
(1993) 05 DEL CK 0087
In the Delhi High Court
Case No : Suit No. 274 of 1975

The Bharat Sewak Samaj Trust		APPELLANT
	Vs	
The Union of India and Another		RESPONDENT

Date of Decision : 07-05-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1993) 26 DRJ 273

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Maehswar Dayal and V.K. Sharma, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present suit has been filed by the plaintiff against the defendants for declaration that the acquisition of land comprised in Khasra Nos. 301 and 493/302, measuring 12Bighas 5 Biswas, situated in village Ladha Sarai, Delhi State, along with the superstructures, standing thereon, vide notification No. F.4(98)/64/ L & R (ii) dated 6.1.1969, is without jurisdiction, illegal, null and void, as the same does not affect the rights of the plaintiff to the ownership and possession on the said land.

(2) The plaintiff is a registered Trust and the present suit has been filed through Shri M.M. Wakhare. The plaintiff is the owner of the land comprised in Khasra Numbers, as mentioned above, and the same were purchased vide Sale Deed dated February 22, 1962, for a sum of Rs. 18,375.00 . The Sale Deed was executed by the Managing " Officer, Government of India, Ministry of Rehabilitation, Jam Nagar House, New Delhi, for and on behalf of President of India, in favor of Bharat Sewak Samaj Central Office, who is the plaintiff in the present suit. The Sale Deed was duly registered with the Sub Registrar, New Delhi, vide document No. 2573, Additional Book No. I, Volume No. 792, pages 23-25 dated April 10, 1962. The plaintiff has further submitted in the plaint that a

huge amount of Rs.2,90,660.00 was spent in raising construction thereon for the purposes of various activities for the public and charitable nature carried on by the plaintiff, such as: i) Mahila Shilip Kala Kendar (ladies stitch in school) ii) Bal Wari (children's primary education school) iii) Medical Dispensary iv) Carpentry v) Model agriculture farm vi) Ashram

(3) The officers of defendant no.2, Delhi Development Authority, in the month of March, 1973, threatened to take possession of the above mentioned land along with superstructure, standing thereon, by force, stating that the same has been acquired for public purpose by Delhi Development Authority, and the plaintiff has contended that as these threats were given without any show cause notice, a suit (suit No. 169/72), entitled "Bharat Sewak Samaj, New Delhi v. The Delhi Development Authority" was filed on March 28, 1973, for the issue of perpetual injunction for restraining the said Authority from entering upon or interfering with the said plaintiffs possession in the property. It is further submitted in paragraph 5 of the plaint that the defendant no.2, Delhi Development Authority, filed the written statement in the above mentioned suit, wherein it was stated that the land in dispute did not vest in the said Authority, but that the same was included for acquisition by the Government of India. It is not clear from the plaint, as to the final outcome of the suit, except to the extent of the averments, made by the plaintiff in paragraphs 4,5 and 6 of the plaint.

(4) The property having vested in the plaintiff, a notice u/s 9 of the Land Acquisition Act, (hereinafter referred to as the Act), was received by the plaintiff from Shri V.K. Bhalla, Land Acquisition Collector, Tis Hazari Court, Delhi, against which the plaintiff filed objections therein on June 30, 1973, objecting against the acquisition of the land under the Act and in the alternative claiming compensation for Rs.4,90,000.00 . The proceedings started by the Land Acquisition Collector, based on the notification u/s 6 of the Act dated January 6, 1969, have been now challenged in this Court as illegal, null and void. as no notice u/s 4 of the Act had been issued by the Government, after purchase of the land by the plaintiff from the Government of India vide Sale Deed dated February 22, 1962, as mentioned above. The Notification , in any case, has been challenged, is void, as the land was then acquired evacuee property vesting in the President of India, u/s 12 of the Displaced Persons (Compensation & Rehabilitation) Act, and, as such, no proceedings could be taken for the acquisition of the same u/s 4 of the Act. The plaintiff has further averred that the notification dated November 13, 1959, u/s 4 of the Act, did not specify the particular khasra nos., sought to be acquired by the Government and only stated that the lands, situated in the various localities of Delhi and New Delhi, were sought to be acquired at the same time, and stating that the evacuee land is exempted from the above said acquisition.

(5) The plaintiff has filed this suit, by which he has impugned the proceedings under Sections 4,6 and 9 of the Act and has reiterated that the notifications, issued under these provisions, do not apply to the case of the plaintiff.

(6) The suit was admitted as far back as May 7, 1975, and summons in the suit were issued to the defendants and status quo in respect of the property was directed to be maintained. The Union of India did not appear on various dates and on May 27, 1976, this Court passed the order that the trial of the suit will proceed without the written statement of the Union of India, being taken on record. Statement was also made by the counsel for defendant no.2 that he has no concern with the suit, as no land had been given to his client by defendant no. 1. Another order was made on March 17, 1977, which reiterated that the defendant no. 1 was not entitled to file any written statement or produce its oral evidence for any purpose. But it was left open to the said defendant to cross-examine the witnesses, produced on behalf of the plaintiff.

(7) The following issues were framed on September 27, 1978:

1. Whether the plaintiff is the owner of land comprised in Khasra Nos.301 and 493/ 302, measuring 12 Bighas 5 Biswas, situate in village Ladha Sarai, Delhi State? OPP. 2. Whether the plaintiff raised any construction on the said land and if so, what amount was spent by the plaintiff on the construction? OPP. 3. Whether the declaration issued u/s 6 of the Land Acquisition Act, dated 6th January, 1969, is invalid in that it is not preceded by a valid notification u/s 4 of the Land Acquisition Act? OPP. 4. Relief.

Issues I To 3

(8) The plaintiff examined Public Witness 1 Shri Shiv Shankar Singh, General Secretary of the plaintiff and Public Witness 2 Shri H.S. Bhatia, Dealing Assistant, Department of Rehabilitation, Jaisalmer House, Ministry of Home Affairs, New Delhi. Public Witness 1 reiterated the Khasra nos. 301 and 493/302, measuring 12 Bighas 5 bids was situated in village Ladha Sarai, Delhi was evacuee property and vested in the Government of India, after its acquisition by Union of India and it was later sold to the plaintiff vide Sale Deed Exhibit P.1. The possession of this property was taken by the plaintiff and superstructures were raised thereon. In course of time, a Trust of the immovable property of Bharat Sewak Samaj was formed in 1963 and this property has come to be vested in the said Trust. The evidence of Public Witness 2 further reiterates that on 13th November, 1959, the suit land was evacuee property, in accordance with Jamabandi Register. It was declared as such from the very beginning by notification. It was later transferred to Bharat Sewak Samaj, plaintiff herein. He has also confirmed the execution of the Sale Deed Exhibit P. 1.

(9) I have heard learned counsel for the plaintiff. He has referred me to the evidence produced in this matter and to the documents, which are duly exhibited. Exhibit P. 1 is the original Sale Deed, which clearly indicates that the properties, which are subject matter of the present suit, vested in the plaintiff. Exhibit P.2 is the original Jamabandi, which is also to the same effect. Exhibit P. 11 is the notification dated 13.11.1959, issued u/s 4 of the Act. The counsel for the plaintiff has referred me to paragraph 2, which reads as follows:

"2. 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 1) 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 House Building Cooperative Societies mentioned in annexure III; (c) The land already notified either u/s 4 or u/s 6 of the Land Acquisition Act, for any Government scheme; (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."

(10) He accordingly contends that the suit land, in any manner, in view of the notification itself, could not be acquired as the same was an evacuee land, duly conveyed to the plaintiff by the Ministry of Rehabilitation. Therefore, the Government could not issue any notification under Sections 4, 6 and 9 of the Act and the land of the plaintiff could not have been acquired in terms thereof.

(11) Exhibit P.10 is the Notification dated January 6, 1969, issued u/s 6 of the Act and P. 12 is the Award of the Land Acquisition Collector.

(12) Reference is also made to the judgment of this Court in Ram Kishan vs. Union of India 1990 Raj LR 166, which dealt with the same notification dated November 13, 1959. The learned Judge held that the said Notification expressly excluded Government land and evacuee land and the land of the petitioner was exempt. Therefore, the notification, issued u/s 6 of the Act was clearly invalid. This judgment supports the contention of learned counsel for the plaintiff. The Notification in the present case was also issued on the same date and it has been proved by evidence on record that the land could not be acquired, as it was clearly exempt being an evacuee land.

(13) The plaintiff has proved from the evidence on record that he is the owner of the land comprised in Khasra Nos.301 and 493/302 measuring 12 Bighas 5 Biswas, situated in village Ladha Sarai, Delhi, and there is no evidence to the contrary in this regard. There is also no evidence, which will rebut the contention of the plaintiff that he raised construction on the suit land. Issues 1 and 2 are decided accordingly.

(14) In view of the above, issue no.3 is decided to the effect that the notifications under Sections 4 and 6 of the Act in respect of the land of the plaintiff, are invalid, so far as the suit land is concerned.

(15) I accordingly pass a decree in favor of the plaintiff and against the defendants declaring that the acquisition of the suit land under the provisions of the Land Acquisition Act of 1894, as stated above, was illegal and without jurisdiction, and did not affect the rights of the plaintiff to continue in possession of the said property consisting of the land and superstructures raised thereon. No order as to costs.