDA was also served with the notice of this application and appeared through counsel on 22nd July, 1999. It accordingly came to know of the ex-parte decision dated 23rd March, 1992 atleast after the service of the notice of CM.1499/99. However, no steps were taken by the respondent no.4-DDA immediately thereafter in the matter and on 16th October, 2001 the respondent no.4 moved CM.1404/2001 u/s 114 read with Section 151 of the CPC for recalling the Order dated 23rd March, 1992. In this application also the respondent no.4 has stressed that the appellant has procured the judgment dated 23rd March, 1992 by playing fraud on this Court.

6. In this way, the applicant in CM.1499/99 and respondent no.4-DDA - applicant in CM.1404/2001 are seeking recall of the judgment and Order dated 23rd March, 1992.

7. In so far as Maharani Bagh Residents Welfare Association is concerned, it has no locus standi to file any such application and the same is not maintainable inasmuch as this applicant was neither party in the Writ Petition nor in the Appeal. Applicant being not a party in the proceedings is not bound by the judgment. If the applicant is prejudiced by the said judgment in any manner and if it is the case of the applicant that the judgment was obtained by fraud, needless to mention, the applicant shall have right to challenge this judgment in collateral proceedings as well at any point of time. After the appeal was disposed of by judgment and Order dated 23rd March, 1992 nothing survived in this appeal and it would not be open to the applicant, that too stranger to the proceedings, to move such an application and seek recall of that Order more particularly when the applicant is not remediless. Accordingly, CM.1499/99 is

dismissed as not maintainable.

8. Coming to CM.1404/2001 filed by the respondent no.4/DDA, we are of the opinion that such an application is clearly belated and time barred having being filed more than 9-1/2 years after the judgment was delivered. In the application, apart from stating that when the appeal was taken up for final hearing on 23rd March, 1992, none of the respondents appeared, no reasons are at all given as to why the counsel for the respondent no.4 who was dealing with the matter could not appear. Thus, there is no Explanation worth the name for non appearance of the counsel on the date when the matter was taken up for final hearing. Not only this, as already pointed out above, the DDA in any case came to know about the passing of the judgment and Order dated 23rd March, 1992 atleast by 22nd July, 1999 when it received notice of CM.1499/99. Even from this date the respondent no.4 has taken more than two years in filing this application. For this delay also there is no Explanation offered by the DDA. Even no application for condensation of delay is filed seeking filing of the review application. For this reason alone, we are not inclined to entertain this application which is dismissed as such.

9. We may point out that the respondent no.4-DDA had strenuously argued that the judgment dated 23rd March, 1992 had been obtained by the appellant by playing fraud upon the Court. He also referred to the averments made in the counter affidavit filed in the Writ proceedings by the DDA wherein allegations of the alleged fraud were stated. These allegations are repeated in this CM as well. However, it is not necessary for us to go into this controversy. As already pointed out above, if the judgment is obtained by fraud than such a judgment is a nullity and in these circumstances it would always be open for the DDA as well to file appropriate Suit for declaration to the effect that the judgment was not binding and is void. We may point out here that the case of the appellant is that no such fraud has been played. The allegations regarding fraud are disputed questions of fact which can even otherwise be gone into only after the parties lead their evidence in the appropriate proceedings that may be filed by the respondent no.4 if it so chooses.

10. Therefore, leaving this question open both the applications are dismissed.