
(2008) 04 DEL CK 0030
In the Delhi High Court
Case No : WP (C) No. 1974 of 1986

Shri M.S. Dewan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 12(1), 12(2)
Land Acquisition Act, 1894 — Section 17, 18, 4, 6

Citation : (2008) 103 DRJ 255 : (2008) 2 ILR Delhi 1078

Hon'ble Judges : T.S. Thakur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—More than 20 years after the issue of a preliminary notification u/s 4 and a Declaration u/s 6 of the Land Acquisition Act, the petitioner in this writ petition has assailed the validity of the acquisition proceedings in respect of a parcel of land measuring 66 Bighas and 6 bids was situate in village Ladha Sarai, Delhi for the public purpose of Planned Development of Delhi. Two primary grounds were urged before us in support of the said challenge. Firstly, it was contended that the delay in the completion of the acquisition proceedings vitiated the said proceedings. That contention was, however, given up by Mr. Vashisht, learned Counsel for the petitioner, in the course of his submissions in the light of the decision rendered by a Full Bench of this Court in Roshanara Begum v. Union of India 1996 I AD (Del) 6. We need not, Therefore, dilate on that aspect of the matter. The second ground of challenge was, however, pursued by Mr. Vashisht who contended that the acquisition proceedings qua the land in question were unsupported by a preliminary notification in as much as the said notification had no application to evacuee land. Since the land owned by the petitioner was at one point of time evacuee land, the same, according to the learned Counsel, was

exempt from the purview of the notification, hence immune from acquisition. In as much as the Collector had included the said land in the declaration u/s 6 and the award made by him, he committed a mistake that required correction by this court in exercise of its writ jurisdiction.

2. On behalf of the respondents, it was per contra argued by Mr. Poddar that not only was the writ petition barred by unexplained delay and laches, but the petitioner had no locus standi to maintain the same. Our attention was drawn by Mr. Poddar to an order passed by this Court on 9th March, 2005 whereby Mr. Vashisht, Counsel for the petitioner, was directed to take instructions whether he had already sold the land and also whether and if so when had the petitioner paid the sale consideration for the same to the concerned department. No affidavit has, despite that direction, been filed by Mr. Vashisht. The respondents had, however, filed an additional affidavit on 5th April, 2005 inter alias stating that the Land Acquisition Collector had issued the preliminary notification on 23.1.65 followed by declaration on 7.12.65 and an award on 16.10.89. It was further stated that the petitioner had not only participated in the award proceedings but had accepted the same as per his own showing and even got a reference u/s 18 of the Act made for the enhancement of the amount of compensation. It is further alleged that the petitioner had assigned his rights in the property in question in terms of an assignment deed dated 27th September, 2004 for a consideration of Rs. 50 lakhs and thereby lost all interest in the property including the right to challenge the acquisition proceedings. It was further stated that the petitioners had further transferred their right to third parties by executing deeds of Power of Attorney in their favor. Copies of some of such documents have been enclosed and marked Annexure R3/2 collectively. A suit for declaration and permanent injunction for cancellation of the assignment deed was also pending but all these facts have been withheld by the petitioner from the court, despite a direction issued to him to state whether he has transferred the property in question and received the full consideration for the same.

3. We have given our careful consideration to the submissions made at the bar and perused the record. The writ petition is, in our opinion, barred by inordinate and unexplained delay and laches. The preliminary notification as seen earlier was issued as early as on 23.1.65. A final declaration u/s 6 was also issued on 7.12.65. There is no Explanation as to why the petitioner slept over the matter for more than two decades before filing this petition. The legal position regarding the approach to be adopted in cases challenging land acquisition proceedings has been settled by a long line of decisions of the Supreme Court and that of this Court. The decisions emphasize the need for the petitioner to act diligently and to approach the writ court in good time. Far from showing any diligence, the petitioner has been totally remiss in agitating the matter at the appropriate stage. He has allowed the proceedings to attain finality without raising a little finger against the same. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the declaration u/s 6 was issued in the year 1966 whereas the writ

petition was filed in the year 1972. The Supreme Court considered this delay to be sufficient to warrant dismissal of the writ petition on the ground of laches. The Court held that if there was any defect in the notification u/s 4 issued as early as in the year 1959 and a declaration u/s 6 was issued in 1966, there was no reason why the petitioners should have waited till the year 1972 to come to the Court. It was not, declared the court, permissible for the petitioners to sit on the fence, allow the Government to complete the acquisition proceedings on the basis of notifications issued under Sections 4 and 6 of the Act and then attack the same on grounds which were available to them when the notification was published. The following passage is in this regard instructive:

To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners.

4. In *Indrapuri Griha Nirman Sahakari Samiti Ltd. Vs. The State of Rajasthan and Others*, . The Supreme Court reiterated the view taken in *Aflatoon's* case and observed:

This Court in the recent unreported decision in Writ Petn. No. 362 of 1972 decided on 23-8-1974 : now reported in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, held that if persons allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then attacked the notification on grounds which were available to them at the time when the notification was published it would be putting a premium on dilatory tactics.

5. In *Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others*, , there was a delay of two years in filing the petition, assailing the proceedings under the Land Acquisition Act, 1894 (for short "the Act"). The Court held that in cases where land is needed for a public purpose and that too for implementation of a scheme under the Urban Development Act, the Courts need to take care not to entertain the challenge to the acquisition proceedings on the ground of delay for otherwise it would cause serious prejudice to the person for whose benefit the Scheme was framed.

6. In *Rudradhar R. Trivedi Vs. State of Maharashtra and another*, , the High Court had dismissed the petition on the ground of inordinate delay and laches. In an appeal against the said order, the Supreme Court held that the discretionary remedy available to a litigant under Article 226 of the Constitution could not be invoked after long and unexplained delay. Similar is the view taken by the Supreme Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , where the Court reiterated that undue and unexplained delay in the filing of the petition before the High Court was in itself sufficient to

deny to the petitioner the discretionary relief under Article 226 of the Constitution. The Court declared that equity favors only the vigilant and not the indolent litigant. The question of granting an order of cancellation of a notification issued for a public purpose did not Therefore, arise. Reference may also be gainfully made to the decision of the Supreme Court in Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, , where the Court observed:

It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times : even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favored rather than claiming disfavor. Law courts never tolerate an indolent litigant since delay defeats equity? the Latin maxim *vigilantibus et non dormientibus jura subveniant* (the law assists those who are vigilant and not those who are indolent).

7. In the light of the above settled legal position and the decisions of the Supreme Court in Vishwas Nagar Evacuee Plot Purchasers Association and another Vs. Under Secretary, Delhi Admn. and others, , The Ramjas Foundation and Others Vs. Union of India and Others, , M. Ramalinga Thevar Vs. State of Tamil Nadu and Others, and Prem Chand Gupta and Ors. v. UOI and Ors. WP (C) No. 1131/1983 disposed on 20th December, 2007, we have no hesitation in holding that the present writ petition is barred by unexplained delay and laches and is, Therefore, liable to be dismissed on this ground alone. Reference may in this regard be made even to the decisions of this Court in Prem Sagar Vs. Union of India (UOI) and Others, , Babu Ram and Ors. v. Union of India and Ors. 125 (2005) DLT 259, delivered in near identical circumstances.

8. There is considerable merit even in the alternative submission made by Mr. Poddar that the petitioner had by reason of the deed of assignment executed by him for a consideration of Rs. 50 lakhs lost all interest in the property and the locus to maintain the present writ petition. The petitioner has despite an opportunity granted to him failed to make a clean breast of the true facts. He has avoided to file an affidavit stating whether he has sold the land for valuable consideration during the pendency of the proceedings. On the contrary, the respondents have not only filed an affidavit specifically asserting that the petitioner has sold the land for valuable consideration but placed on record a copy of the assignment deed from a reading whereof it is evident that the petitioner has sold/assigned/transferred all his rights, titles, interest, shares, accountable and claims etc. including a claim in the original compensation amount whatsoever and the right to seek further enhancement in favor of the assignee for a sum of Rs. 50 lakhs received by him towards consideration. The relevant portion of the assignment deed reads:

And Whereas the Vendor/Assignor/Seller for his bonafide/legal needs and requirements have willingly agreed to assign/sell/transfer all his rights, title and interest, shares, actionable claim and claims etc. in the original compensation

amount whatsoever assessed by LAC and further to be enhanced/re- assessed and settled in future from the date hereof in respect of my 22 bighas and 01 biswa (equal to 4.60 acres) land out of my one-half share of the land bearing Khasra No. 433/221 min situated at Village LADHA SARAI, Tehsil Hauz Khas, New Delhi, whatsoever to be settled or enhanced by the Court, in reference or in revision or appeals or SLP of the same in higher courts with all rights to recover and receive the same from the concerned courts, authorities/departments, for total agreed sale consideration of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) to the Vendee/Assignee/Purchaser and the Vendee/Assignee/Purchaser have agreed to purchase the same. The entire consideration amount of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) has already been received by the Vendor/Assignor/Seller from the Vendee/Assignee/ Purchaser.

9. The assignment deed by a specific term records that from the date of the execution of the deed that the vendor/assignor had been left with no right, title, interest, claim whatsoever in the land or the compensation payable in the same. This is evident from para 5 of the Assignment Deed which reads as under:

That now the Vendor/assignor had been left with no right, title, interest, claim, shares or concern of any nature or any kind whatsoever with the said land and its original compensation amount or enhanced compensation amount of with all its statutory benefits of any kind, and the Vendee/Assignee has become the absolute owner of the same hereinafter.

10. In the light of the above, we have no hesitation in holding that the petitioner has ceased to have any interest in the property which formed the subject matter of the acquisition proceedings. Since the assignee and his transferee did not come forward to seek substitution in place of the petitioner, we have no option but to hold that this writ petition, is on account of the above subsequent developments, no longer maintainable.

11. The third and the only other aspect that needs to be examined is whether the land in question was unsupported by the preliminary notification. It is not in dispute that the land in question was an evacuee land at one point of time which was then acquired by the Government in terms of Section 12 of The Displaced Persons (Compensation and Rehabilitation) Act, 1954. As a consequence of the said acquisition, all rights held by the company in the evacuee land stood extinguished and the land wholly vested in the Government of India and free from all encumbrances. This is evident from Section 12(2) of the said Act which reads as:

On the publication of a notification under Sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

12. It is, in the light of the above, futile to argue that the acquisition proceedings

were unsupported by any preliminary notification u/s 4 as the same had exempted evacuee land from the operation thereof. With the acquisition of the evacuee land by the Government of India u/s 12 and the extinguishing of the right, title, interest of the evacuee in the same, the land ceased to be an evacuee land. It is not in dispute that the petitioner was the highest bidder in the auction conducted by the Government. On that basis, Therefore, the petitioner had acquired valuable right in the property in question which was legally acquirable. Assuming, Therefore, that the land in question was on the date of the preliminary notification vested in the Government, as the sale certificate in favor of the petitioner issued only on 16.7.69, yet the right of the petitioner as the highest bidder for the same was a valuable right which the Government had to acquire before utilizing the land for any public purpose. This aspect is covered by the decisions of the Division Bench of this Court in *M.S. Dewan v. Union of India* WP(C) 1400/1986 decided on 6th February, 2003 and *DDA v. Saraswati Devi and Ors.* 141 (2007) DLT 484. In the *M.S. Dewan's* case, the Division Bench observed:

We have already held above that the title in the property passed in favor of the petitioner on 14.11.1961. Even assuming that the title had not passed to the petitioner till 22.7.1963, when sale certificate was issued, in that case also we do not find any substance in the submission made on behalf of the petitioner that the property could not have been notified for being acquired being the property of the Government till 22.7.1963 and the Government could not have acquired its own property. The reason in our holding so is that the property on being put to auction on 28.12.1960, the petitioner was declared to be the highest bidder against his verified claims of the property left behind in Pakistan. The verified claims were surrendered by him as a part of consideration for purchase of the property in question in public auction. The balance consideration was paid in cash. The entire consideration stood paid by 14.11.1961. The right of the petitioner in the property on being declared to the highest bidder was a valuable right, which the petitioner could enforce against the respondents in compelling the respondents to transfer the property in his name. Such a right could be acquired. The property on being put to auction and on the petitioner being declared to be the highest bidder and on receipt of entire sale consideration went out of compensation pool. The petitioner alone had interest in the property. This interest could definitely be acquired pursuant to the notification issued u/s 4 of the Act. Therefore, it cannot be said that the notification u/s 4 of the Act was non est. It was for the petitioner to have raised a claim. Proceedings for acquisition thus cannot be challenged on the ground that such interest could not have been acquired. Therefore, no fault can be found in the notification u/s 4 of the Act.

13. In *Saraswati's* case, a similar view was taken by the Division Bench wherealso the challenge to the acquisition proceedings in similar circumstances, was repelled by this court and the right acquired by the highest bidder in a public auction was held to be legally acquirable for the public purpose. The following passage from *Saraswati's* case is in this regard relevant:

The impugned notification u/s 4, 6 and 17 of the Land Acquisition Act was in the meantime issued on 7th March, 1962 followed by an award made in June, 1982. The question then is whether an acquisition in anticipation of the issue of a proper sale certificate was legally permissible. A complete answer to that question is provided by the Division Bench decision of this Court in *M.S. Dewan v. UOI and Ors.* WP (C) No. 1400/1986 decided on 06.02.2003. The said case also related to acquisition of land which had already been auctioned but in relation to which a sale certificate had not been issued as on the date of the notification. This Court held that the right of the highest bidder in the property notified for acquisition was a valuable right which could be enforced against the respondents for compelling them to transfer the property in his name. Such a right could be legally acquired for a public purpose. With the property put to auction and the highest bidder paying the sale consideration, the auction purchaser alone had an interest in the property which interest was capable of being acquired. That is the position in the instant case also. The land in question having been auctioned and the husband of the writ petitioner having emerged as the successful bidder, he had acquired a valuable and legally enforceable right in the property which was capable of acquisition. The argument that since the sale certificate was issued much after the issue of the notifications under the Land Acquisition Act, the land continued to vest absolutely in the Government and, could not, Therefore, be acquired has Therefore, to be rejected.

14. In the light of the above pronouncements, we have no hesitation in holding that there was no illegality in the acquisition of the land in question for the public purpose of planned development of Delhi. In the result, there is no merit in this petition which fails and is hereby dismissed with costs assessed at Rs. 5000/-.