

Ramjas Foundation and others

Vs

Union of India and others

Civil Appeal No. 2213 of 1978

(CJI M.H. Kania, N.M. Kasliwal, N.P. Singh JJ.

13.11.1992

JUDGEMENT

KASLIWAL, J.:-

1. This appeal by the Ramjas Foundation, a society duly registered under the Societies Registration Act, 1860 and five others who are the Secretary and trustees of the Ramjas Foundation is directed against the order of the Delhi High Court dated January 31, 1978 dismissing the Civil Writ Petition No. 106 of 1978 in limine.

2. On November 13, 1959, the Chief Commissioner, Delhi issued a Notification under S. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). Land measuring 34070 acres was notified as land likely to be acquired by the Government at the public expense for a public purpose, namely, the planned development of Delhi. The following land was excluded from the scope of the notification:

- (a) Government land and evacuees land;
- (b) the land already notified, either under S. 6 of the Land Acquisition Act for any Government Scheme;
- (c) the land already notified either under S. 4 or under S. 6 of the Land Acquisition Act, for House Building Co-operative Societies mentioned in Annexure-III;
- (d) the land under graveyards, tombs, shrines and the land attached to religious institutions and Wakf property.

3. The aforesaid land measuring 34070 acres included land measuring about 872 bighas, 9 biswas situated in chowkri Mubarikabad and measuring about 730 bighas situated in chowkri Sadhurakhurd, belonging to the Ramjas Foundation. The present appeal relates to the land situated in chowkri Sadhurakhurd. The Ramjas Foundation on December 11, 1959 filed objections under Section 5A of the Act for the entire land situated in Mubarikabad as well as Sadhurakhurd. The Lt. Governor of Delhi subsequently issued Notifications under S. 6 of the Act on 15-4-1968, 27-4-1968, 15-5-1968, 19-8-1968, 14-1-1969 and 18-1-1969. The Lt. Governor also issued notices under Ss. 9 and 10 of the Act on December 27, 1972 for Sadhurakhurd land. As regards the land in Mubarikabad Notification under S. 6 of the Act was issued on February 28, 1968. Ramjas Foundation filed a writ petition in May, 1968 in the Delhi High Court challenging the action of the Government in acquiring their lands situated in Mubarikabad. In the said writ petition Sachar, J. (as

he then was) who heard the petition was of the view that the matter ought to be tried in a suit instead of writ-proceedings. He, therefore, by his order dated August 10, 1971 permitted the Ramjas Foundation to withdraw the petition with liberty to agitate the matter in a suit and as such the writ petition was dismissed as withdrawn. The Ramjas Foundation then filed a suit in the Delhi High Court on November 8, 1971 for quashing the Notifications issued under Ss. 4 and 6 of the Act in respect of the land situated in Mubarikabad. The suit was dismissed by Awadh Behari Rohtagi, J. of the Delhi High Court by order dated 21-3-1977 reported in AIR 1977 Delhi 261. Learned counsel for the appellants brought to our notice that Letters Patent Appeal before the Division Bench of the High Court is pending against the aforesaid judgment of the learned single Judge.

4. So far as the land situated in Sadhurakhurd with which we are concerned in the present appeal a Writ Petition No. 213 of 1973 was filed in the High Court and the same was dismissed as withdrawn on 30th March, 1977. Thereafter another Writ Petition No. 106 of 1978 was filed challenging the notifications issued under Ss. 4, 6, 9 and 10 of the Act and the same was dismissed by the High Court by the impugned order dated January 31, 1978 in limine as already mentioned above.

5. We have heard Mr. Tarkunde, learned Senior Advocate on behalf of the appellants and Mr. Tulsi, Learned Additional Solicitor General on behalf of the respondents. Learned counsel for the appellants contended that the appellants had submitted their objections under S. 5A of the Act on 11-12-1959 but the same were rejected without affording any opportunity of personal hearing. It was submitted that it was mandatory on the part of the respondents to have given an opportunity of personal hearing specially when the same was desired and a denial of such opportunity of personal hearing invalidates the Notifications issued under Ss. 6 and 9 of the Act. Reliance in respect of the above contention is placed on *Farid Ahmed Abdul Samad v. Municipal Corporation of the City of Ahmedabad* (1977) 1 SCR 71 : (AIR 1976 SC 2095).

6. It was also contended on behalf of the appellants that the notification issued under Section 4 of the Act itself excludes the land of Wakf property. It has thus been contended that so far as the land in question is concerned the same being also a wakf property as such ought to have been exempted under the notification itself. It was submitted that Ramjas Foundation is an educational charitable society which is running several schools and post graduate college in Delhi and several educational institutions are being run on the alleged acquired land itself. As an alternative argument it was submitted that in case this Hon'ble Court takes the view that wakf property mentioned in the alleged notification does not include the educational and charitable institutions run by Hindus or non-Muslims then such notification is void for violation of Art. 14 of the Constitution.

7. As regards the objection of the violation of the mandatory provisions of Section 5A of the Act in not affording an opportunity of personal hearing while deciding such objections, we granted an opportunity to the Learned Additional Solicitor General to place material after examining the original record. We granted this opportunity to the respondents on account of the reason that the writ petition had been dismissed by the High Court in limine without issuing notice to the respondents and as such the respondents had not been given any opportunity before the High Court to place any material to refute the allegations made by the appellants in this regard. The Additional Solicitor General during the course of the hearing of the matter placed an order of the Land Acquisition Collector, Delhi dated 23-2-1968 which has been taken on record and for the purposes of identification has been marked as Annexure 'X'. A copy of the said Annexure 'X' was also given to the Learned counsel for the appellants. A perusal of the aforesaid order dated 22-3-1968 clearly shows that the Ramjas Foundation Society was represented through Sh. Ratan Lal Gupta, Advocate who was given a personal hearing. From a perusal of the aforesaid document Annexure 'X' dated 23-

2-1968 it is clear that full opportunity of hearing through counsel was afforded to the Ramjas Foundation. It has been further mentioned in this order that the Ramjas Foundation Society was also allowed to file fresh objections if so desired, but Sh. Ratan Lal Gupta, Learned Advocate for the petitioner society declined and stated that there was nothing more to add in the previous objection petition. After bringing the said document Annexure 'X' to the notice of the Learned counsel for the appellants, no satisfactory explanation or argument came forward on behalf of the appellants. The conduct of the appellants in raising the plea that no opportunity of personal hearing was given to the appellants in respect of the objections filed under Section 5A of the Act was totally baseless and factually incorrect and such conduct is reprehensible. It is well settled that a person invoking an equitable extraordinary jurisdiction of the Court under Art. 226 of the Constitution is required to come with clean hands and should not conceal the material facts. The objection regarding not affording an opportunity of personal hearing in respect of objections filed under Section 5A of the Act was one of the main planks of the grounds raised in the writ petition as well as in the Special Leave Petition filed before this Court and ought we know if such ground had not been taken this Court would have entertained this appeal or not. The appellants have taken the advantage of obtaining the stay order also from this Court which is continuing for the last 14 years as the Special Leave Petition was filed in 1978 itself.

8. It may be further noted that a common objection petition under Section 5A of the Act in respect of both the lands situated in Mubarikabad as well as in Sadhurakhurd was filed on 11-12-1959 through Sh. Ratan Lal Gupta, Advocate. The said objections were heard in the presence of Shri Ratan Lal Gupta, Advocate and disposed of by one common order Annexure 'X' and we cannot believe an ipse dixit explanation made orally during the course of arguments on behalf of the appellants that they had no knowledge of any personal hearing being given to Shri Ratan Lal Gupta, Advocate. It is also important to note that no such objection was taken in respect of land in Mubarikabad.

9. Another ground on which the present appeal has been contested is the ground of delay, laches and acquiescence in filing the writ petition challenging the acquisition proceedings. As already mentioned above a common notification was issued under Section 4 of the Act for an area of 34070 acres of land needed for planned development of Delhi. Between 1959 and 1961, about six thousand objections were filed under Section 5A of the Act. The objections were overruled. On March 18, 1966, the declaration under Section 6 of the Act was published in respect of a portion of the area. Thereafter, in 1970 notices were issued under Section 9(1) of the Act and some of the persons who had received such notices challenged the validity of acquisition proceedings by filing writ petitions before the High Court of Delhi. The High Court negatived all the contentions raised in those cases and dismissed the writ petitions. Thereafter appeals by grant of special leave against the judgment of the Delhi High Court as well as writ petitions filed directly under Art. 32 of the Constitution were heard and disposed of by this Court by a common judgment reported in *Aflatoon v. Lt. Governor Delhi*, (1975) 1 SCR 802: (AIR 1974 SC 2077). In the aforesaid case a Constitution Bench of this Court held that in the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with regard to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular purpose for which each and every item of land comprised in the area is needed.

10. It was further held in the above case that about six thousand objections were filed under Section 5A by persons interested in the property. Several writ petitions were also filed in 1966 and 1967 challenging the validity of the acquisition proceedings. The Government had necessarily to wait for

the disposal of the objections and petitions before proceeding further in the matter. The High Court was of the view that there was no inordinate delay on the part of the Government in completing the acquisition proceedings. The conclusion of the High Court was held to be correct. It was also held in the above case that the writ petitions were liable to be dismissed on the grounds of laches and delay on the part of the petitioners. In the above case this Court had found that the appellants of that case had not moved in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. This Court then observed as under [AIR 1974 SC 2077, Para 11]:

"There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 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."

11. The delay and laches in the case before us are even worse than those in the above cited Aflatoon's case (AIR 1974 SC 2077). The appellants had initially filed a writ petition No. 213/73 challenging the notification dated 13-11-1959 under Section 4 of the Act and notification dated 27-4-1968 under Section 6 of the Act with respect to 245 bighas and 1 biswas of land situated in the revenue estate of Sadhurakhurd and the notices dated 27-12-1972 under Sections 9 and 10 of the Act issued by the Land Acquisition Collector, Delhi with respect to Khasra No. 1040/353 (12 bighas and 8 biswas). On 30-3-1977 Shri M. C. Gupta, Learned counsel for the Ramjas Foundation stated that he had instructions from his clients to state that they did not want to press the petition and wish to withdraw it. The statement of Sh. Gupta had been separately recorded. The Court, in these circumstances permitted to withdraw the petition and dismissed the same as withdrawn. It is important to note that in the statement Sh. M. C. Gupta, Learned counsel for the petitioners stated as under:

"I may be permitted to withdraw this petition in view of the judgment delivered by Hon. Mr. Justice Awadh Behari in suit No. 451 of 1971 decided on 21st March, 1977, between the parties, wherein the contentions urged were precisely the same as urged in this petition, my clients reserved the opportunity to file a fresh suit if so necessitated by the circumstances in future."

12. It may be noted that the reference with regard to suit No. 451 of 1971 decided on 21st March, 1977 is in respect of the land of petitioners situated in Mubarikabad. It is surprising that though the opportunity was sought for filing a fresh suit, the appellants again filed a writ petition No. 106 of 1978 in the High Court on 7-1-1978 which was ultimately dismissed by the High Court in limine on 31st January, 1978 by a Division Bench comprising of T.P.S. Chawla and Awadh Behari, JJ. In this writ petition No. 106 of 1978 the appellants conveniently omitted to mention that the permission to withdraw the petition No. 213 of 1973 was granted on the statement of Sh. M. C. Gupta that his clients reserved the liberty to file a fresh suit and not writ. Thus no liberty was sought or given for filing a fresh writ petition. In any case there were no fresh ground or circumstances available to the

appellants to file a fresh writ petition No. 106 of 1978 on 7-1-1978 on identical grounds when the earlier writ petition No. 213 of 1973 had been dismissed as withdrawn on 30-3-1977. Nothing had happened between 30-3-1977 and 7-1-1978 for giving a fresh cause of action to the appellants to file the writ petition No. 106 of 1978. Awadh Behari, J. had dismissed the suit No. 451 of 1971 by order dated 21-3-1977 in regard to the lands in Mubarikabad and he was also one of the Judges of the Division Bench who passed the impugned order dated January 31, 1978 dismissing the writ petition in limine as he was fully aware of the entire background of this litigation. The appellants are themselves responsible for creating confusion in initiating separate proceedings at different periods of time in respect of the lands situated in Mubarikabad and Sadhurakhurd though challenge to the acquisition proceedings was on common grounds. Learned counsel for the appellants was unable to satisfy in respect of such conduct of hide and seek on the part of the appellants. In case, as sought to be explained by Mr. Tarkunde, Learned Senior counsel for the appellants, the appellants were depending on the result of the civil suit filed in respect of the lands situated in Mubarikabad there was no justification for filing the writ petition No. 213 of 1973 in respect of the land situated in Sadhurakhurd as the suit was not decided in 1973 but was in fact dismissed on 21-3-1977. We find no justification for filing the writ petition in respect of the land situated in Sadhurakhurd in 1973 and subsequently withdrawing the writ petition on 30th March, 1977 reserving the liberty to file a fresh suit but thereafter again filing the writ petition on 7-1-1978 instead of suit.

13. Independently, of all the circumstances mentioned above, we shall now consider the question of delay and laches in filing the writ petition No. 106 of 1978 and the earlier writ petition No. 213 of 1973 relating to lands in Sadhurakhurd. Mr. Tarkunde, learned Senior counsel vehemently contended that there is no limitation prescribed for filing the writ petition and the question of delay and laches has to be examined independently in the facts and circumstances of each case. He has argued that the appellants are continuing in possession upto date and though challenge has been made to the validity of notifications issued under Section 4 in 1959, Section 6 in 1968 and 1969 and Sections 9 and 10 in 1972, there is no delay, since no award has been passed so far and no loss has occasioned to the respondents due to lapse of time. It has been submitted that there was no change of circumstances during the intervening period and the delay has been fully explained on the aforesaid grounds. It has also been argued that notifications under Sections 9 and 10 were issued in 1972 and soon thereafter the appellants came forward with a writ petition No. 213 of 1973 challenging the notifications issued under Sections 4, 6, 9 and 10 of the Act. We find no force at all on the above contentions.

14. It is an admitted fact that notification under Section 4 of the Act was issued as early as 1959 and all the notifications under Section 6 of the Act in relation to the land of the appellants in Sadhurakhurd were issued in 1968 and 1969. The challenge to the acquisition proceedings was mainly based on the ground that in the notification dated 13-11-1959 issued under Section 4 of the Act the lands of wakf property were excluded and the lands of the appellants being also used for educational and charitable purposes the same were also liable to be excluded. At a later stage a ground was also taken that if wakf property in the aforesaid notification under Section 4 of the Act meant only wakf properties of the Mohammedans, then such notification was discriminatory and violative under Art. 14 of the Constitution as there was no reasonable ground to discriminate such properties of Hindus or non-Muslims also meant for charitable purposes. So far as the notifications under Section 6 of the Act are concerned the same were attacked on the ground that no opportunity of personal hearing was given to hear the objections filed under Section 5-A of the Act. Thus it is abundantly clear that the challenge was in respect of notifications under Sections 4 and 6 of the Act alone and though in the prayer clause relief has been sought to quash the notification under Sections 9 and 10 of the Act also which were issued in 1972 but no ground whatsoever has been pleaded in

the writ petition nor raised before us as to how the notifications under Sections 9 and 10 had any concern for explaining the delay in respect of the challenge to notifications under Sections 4 and 6 of the Act. It is worthwhile to note that according to the appellants own showing the notices under Sections 9 and 10 issued to the appellants in 1972 were in respect of the land being Khasra No. 1040/353 which related to 12 bighas and 8 biswas only. The challenge on the other hand in the writ petition is in respect of notifications under Sections 4 and 6 covering the entire land measuring about 730 bighas situate in village Sadhurakhurd. We find no justification at all in explaining the delay on the ground that no award has been passed nor the appellants have been dispossessed so far. This cannot be an explanation for not challenging the notifications under Sections 4 and 6 of the Act and in the present case the appellants had themselves sought stay from this Court as early as 15-11-1978 for not making and declaring the award and not to dispossess the appellants. Thus we find no justification at all for the delay in not challenging the notification issued under Section 4 on 13-11-1959 till 1973. Even notifications under Section 6 of the Act were issued in 1968 and 1969 but not challenged till 1973. As already mentioned above in Aflatoon's case (AIR 1974 SC 2077) (supra) a Constitution Bench of this Court has clearly held that even after the declaration under Section 6 of the Act published in 1966, the appellants had approached with their writ petitions in 1970 when the notices under Section 9 were issued to them the writ petitions were liable to be dismissed on the grounds of laches and delay. Mr. Tarkunde, learned senior counsel made strenuous effort to distinguish the aforesaid case on the ground that in the aforesaid case the Court was influenced with the fact that the petitioners had sat on the fence and allowed the Government to complete (emphasis added) the acquisition proceedings. Much emphasis has been laid on the word 'to complete' the acquisition proceedings. We find no force in this submission as the facts narrated in the above case clearly show that the petitioners in those cases had filed writ petitions in the High Court in 1970 and in the Supreme Court in 1972 after the issuance of notices under Sections 4, 6 and 9 of the Act. The use of the word 'complete' was not of much significance and the main reasoning of the case was that grounds to attack the notification under Sections 4 and 6 of the Act were available at the time of publication of such notifications. In the facts and circumstances of the case before us the appellants were also sitting on the fence and did not take any steps of challenging the notifications under Sections 4 and 6 of the Act till 1973 though the grounds now sought to be urged were available to the appellants as soon as such notifications were issued. Thus viewing the matter from any angle we are clearly of the view that the writ petition was also liable to be dismissed on the ground of laches and delay on the part of the appellants apart from other grounds already dealt by us. In the face of the aforesaid view taken by us, it is not necessary at all to go on other questions raised in the case. We decline to express any opinion on any questions of law raised in the appeal.

15. In the result we dismiss this appeal with costs. In view of the dismissal of the appeal itself all interim orders stand vacated automatically. Appeal dismissed

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