

Delhi Administration

Vs

Gurdip Singh Uban and Others

Civil Appeals Nos. 4656-57 of 1999

(Sujata S. Manohar, M. Jagannadha Rao JJ)

20.08.1999

JUDGMENT

M. JAGANNADHA RAO, J. –

1. Leave granted.

2. These two civil appeals have been filed by the Delhi Administration against the judgment of the Delhi High Court in CWP No. 920 of 1986 dated 17-12-1996. The respondents are the owners of an extent of about 2.50 acres in Chattrapur Village. The notifications, in fact, covered land of an extent of about 50,000 bighas in thirteen villages. The writ petition was allowed under the impugned judgment and the notifications were quashed.

3. The brief facts of the case are as follows :

The notification under Section 4(1) of the Land Acquisition Act was issued on 25-11-1980 while the declaration under Section 6 was published on 7-6-1985. Initially, the declaration under Section 6 was challenged in CWP No. 1639 of 1985 and 76 other writ petitions which were referred to a Full Bench of the Delhi High Court on a certain legal issue. The Full Bench decided the point and upheld the Section 6 declaration. The contention before the Full Bench was that the declaration under Section 6 was issued more than 3 years after the Section 4(1) notification and was, therefore, bad in law. The submission was that even though there were various stay orders in several writ petitions by the High Court in relation to the operation of the Section 6 declaration, they were all individual orders passed in the cases of various writ petitioners and hence these orders could not be treated as amounting to a suspension of the entire Section 6 declaration and hence the said declaration must be struck down as time-barred in respect of others who did not obtain stay orders. The Full Bench of the High Court rejected the above contention holding that the scheme for which the land was acquired was an integrated one and the stay orders even if obtained in individual cases necessarily resulted in precluding any further proceedings being taken under the Section 6 declaration. Excluding the time covered by the stay orders, the Section 6 declaration must, it was held, be deemed to have been issued in time. On that reasoning, the notification under Section 4(1) and Section 6 were declared valid by the Full Bench. The other points raised by individual writ petitioners, namely that the enquiry under Section 5-A was vitiated etc., were not decided by the Full Bench and for that purpose the matters were sent back to a Division Bench. The judgment of the Full Bench dated 25-7-1987 is reported in *Balak Ram Gupta v. Union of India* (AIR 1987 Del 239 (FB)). Thereafter, the 73 matters were listed before a Division Bench which finally disposed of the writ petitions by a separate judgment reported as *B. R. Gupta v. Union of India* ((1989) 37 DLT 150 (DB)) on 18-11-1988. The writ petitions were allowed and the Section 6 declaration was

quashed on the ground that the Section 5-A enquiry was vitiated etc. (There is dispute as to whether the declaration was wholly quashed.) The said judgment was not appealed against by the Delhi Administration. The present writ petition was filed on 23-4-1986 for quashing the same notification dated 25-11-1980 and 7-6-1985 issued under Sections 4(1) and 6. It related to Khasras Nos. 704/1, 706/2, 706/3, 70712, 714, 71512, 90912, 10/2 and 693.

4. When the present writ petition came up for hearing before a Division Bench on 17-12-1996, the writ petitioners contended that by the judgment of the Division Bench rendered in B. R. Gupta ((1989) 37 DLT 150 (DB)) dated 18-11-1988 - i.e. after the Full Bench judgment dated 25-7-1987 - the entire Section 6 declaration stood quashed and that even though these writ petitioners (respondents in these civil appeals) had not filed any objections under Section 5-A of the Act, they were entitled to rely upon the earlier Division Bench judgment of 18-11-1988 and contend that the entire Section 6 declaration was quashed. This contention was accepted by the Division Bench under the impugned judgment dated 17-12-1996. The Division Bench held that the earlier judgment resulted in the entirety of the Section 6 declaration being quashed and was a judgment in rem and hence the writ petitioners could rely on that judgment even though they had not filed any objections under Section 5-A. The result, according to the appellants, of the Section 6 declaration being quashed would be that the Section 4(1) notification would also lapse. It is against the above judgment that the Delhi Administration has preferred these appeals.

5. In these appeals, the learned counsel for the appellant, Ms Geeta Luthra contended before us that in a similar appeal preferred to this Court decided by a three-Judge Bench in *Abhey Ram v. Union of India* ((1997) 5 SCC 421 : JT (1997) 5 SC 354) in respect of the same group of notifications it was held that in the case of owners who had not filed objections under Section 5-A, they could not take advantage of the judgment of the Division Bench in B. R. Gupta case ((1989) 37 DLT 150 (DB) dated 18-11-1988. It was also held that upon a proper understanding of the judgment of the Division Bench dated 18-11-1988, it could not be held that the entirety of the Section 6 notification stood quashed by the said judgment. The above contention of the learned counsel for the Delhi Administration was supported by the learned Senior Counsel for the Delhi Development Authority, Shri Ravinder Sethi.

6. On the other hand, it was contended by Shri P. N. Lekhi, learned Senior Counsel for the respondents (writ petitioners) that the Division Bench of, the High Court in its impugned judgment was right in holding that the Division Bench in B. R. Gupta case ((1989) 37 DLT 150 (DB) in its judgment dated 18-11-1988, had quashed the entire Section 6 declaration and this was clear from the language employed in that judgment. The appellant could not be permitted to blow hot and cold for, in order to say that the Section 6 declaration was not time-barred, the appellant had contended before the Full Bench in B. R. Gupta case ((1989) 37 DLT 150 (DB)) that stay orders obtained by some would amount to stay of the entire Section 6 declaration and that on the same parity of reasoning, the subsequent judgment of the Division Bench in B. R. Gupta case ((1989) 37 DLT 150 (DB)) must be deemed to have quashed the entirety of the Section 6 declaration. A passage in the Full Bench judgment that the notification could not remain partially stayed or partially suspended was also relied upon. Reference was also made to another judgment of this Court in *Delhi Development Authority v. Sudan Singh* ((1997) 5 SCC 430; 45 (1991) DLT 602) dated 20-9-1991 where a two-Judge Bench of this Court upheld another judgment of the High Court. In that case, as in the present case before us, the High Court had allowed the writ petition filed by Sudan Singh who had contended that the entire Section 6 declaration was quashed by the Division Bench in B. R. Gupta case (1989) 37 DLT 150 (DB)) in the judgment dated 18-11-1988. Sudan Singh did not also file objection under Section 5-A. It was argued that in *Abhey Ram* case ((1997) 5 SCC 421 : JT

((1997) 5 SC 354) decided by the three-Judge Bench on 22-4-1997, though Sudan Singh case ((1997) 5 SCC 430; 45 (1991) DLT 602) was referred to, the appropriate paragraphs were not noticed. The appropriate paragraphs in the Division Bench judgment in B. R. Gupta case ((1989) 37 DLT 150 (DB)) dated 18-11-1988 were also not noticed. In yet another case relating to one B. L. Sharma, another writ petition, CWP No. 2365 of 1990 was allowed on 6-12-1990 and Special Leave Petition (C) No. 3604 of 1992 was dismissed by this Court following the judgment in Sudan Singh case ((1997) 5 SCC 430 : 45 (1991) DLT 602). It is also contended that in the letter of the Joint Secretary dated 31-3-1989, the a legal opinion obtained by the Department was that the judgment of the Division Bench dated 18-11-1988 would cover cases where land was not taken possession of - as in the present case. It is accepted that the respondent did not file objections under Section 5-A but it is said that this was because he was an Army Officer who at that time was working in the forward areas.

7. We may state that it is true that in Sudan Singh case ((1997) 5 SCC 430 : 45 (1991) DLT 602). It a two-Judge Bench of this Court confirmed another judgment of the Delhi High Court wherein the High Court had allowed the writ petition on the basis that the judgment of the Division Bench dated 18-11-1988 had quashed the Section 6 declaration wholly. It is also true that in Sudan Singh case ((1997) 5 SCC 430 : 45 (1991) DLT 602) too no objections were filed by the owners under Section 5-A. But, we are governed by the judgment of the three-Judge Bench in Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354) where the said Bench not only referred to the effect of the Division Bench judgment of the High Court dated 18-11-1988 but also referred to the judgment of the two-Judge Bench of this Court in Sudan Singh case ((1997) 5 SCC 430; 45 (1991) DLT 602). The three-Judge Bench in Abhey Ram ((1997) 5 SCC 421 : JT (1997) 5 SC 354) is binding on us in preference to the judgment of the two Judges in Sudan Singh ((1997) 5 SCC 430 : 45 (1991) DLT 602).

8. In connection with owners or persons interested who have not filed objections under Section 5-A, in principle, it must be accepted that they had no objection to the Section 4 notification operating in respect of their property. On the other hand, in respect of those who filed objections, they might have locus standi to contend that the Section 5-A enquiry was not conducted properly. We, therefore, agree in principle with the view of the 6 three-Judge Bench in Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354) that those who have not filed objections under Section 5-A, could not be allowed to contend that the Section 5-A enquiry was bad and that consequently the Section 6 declaration must be struck down and that then the Section 4 notification would lapse. If, therefore, no objections were filed by the respondents, logically the Section 6 declaration must be deemed to be in force so far as they are concerned.

9. But learned Senior Counsel for the respondents contends that the judgment of the Division Bench dated 18-11-1988 in B. R. Gupta case ((1989) 37 DLT 150 (DB)) had quashed the entire Section 5-A proceedings and that even in case the respondents had filed objections, the position would not have been different. We cannot accept this contention. We are of the view that in respect of those who did not object to the Section 4(1) notification by filing objections under Section 5-A, the said notification must be treated as being in force. The writ petitioners cannot be permitted to contend that in some other cases, the notification was quashed and that such quashing would also enure to their benefit.

10. Then coming to the effect of the judgment of the Division Bench dated 18-11-1988 of the High Court, we are of the view that the three-Judge Bench judgment in Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354) has interpreted or declared the effect of the said High Court judgment

dated 18-11-1988. That judgment is binding on us. We cannot go by the two-Judge Bench judgment in Sudan Singh case ((1997) 5 SCC 430; 45 (1991) DLT 602) because we are bound by the judgment of the three-Judge Bench in Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354). Further, the judgment in Abhey Ram case (1997) 5 SCC 421 : JT (1997) 5 SC 354) takes notice of Sudan Singh case ((1997) 5 SCC 430; 45 (1991) DLT 602) and it cannot be contended that they have not looked fully into the judgment in Sudan Singh case ((1997) 5 SCC 430; 45 (1991) DLT 602) and or fully into the judgment of the Division Bench of the High Court dated 18,-11-1988 in B. R. Gupta case ((1989) 37 DLT 150 (DB)). Nor is the dismissal of the special leave petition in B. L. Sharma case a precedent which can outweigh Abhey Ram ((1997) 5 SCC 421 : JT (1997) 5 SC 354). The opinion of the legal department of the Government or the Delhi Development Authority which is relied upon apart from not having binding force, cannot override Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354).

11. Reliance was then placed by the learned Senior Counsel for the respondents on Oxford English School v. Govt. of T.N. ((1995) 5 SCC 206) but it has no relevance to the question before us viz. whether a notification under Section 6 can be upheld in respect of only some of the lands covered by it. Also a three-Judge Bench in N. Narasimhaiah v. State of Karnataka ((1996) 3 SCC 88) has held that the said judgment has been rendered per incuriam. So far as the other contention that the Government cannot blow hot and cold, we are of the view that the reasoning given by the Full Bench in its judgment dated 25-7-1987 was confined to the question whether the Section 6 declaration was time-barred. The Court held that as the scheme was an integrated one, stay of parts of it precluded the authorities from going ahead with the entire Section 6 declaration. That reasoning cannot help the respondents to contend that the same thing would apply to the quashing of the declaration by the Division Bench in its judgment dated 18-11-1988. Quashing the notification in the cases of individual writ petitions cannot be treated as quashing the whole of it. That was what was held in Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354). The main, points raised before us are fully covered by the judgment of the three-Judge Bench in Abhey Ram case ((1997) 5 SCC 421 : JT (1997) 5 SC 354).

12. For the aforesaid reasons, these civil appeals are allowed and the judgment of the High Court is set aside and the writ petition is dismissed. There will be no order as to costs.