

(2005) 05 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (C) No. 834 of 1997

Shri Om Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 22
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12
Land Acquisition Act, 1894 — Section 10, 11, 16, 17(4), 18

Citation : (2005) 120 DLT 514

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

Bench : Division Bench

Advocate : Anand Yadav, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The Petitioner in this petition under Article 226 of the Constitution of India prays for issuance of a writ in the nature of mandamus and certiorari calling for records of the Respondents and for quashing the acquisition proceedings in relation to Khasra No. 2008/1798/162 measuring 04 bids was situated in Revenue Estate, Karkardooma Illaqa Shahadra, Delhi and also the Notification dated 13.11.1959 issued u/s 4 of the Land Acquisition Act (hereinafter referred to as the 'Act') and the Declaration dated 2.1.1969 issued u/s 6 of the Act.

2. The Petitioner claims to be the owner in possession of property No.65, South Dharona Road, Vishwas Nagar, Shahdara, Delhi measuring around 200 sq. yards in the Khasra No. afore-stated. The property was acquired evacuee property u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 vide Notification dated 7.7.1955 issued by the Ministry of Rehabilitation, New Delhi. The property continued to be an evacuee property by Notification u/s 4 of the Act wherein the Delhi Administration acquired nearly 34070 acres of land in various

villages in Delhi. The property in question was put to auction by the Managing Officer of the concerned Ministry. The auction of the property was held in which the Petitioner had participated and he was declared as the highest bidder and had paid for a total sum of Rs.2,100/- on 16.8.1959. On the fall of the hammer the Petitioner paid a sum of Rs.210/- and remaining amount was paid by him at a subsequent stage. The sale certificate under Rule 90 (15) of the relevant Rules was issued by the Managing Officer on 27.7.1963 with effect from 19.5.1961 in favor of the Petitioner. In other words, the title of the property was conveyed to the Petitioner on 27.7.1963 when complete consideration was given by the Petitioner to the concerned department and as well as furnished the requisite documents.

3. The case of the Petitioner before the court is that as on the date of issuance of Notification u/s 4 the property could not be acquired being an evacuee property and exempted under the terms of the Notification itself. Further, it is stated that issuance of Notification/Declaration u/s 6 being made on 2.1.1969 and subsequent proceedings thereto would not effect the nature of the property and as such the entire acquisition proceedings taken by the Respondents in relation to the property in dispute are vitiated in law.

4. Upon notice the Respondents filed the counter affidavit. The facts have not been disputed by the Respondents. An objection has been taken that the possession of the property has been taken after pronouncement of the Award No.53A/81-82 and the same has been handed over to the Delhi Development Authority on 22.9.1986. In view of the provisions of Section 16 of the Act the property vests in the Government and the Petitioner cannot challenge the proceedings on any ground whatsoever in the present proceedings. It is stated that when the Notification dated 13.11.1959 was issued the evacuee property was not exempted from acquisition and the Respondents prayed for dismissal of the writ petition. At the very outset we may refer to the Notification issued by the Respondents u/s 4 of the Act. The relevant part of the Notification reads as under :

"It is hereby notified that the land, measuring 34070 acres and marked with blocks Nos. A to T and X in the enclosed map (annexure I) and the description of which has been given in annexure II excepting the following land in the blocks referred herein.

(a) Government land and evacuee land;

(b) the land already notified, either u/s 4 or u/s 6 of the Land Acquisition Act, for any Government scheme;

(c) the land already notified either u/s 4 or u/s 6 of the Land Acquisition Act for Housing Building Co-operative Societies mentioned in Annexure III;

(d) the land under graveyards, tombs, shrines and the land attached to religious institutions and waqf property is likely to be acquired for the above purpose."

5. The bare reading of the above Notification clearly shows that in terms of the Notification the Government land as well as the evacuee land which fell within the blocks mentioned in the Notification was exempted from acquisition.

6. It is a settled principle of law that the title in the property would pass to the auction purchaser under the rules only upon and after complete consideration is paid by the purchaser to the concerned department and thereupon a sale certificate is issued. The sale certificate takes effect from the date the complete consideration is paid and requisite formalities are completed by the purchaser. Before that date the property does not lose its character of being an evacuee property. The title in the property pre-supposes the payment of price in full and after the approval of the authority of the highest bid. Grant of certificate may relate back to the date of full payment. If the price is not paid the auction purchaser has no claim to the property. Reference in this regard, can be made to the various judgments of the Supreme Court where consistently this view has been accepted by the Court (see *Dr. Bhargava and Co. and another Vs. Sh. Shyam Sunder Seth by L.Rs.*, *Bishan Paul Vs. Mothu Ram*, *Bombay Salt & Chemical Industries v. L.J. Johnson and Ors* 1958 SC 289.) Further more it is also an equally well settled principle of law that for any proceedings to be taken under the provisions of the Act for acquisition of land, notification u/s 4 is a sine-qua-non. If the notification u/s 4 is defective or excludes certain area from the scope of acquisition then neither such an illegality can be cured nor scope of the notification enlarged subsequently.

7. In the present case, the Petitioner has also placed on record documents which show that in the year 1960-61 the petitioner had only paid a sum of Rs.420/- and thereafter, the demand was raised by the Department by their letter dated 23.1.1961. As already noticed, the sale certificate was issued in favor of the Petitioner on 27.9.1963 while Notification u/s 4 was issued on 13.11.1959.

8. On the strength of the above facts, learned Counsel appearing for the petitioner relied upon Full Bench judgment of this Court in the case of *Roshanara Begum Vs. Union of India*, and a Division Bench judgment of this Court in the case of *Matwal Chand v. Union of India W.P.(C) No. 2677/1981* decided on 15th April, 2004 to contend that once the property was an evacuee property at the time of acquisition and issuance of notification u/s 4 of the Act or subsequent Acts, it would be ineffective and inconsequential.

9. May be this preposition of law could hardly be disputed, keeping in mind the consistent view of this Court as well as the judgment of the Supreme Court. But the question that still requires consideration by the Court is that what is the effect of considerable delay and the fact that the possession of the land has already been taken by the authorities in accordance with law and thus, it is not open for the Court to question the validity of the notification dated 13th November, 1959.

10. As already noticed, the notification u/s 4 was issued on 13th November,

1959, declaration u/s 6 was issued on 2nd January, 1969 and after completing the acquisition proceedings, the award including the land in question was made by the Land Acquisition Collector on 22nd September, 1986. In the award, khasra number 2008/1798/162 was specifically mentioned and possession thereof was taken by the competent authority in furtherance to the Kabza Karwai recorded by the officials of the respondents on 22nd September, 1986 itself. The notification under sub-section (i) of Section 22 of Delhi Development Act was published, placing and giving the land to the DDA for the planned development of Delhi in terms of its earlier notification, vide notification dated 15th October, 1986. The property which is subject matter of the present writ petition, is specifically mentioned in the said kabza karwai report as well as the notification. In other words, on 22nd September, 1986/15th October, 1986 the property vests in the Government/Authority, free of any encumbrances and any restrictions. This is a complete divesting of any right in the property of its original owners as well as the nature of the property.

11. Even if the original notification was not applicable to the land in question, still upon conclusion of acquisition proceedings and land vesting in the appropriate government, the petitioner would not be able to challenge the proceedings. The Supreme Court has specifically held that there can be no challenge to the acquisition proceedings after possession of the land is taken and the land is vested in the State [Refer: State of Rajasthan and Others Vs. D.R. Laxmi and Others, and Delhi Development Authority Vs. Shyam Sundar Khanna and Others].

12. This subject was also explained by another Division Bench of this Court in the judgment dated 26th March, 2004 passed in W.P.(C) No. 2361/1987 and after scanning numerous case law on this aspect, following principle was stated:-

"In view of the aforesaid pronouncements, including the recent judgment of the Supreme Court in the case of Delhi Development Authority v. Shyam Sunder Khanna (supra), the principle which can be deduced is that even in the case of void order, the aggrieved party has to approach before such an order is enforced. Till the order is enforced (in the instant case to mean that till possession is taken) the aggrieved party may challenge the order and at that stage the question of delay, laches or waiver would not come in his way. However, after the order is enforced, namely, possession is taken and the writ petition is filed thereafter, considerations like delay, laches or waiver would become relevant even when contention raised is that the impugned order was void."

13. In the case of Shri Gajendra Kumar Vs. Union of India (UOI) and Others, , the Court while dealing with somewhat similar circumstances except to the extent whether it stood already determined that the property in question was an evacuee property or not held as under:-

"The petitioners are seeking quashing of Notification u/s 4 and Declaration u/s 6 of the Act (it is not understood why the petitioners have prayed for quashing

Notification u/s 4 of the Act when according to them it does not cover their land as it is excepted thereto) and notices under Sections 9 and 10 of the Act and also award bearing No. 60-82/83 in respect of the land of the petitioners. Such a prayer cannot be granted in a petition filed in the year 1987, i.e. much after the award, which was passed in the year 1983 and possession taken in the year 1984."

14. The petitioner on 29th May, 1971 had filed objections which were duly dealt with by the competent authority. The declaration u/s 6 of the Act had already been notified on 1st January, 1969 and thereafter, the award was made and possession taken on 22nd September, 1986. The petitioner has filed the present writ petition, after approximately 11 years, of his dispossession from the land. In the face of the kabza karwai and notification issued by the DDA u/s 22 of the Delhi Development Act, it essentially must be presumed that the land vests in the Government, free of any restrictions. The provisions of Section 16 of the Act are unambiguous in its language and application. Once the Collector has made an award u/s 11, he may take possession of the land. Once the possession is taken thereupon the land shall absolutely vest in the Government free from all encumbrances. The vesting of the land in the Government would ever be a legal impediment in the owner or an objector, raising any challenge to the Notification under the Act and the acquisition proceedings completed in furtherance thereto. Taking of possession by the Government is the final act to complete the acquisition proceedings in all respects where after it would be impermissible to raise challenge to the notifications issued by the appropriate government particularly u/s 4 and 6 of the Act. The delay in approaching the Court would only be a further relevant consideration for dismissing such a claim. Taking of actual physical possession is not always essential in as much as on certain occasions and in given circumstances, even possession taken and recorded on the relevant records would be sufficient compliance to raise a presumption in favor of the Government u/s 16 of the Act. In the case of H.M. Kelogirao and Ors. v. Govt. of A.P. And Ors. with H.M. Kelogirao and Others Vs. Govt. of A.P. and Others, , the Supreme Court held as under:-

"The fact that the possession of the land was taken over soon after the notification u/s 4(1) of the Act and declaration u/s 6 of the Act were published because of invoking of the provisions of Section 17(4) of the Act is not in dispute. That would show that the possession of the land was taken over from the appellants as early as in 1979, almost two decades ago. It is also not disputed that a bus-stand had since been constructed a huge expense and since 1982-1983 that bus-stand is functional and that is the only bus-stand to cater to the residents of Anantpur and the neighbouring areas. It is also not denied that all the appellants had filed their objections to the notice u/s 9 of the Act and in those objections they had only claimed enhanced compensation at the rate of Rs.250 per sq. feet and no grievance was made about the invalidity of the notice u/s 9 of the Act or of the earlier proceedings. All the appellants had participated in the award enquiry and after the award was made on 10-4-1987, the

appellants approached the High Court through writ petitions under Article 226 of the Constitution of India. It is also not disputed that a majority of the landowners have already received the compensation after the award was made and some of them have also taken recourse to proceedings u/s 18 of the Act. Should in this fact situation the acquisition proceedings be quashed and the land on which the bus-stand exists be directed to be returned to the appellants and the general public made to suffer? The answer, in our opinion, has to be in the negative."

15. Reference in this regard can also be made to various other judgments in the cases of *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , *Mohd. Ishaq and Ors. v. Delhi Development Authority* 2002 (VIII) A D 445, *Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others*, and *Nagin Chand Godha Vs. Union of India (UOI) and Others*, .

In the present case we have already noticed that the khasra numbers, ownerships of which is claimed by the petitioner, are specifically mentioned in the kabza karwai report dated 22nd September, 1986. The contents of the record maintained by the respondents in normal course of its business cannot be disbelieved by the Court, unless there were compelling circumstances. The report clearly shows that possession of the property in question was taken by the State Government which thus, legally and for all intent and purposes, would vest in the Government, free of any encumbrances, restrictions or limitations. Even if there was some infirmity, irregularity or illegality in the acquisition proceedings, the petitioner would be de-barred from raising any objection in that regard, where once possession of the land so notified and forming part of the award, had been taken by the appropriate government.

16. Applying the above well-settled principle, we are unable to accept the contention raised on behalf of the petitioner, that because of an infirmity or a specific exclusion in the notification u/s 4 of the Act, the acquisition proceedings were illegal, ineffective or void in law. Resultantly, the land of the petitioners should be excluded from the operation of the notification.

17. Furthermore, it was for the petitioner to approach the Court at the relevant time, which by his own conduct, the petitioner failed to act. The possession was taken in the year 1986 while the petitioner has approached the Court in the year 1997. The petition is also liable to be dismissed on the ground of unexplained delay and laches.

18. The writ petition is disposed of in the above terms while leaving the parties to bear their own costs.