

Bimla Devi and Others

Vs

Union of India and Others

With

Vidya Devi and Others

Vs

Union of India and Others

Special Leave Petition (Civil) No. 6913 of 1985 and Writ Petition (Civil) No. 287 of 1987

(L. M. Sharam, Dr. T. K. Thommen JJ)

12.09.1989

JUDGMENT

SHARMA, J. –

1. The petitioners, by a writ petition registered as C. W. 1850 of 1984, challenged before the Delhi High Court a notification under Section 4 of the Land Acquisition Act and a declaration under Section 6 of the Act on several grounds. Since some of the questions arising in the case were same as pressed in another writ application to which the petitioners were not parties, their application C. W. 1850 of 1984 was directed to be heard after the decision in the other case. The other case was disposed of by a judgment (Munni Lal v. Lt. Governor of Delhi, ILR (1984) 1 Del 469 : AIR 1984 NOC 230 (Del)) and following the same the petitioners' C. W. 1850 of 1984 was dismissed by a short order dated April 17, 1985. This order has been challenged by the present special leave petition on the ground that one of the pleas taken in C.W. 1850 of 1984 did not arise for decision in the reported case and the High Court ought to have considered and decided that point also. Mr. Tarkunde, the learned counsel for the petitioners has referred to paragraph 11 of the writ petition filed in the High Court which reads as follows :

"11. That though the notification under Section 4 of the Act was published in Delhi Gazette Part IV by the authority but it was not circulated in the area for giving the knowledge thereof to the people concerned. The petitioners came to know about the notification in the month of May 1984 by some clerks of the DDA. The respondents did not follow the mandatory provision of Section 4(1) of the Act. The notification and the declaration were not given and placed at the convenient point in the revenue estate of village Rithala, Delhi. Thus, the petitioners were deprived of their rights to file objections to the notifications within 30 days under Section 5(1) of the Land Acquisition Act, 1894."

2. The learned counsel placed the reported decision and pointed out that this question could not be deemed to have been concluded by the reported judgment. The learned counsel for the respondents

stated that in all probability the petitioners did not press the said point and, therefore, the High Court could not deal with the same.

3. Special leave is granted.

4. It has not been stated on behalf of the respondents, by an affidavit, before this Court that the petitioners' plea in paragraph 11 of the writ petition had not been pressed. The High Court's judgment also does not suggest that the only point which had been pressed on behalf of the petitioners was the one which was covered by the reported judgment. In the circumstances we accept the argument of Mr. Tarkunde, set aside the impugned judgment and remit the case to the High Court for a fresh decision after considering the plea taken by the petitioners in paragraph 11 of the writ petition. The petitioners shall not be allowed to press any other point in support of the writ petition before the High Court.

5. It is stated by Mr. Tarkunde that Writ Petition No. 287 of 1987 has become infructuous and is, therefore, not pressed. The same is dismissed as not pressed. The appeal arising out of S.L.P. 6913 of 1985 is, however, allowed as indicated above but, without costs.

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