

(2007) 02 DEL CK 0004
In the Delhi High Court
Case No : Writ Petition (C) 1890 of 1992

Vishnu Dutt Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 4, 4(1), 5A, 5A(2)

Citation : (2007) 138 DLT 615

Hon'ble Judges : Mukul Mudgal, J; J.P. Singh, J

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Sanjay Poddar, for LAC and Rajesh Pathak, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—In this petition under Article 226 of the Constitution of India it is prayed that Notification No. F.9(18).60/LandB dated 25.11.1980, the Declaration u/s 6 of the Land Acquisition Act (hereinafter referred to as the "Act") dated 27.5.1985 and the award No. 14/87-88 in respect of the land measuring 76 bighas 10 bids was situated in village Satbari, Tehsil Mehrauli, Delhi (hereinafter referred to as the "said land") be "quashed and the respondents be directed to restore the possession and the ownership of the said land in the revenue records, by making necessary corrections, in the revenue records. Section 6 of the Act reads as under:

Section 6 "Declaration that land is required for a public purpose. - (1) Subject to the provisions of Part VII of this Act, when the Appropriate Government is satisfied after considering the report, if any, made u/s 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a secretary to such Government or of some officer duly authorized to certify its orders and

different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5-A, Sub-section (2):

[Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1976 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(Explanation 1- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification of the notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded.

(Explanation 2- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]

(2) Every declaration shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of the such publication and the giving of the public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the Appropriate Government may acquire the land in a manner hereinafter appearing.

2. The learned Counsel for the petitioner submitted as follows:

(a) That the petitioner owns land comprised in Khasra Nos. 192 (4-16), 193/1(0-12), 193/2(3-5), 193/3(0-19), 194(4-16), 193/1(3-12), 195/2(1-4), 196/1(1-4), 196/2(3-12), 197(4-16), 203(3-0), 206(4-16), 207(4-16),

210(4-11), 211/1(0-11), 211/2(3-19), 212/1(3-12), 212/2(1-4), 213/1(1-8), 213/2(0-2), 213/3(0-14), 214/4/1(2-8), 213/4/2(0-4), 222/1(1-2), 222/2(2-0), 222/3(0-5), 952(2-2), 955(4-16), 957(3-0), 998(1-3), 209(0-12), 222/2(0-8), 222/3(0-2), totally admeasuring 76 bighas and 10 biswas, situated in the revenue estate of village Satbari, Delhi.

(b). The respondents wanted to acquire the land of the said village including the land comprising above khasra Nos. by the notification/declaration and the award mentioned above. The said notification/declaration and the award is in respect of the following villages:

1. Chattarpur
2. Khanpur
3. Deoli
4. Satbari
5. Neb Sarai
6. Saidul Ajaib
7. Tejpur Khurd
8. Hauz Rani
9. Khirkee
10. Shyoorpur
11. Maidangarhi
12. Tughlakabad
13. Tigri

(c) The acquisition proceedings were challenged by the other land owners and the notifications were set aside in CWP No. 1639/1985 titled Balak Ram Gupta v. UOI by the judgment dated 18.11.1988. Thus the said judgment being in rem, the petitioner's land stood denotified and if the same is to be acquired a fresh notification /declaration and an award will be necessary. It is an admitted case that the petitioner did not question the said Notification and is challenging the same only in the present proceedings. Balak Ram Gupta's case (supra) is deemed to cover the present petitioner's land.

(d) There was another batch of petitions also dealing with the same acquisition proceedings in CWP 51/1989 titled Balbir Singh v. UOI. The said petitions were decided on 15.5.1989 directing the respondents to handover the possession of the land to the petitioners and the land owners were directed to refund compensation with interest @ 12% per annum. Balbir Singh's judgment (supra) was confirmed by the Hon''ble Supreme Court by an order dated 20th

September, 1991 (SLP No. 12009-54/1989).

(e) It is alleged that the petitioner was in continuous possession and made representation dated 20th November, 1991 referring to Balak Ram Gupta's judgment (supra) and offered to refund the compensation but no reply was received by him.

(f) In an another matter titled Manohar Lal Atri v. UOI CW No. 2364/1990 decided on 6th December 1990, this Court had directed the respondents to give back the possession of the land and the land owners were directed to refund the compensation with interest @ 12 % per annum. The present case is said to be covered by the above said judgments.

(g) The possession of the land is with the petitioner but in the revenue record the possession is shown to be that of the Government/DDA. Therefore, the respondents should be directed to restore the possession in the revenue records as the petitioner was willing to refund the compensation as directed in Balbir Singh's judgment. It is pleaded that the respondent have been threatening to dispossess the petitioners. Hence this petition. (emphasis added)

3. The learned Counsel for the respondents submitted as follows:

(a) The present writ petition is highly belated because the Notification, Declaration and the Award are being challenged in the year 1992 and there is no plausible Explanation for the delay of about 12 years. The acquisition proceedings having become final and concluded cannot be challenged at this belated stage.

(b) The petitioner has acquiesced in the acquisition proceedings especially because the possession of the land has already been obtained by the Land Acquisition Authority and the compensation has been received by the petitioner. The said land has vested in the Government free from all encumbrances. The petitioner, who has received the compensation after accepting the acquisition proceedings cannot be permitted to approbate and reprobate in the same breath.

(c) The petitioner is also estopped from challenging the Notifications and the Award. It is denied that the land stands denotified or that Balak Ram Gupta's case (supra) has any bearing on the present petition because the said judgment is in personam and is not applicable to the petitioner.

(d) The issue has attained finality in the judgment titled Abhey Ram (dead) by LRs. and others Vs. Union of India and others, and Delhi Administration v. Gurdeep Singh Uban reported in 2000 (7) SCC 369. It is denied that the petitioner was in possession of the land and it is submitted that the possession of the land has been taken over and handed over to the DDA for development.

(e) It is submitted that the petitioner has not come to the court with the clean hands and is making misrepresentation in the court.

(f) The file shows that an application dated 13th August 1997 was filed under

Order VI Rule 17 CPC for incorporating the plea that the petitioner had filed objections u/s 5A of the Land Acquisition Act before the Land Acquisition Collector and notice dated 23.1.1981 was sent by LAC Shri Shiv Raj Tyagi to the petitioner for personal hearing on 12th February 1981. However, no substantial personal hearing was given and Shri Shiv Raj Tyagi was later on transferred and Therefore he could not make a report about the acquisition to the Government.

(g) On 22nd May 1985 Shri G.C. Pillai made a report to the Government on the objections of the petitioner u/s 5A of the Act without affording fresh hearing to the petitioner. It is further submitted that the Lt. Governor's office received a report on 24th May 1985 and mechanically gave consent for the issuance of the declaration u/s 6 of the Act, without passing a speaking order. It seems that the application for amendment by the petitioner incorporating the plea that the petitioner had filed objections u/s 5A of the Act was not pressed.

4. Order sheet of this file shows that on 12th January 1993 it was clarified that the CW No. 3611/1991 titled as Jit Ram v. UOI will be the main case because similar questions were pending in a batch of petitions. The presence of the learned Counsel for the petitioner was marked in the said order. The said case Jit Ram v. UOI (supra) has been decided along with CWP No. 809/1992 titled Santosh Kumar v. UOI by a Division Bench judgment of this Court on 26th May 2006. Similar questions including objections u/s 5A of the Act, as in this matter were raised in Santosh Kumar and Jit Ram's case (supra). The said writ petitions have been dismissed on the grounds of delay and laches. The Division Bench has dealt with the judgments in Balak Ram Gupta's and Abhey Singh's cases (supra) amongst others decided by the High Courts and the Hon'ble Supreme Court of India. Following the Santosh Kumar's judgment this Division Bench has already dismissed WP (C) No. 1102/1992 titled as Satluj Bhatta v. UOI in respect of village Shayoorpur. Similarly WP (C) 2322/94 titled as Banwari Lal Sharma v. UOI has been dismissed on 18th September, 2006. This judgment has been upheld by the Hon'ble Supreme Court in SLP No. 19164/2006 decided on 1st December, 2006. Identical questions arose in Writ Petition No. 3614/1991 titled as Ajit Singh v. UOI decided by a Division

Bench of this Court on 21st December 2000 in respect of village Maidan Garhi, reported in (89) 2001 DLT 489. The relevant observations in the aforesaid judgment are reproduced hereunder :

...we are of the considered view that this petition is liable to be dismissed on the ground that the land in dispute already stands vested in the government in view of its possession having been taken over by the government in pursuance of provisions of Section 16 of the Act. Since the question of government having taken possession of the land is of paramount importance for purposes of the preliminary objection, we have already referred to the various admissions on the part of the petitioners in the writ petition that the possession is with the respondents and one of the reliefs in the petition being that respondents be directed to hand over possession of the lands to the petitioners. We would like to

note here that the respondents in their counter affidavit have very clearly and categorically asserted that they are in possession of the lands in question. They have also relied on official records regarding taking over possession of the lands. There is no rebuttal or denial of this assertion. No attempt was made to file any rejoinder to controvert these assertions of the government. Therefore, it is established beyond doubt that the government had taken over possession of the lands after the award as per provisions of Section 16 of the Act. The land stood vested in the government. The owners like the petitioners were divested of their ownership of the lands. They received compensation for their acquired lands. The government has become absolute owner of the lands free from all encumbrances and it cannot be divested of its ownership. The proceedings under the Land Acquisition Act have come to an end. Curtain had been drawn on the proceedings. The lands are out of the purview of the Act. This writ petition is, Therefore, not maintainable and is liable to be dismissed on this ground alone. The petitioners cannot be permitted to challenge the acquisition of their lands in these facts. We need not go into any other aspect...

5. Another judgment relied upon by the learned Counsel for the respondent No. 1 is WP No. 1863/1994 titled Mahinder Singh Tyagi v. Union of India decided on 21st December, 2000. This is in respect of village Satbari. The petitioner in that case was represented by the learned Counsel for the petitioner in the present case. WP No. 1646/1993 titled as Brahm Arenja v. Delhi Administration decided on 18th September, 2006 is also in respect of village Satbari. The prayer in this case was to direct the respondents to register a Sale Deed in respect of the land situated in village Satbari on the ground that in view of Balak Ram's case (supra) the land stood de-acquired. The Division Bench of this Court relying upon Delhi Administration Vs. Gurdip Singh Uban and Others etc., and Delhi Administration Vs. Gurdip Singh Uban and Others, held that the land stood acquired and dismissed the petition.

6. The present petition has been filed in 1992, after about 12 years from the date of Notification u/s 4 of the Act and after the possession of the land having been taken over and the petitioner has admittedly accepted the acquisition and received the compensation.

7. Considering all the facts and circumstances of the case and the law, we do not find any merit in this petition, the same is, Therefore, dismissed with Rs. 10,000/- (Rupees Ten Thousand Only) as costs in favor of the respondents.