

Santosh Sharma

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V.
GOPALA GOWDA HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

Civil Appeal No. 2774 Of 2006 | 19-09-2013

Having failed to convince the Division Bench of the Delhi High Court to quash the acquisition of land bearing Khasra Nos. 409 and 410/1 situated at Village Malikpur Chhawani, the appellant has preferred this appeal.

The appellant's father Shri Raja Ram Sharma migrated from Pakistan in 1947. He participated in the auction held by the Rehabilitation Department on 6.6.1958 and purchased the plots of land in question.

By notification dated 20.7.1962 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), the Chief Commissioner of Delhi proposed the acquisition of various parcels of land of Malikpur Chhawani (total measuring 274 bighas 6 biswas) including Khasra No.410 for a public purpose, namely, Planned Development of Delhi. The declaration made by the Chief Commissioner under Section 6 of the Act was published vide notification dated 20.9.1962.

Shri Raja Ram Sharma challenged the acquisition proceedings in CWP No.581-D/1963, filed before the Delhi High Court. The same was allowed by the learned Single Judge vide order dated 16.12.1970, the operative portion of which reads as under:

"The result is that both the impugned notifications under Section 4 and 6 of the Land Acquisition Act and the land acquisition proceedings vis-`-vis the petitioner and his land bearing Khasra No.409 and 410/1 located in village

Malikpur Chhawani are quashed and a writ to that effect is issued. The petitioner will also be entitled to his costs."

LPA No.109/1971 filed by the respondents was dismissed by the Division Bench vide judgment dated 31.3.1980.

During the pendency of Writ Petition No.581-D/1963, the Chief Commissioner of Delhi proposed the acquisition of other parcels of land situated in Malikpur Chhawani including Khasra No.409 for the same public purpose, viz., Planned Development of Delhi. Notification under Section 4 of the Act was issued on 24.2.1965. Shri Raja Ram Sharma submitted objections dated 1.4.1965 under Section 5-A(1). The Land Acquisition Collector made recommendation for allotment of alternative site to Shri Raja Ram Sharma but the Chief Commissioner did not accept the same and made declaration under Section 6, which was published vide notification dated 16.11.1966. The Land Acquisition Collector passed award dated 19.9.1986 and fixed market value of the acquired land.

The acquisition of Khasra No.409 was questioned by M/s. Delhi Welding Corporation in Writ Petition No.2714/1986, which was dismissed as withdrawn. Order dated 10.5.2007 recorded by the High Court on the request made by the writ petitioner reads as under:

"The Petition was dismissed on 6.3.2006. Thereafter, an application for restoration has been filed. On 22.9.2006 learned counsel for the Petitioner was invited to argue whether the Writ Petition was covered by the decision of Full Bench in Roshanara Begum v. Union of India and Ors. reported in 61 (1996) DLT 206, which has also been affirmed by Hon'ble Supreme Court in Murari v. Union of India (1997) 1 SCC 15. Instead of arguing the matter, learned counsel for the Petitioner had sought adjournments in order to place full set of papers on which reliance was sought to be made by him. Despite opportunity this indulgence has not been availed of.

Learned counsel for the Petitioner refers to the decision in C.W.P. 581-D/ 1963 dated 16th December, 1970. He states that the Respondents herein had filed a

Letters Patent Appeal which has also been dismissed. In these circumstances, he seeks leave to withdraw the Petition.

Dismissed as withdrawn."

Soon after quashing of the acquisition of land comprised in Khasra No.410/1, fresh notification under Section 4 was issued on 3.6.1980 for the acquisition of that parcel of land. The declaration under Section 6 was made on 16.2.1981. Thereafter, notices under Section 9(1) and (3) were issued to the Rehabilitation Officer, Jamnagar House, New Delhi and the award was passed on 18.9.1986.

After 16 years of passing of the awards, the appellant filed Writ Petition No.1830/2000 for quashing the acquisition proceedings. One of the grounds taken by the appellant was that the acquisition of Khasra No.409 had already been quashed by the High Court and in the absence of challenge to the judgment of the Division Bench, the respondents were not entitled to re-acquire the land. Another plea taken by the appellant was that the competent authority had not applied mind to the objections filed by her father Shri Raja Ram Sharma and the recommendations made by the Land Acquisition Collector were arbitrarily ignored. She also pleaded that the notices issued under Sections 9(1), 9(3) and 12(2) had not been served upon her and on that account her cause was seriously prejudiced.

In an apparent bid to explain the delay, the appellant averred that she had no knowledge about the acquisition proceedings till April 1999; that she had made an application in April 1999 for mutation of her name in place of her father and then she came to know that the land purchased by her father had already been acquired and CWP No.2714/1986 filed by occupants/tenants for quashing the acquisition of Khasra No.409 was pending. The appellant further averred that on acquiring knowledge about the acquisition proceedings, she filed CM No.588/2000 in CWP No.2714/1986 for impleadment as party but the same was withdrawn because she was advised to independently challenge the acquisition of both the khasra numbers by filing substantive petition, which she did in 2002.

The Division Bench of the High Court summarized the grounds on which the appellant challenged the acquisition proceedings and rejected her plea that the acquisition of Khasra No.409 had already been quashed by the learned Single Judge in CWP No.581-D/1963. The Division Bench noted that the appellant's father had filed objections dated 31.8.1962 only against the proposed acquisition of land comprised in Khasra No.410 and that the learned Single Judge had considered challenge to notifications dated 20.7.1962 and 20.9.1962, which did not relate to Khasra No.409 and observed:

"From the aforesaid, it is clear that when second acquisition was not challenged nor any finding recorded that notifications in respect of second acquisition were invalid, mere mentioning of Khasra No.409 in the concluding portion of the judgment of the learned Single Judgment was clearly a typing error. It appears to be bona fide mistake which crept in the said judgment. It further appears that even the parties did not realise this mistake and that is the reason that no application for correction of that error was made before the learned Single Judge and the Government filed appeal only qua the findings relating to the first acquisition. We are of the opinion that merely because of such a mistake whereby Khasra No.409 is also mentioned in Judgment dated 16.12.1970, it would not enure to the benefit of the petitioner and it would not be open to her to contend that the Notifications dated 24.2.1965 and 16.11.1966 qua second acquisition proceedings also stood quashed. It is trite law that no person can take advantage of such a mistake when the petitioner or her predecessor-in-interest had not even challenged the second acquisition proceedings. It does not lie in her mouth to contend that notifications relating to second acquisition also stood quashed.

The condition precedent for getting a relief is that petition or proceedings have to be filed for the purpose. Such condition precedent must be fulfilled before the effect can follow (*Conditio praecedens adimpleri debet priusquam sequatur effectus*). Claim that Notifications qua Khasra No.409 be treated as quashed without even challenging the same, would be asking for too much. Such a consequence in law is clearly impermissible. The mentioning of Khasra No.409 in the judgment which was not the subject matter of the petition was clearly without jurisdiction (*Coram non-judice*) and, therefore, even on this account no benefit thereof can be given to the petitioner.

Therefore, we are of the opinion that second acquisition qua Khasra No.409 was never quashed. Thus there was no question of issuing any further or fresh notifications under Section 4 and 6 qua this land and on the basis of the earlier Notification under Section 4 and Declaration under Section 6, LAC was competent to proceed ahead. Earlier there was no limitation prescribed within which Award was necessarily to be made. Section 11A was added by means of Amendment Act 1984 effective from 24.9.1984 which prescribes two years limitation for passing the Award from the date of Declaration under Section 6 and in respect of pending Declaration within two years of the said amendment. Award made on 19.9.1986 qua Khasra No.409 would thus be within the prescribed period and cannot be challenged on this ground. This question has to be, therefore, answered against the petitioner."

emphasis supplied)

The appellant's challenge to the acquisition proceedings on the ground of violation of Sections 9 and 12 of the Act was also negated on the premise that she has no locus to make a complaint in the matter of non-receipt of notices issued under those sections because her name had not been entered in the records. The Division Bench noted that Shri Raja Ram Sharma had died on 29.10.1978 but the appellant did not take steps for getting her name mutated in the relevant records and held that the Land Acquisition Collector did not commit any illegality by not sending notices to her. The Division Bench then took cognizance of the statement made by the appellant's counsel that she was not living with her father and the land in question had been transferred to third persons, who had raised construction and were running their factories and held that she cannot be considered to be an interested person. This is evinced from the following passage of the impugned order:

"Admittedly, the petitioner was not even living with her father. Counsel also admitted at the Bar that land in question was transferred and she was not in possession. On pertinent query posed by us at the time of arguments, learned counsel for the petitioner informed that she got married much before the death of her father and had been living with her husband, away from her father. Furthermore, land in question has been transferred to third persons and it appears that such transfer is after the Notification under Section 4 of the Act. The transferees have raised construction and are running their factories

therefrom. It is thus clear that present litigation is filed by the petitioner at the behest of those transferees as the petitioner is not even interested."

(emphasis supplied)

As a consequence of rejection of both the grounds of challenge, the Division Bench of the High Court dismissed Writ Petition No. 1830/2000. CM No.24/2004 filed by the appellant under Order XLVII Rule 1 read with Sections 114 and 151 of the Code of Civil Procedure for review of order dated 28.11.2003 was dismissed by the Division Bench of the High Court by observing that entertaining of her prayer would amount to rehearing the matter.

We have heard Shri Shyam Divan, learned senior counsel for the appellant, Shri P.P. Malhotra, learned Additional Solicitor General for the Union of India and Shri Vishnu B.Saharya and Ms.Rachana Srivastava, learned counsel for the Delhi Development Authority and scrutinized the record.

Learned senior counsel for the appellant laid considerable emphasis on the recommendations made by the Land Acquisition Collector under Section 5-A(2) and argued that the competent authority committed serious error by making a declaration under Section 6 without even considering the report of the Land Acquisition Collector. He pointed out that the Land Acquisition Collector had taken note of the detailed objections filed by Shri Raja Ram Sharma and recommended that he be allotted alternative site, but the Chief Commissioner did not pay any heed to the recommendations and mechanically made the declaration. Shri Divan further argued that the acquisition proceedings are liable to be quashed because notices issued under Sections 9 and 12 of the Act were not served upon the appellant and she did not get an opportunity to file objections and/or at least lodge claim for adequate compensation. Learned senior counsel submitted that the observation made by the High Court in the context of the alleged admission made by the appellant's advocate about transfer of land to third parties is patently erroneous. He pointed out that no evidence had been produced by the respondents to show that the acquired land had been transferred after the issue of notifications under Section 4(1) and argued that the Division Bench of the High Court committed serious error by non-suiting the appellant on the ground of lack of locus standi. He invited the Court's attention

to the averments contained in paragraph 7(d) of the review petition to show that the counsel who appeared on behalf of the appellant did not make any statement that the acquired land had been transferred to third parties.

Shri P.P. Malhotra supported the impugned order and argued that the High Court did not commit any error by negating the appellant's challenge to the acquisition proceedings because the writ petition was filed after long time gap of three and a half decades qua the acquisition of Khasra No 409 and two decades qua the acquisition of Khasra No.410/1. Shri Malhotra emphasized that the transfer of land to third parties is evinced from the contents of CWP No.2714/1986 and the attempt made by the appellant to wriggle out of the catch 22 situation by filing review petition was rightly aborted by the High Court. He submitted that the High Court rightly refused to entertain the review petition because the same was not supported by an affidavit of the appellant or her advocate.

In our opinion, there is no merit in either of the contentions urged by learned senior counsel for the appellant. In the first place, it is to be noted that while dismissing the writ petition, the Division Bench of the High Court had taken note of the admission made by the counsel who appeared on behalf of the appellant that the acquired land had been transferred to third parties and she was not in possession. The appellant did try to retract the statement made by her advocate and filed review petition but could not persuade the High Court to entertain the same. In paragraph 7(d) of the review petition filed on behalf of the appellant, the following averments were made:

"That it is most respectfully submitted, that at no stage during the hearing of the case, any statement was made that the land in question had been transferred. It was never admitted that that the Petitioner was not in possession or that the land in question had been transferred to any third party after the notification under Section 4 of the Act. With respect no such admission was made or could be made as the land has never been transferred to any third party at any stage whatsoever. What was admitted at the bar was that there were tenants on the land who were running factories therefrom. Some of these tenants had also filed CWP NO 2714 of 1986, in this Hon'ble High Court which had been admitted and is still pending. This position has also been stated in Para 44 of the Petition filed by the Petitioner. The Petitioner being the only legal heir to Late Raja Ram

who owned the land remains an interested party and had filed the petition in her own right. There is nothing on record, nor was any statement made at the Bar/before the Hon'ble Division Bench to conclude that the present litigation was filed by the Petitioner at the behest of third party transferees and that the Petitioner is not even an interested party. The said observation of the Hon'ble Division Bench in the judgement therefore needs to be reviewed and corrected in view of the above factual position."

If there was any grain of truth in the above-noted averments, the appellant and/or her advocate would have filed an affidavit to substantiate the same. However, the fact of the matter is that neither the appellant nor the advocate, who appeared on her behalf at the hearing of the main petition filed an affidavit in support of the review application. Therefore, the statement contained in order dated 28.11.2003 that the counsel for the appellant had admitted that the land in question had been transferred and she was not in possession cannot be discarded. The sanctity attached to the proceedings of the Court cannot be diluted by relying upon bald averments contained in the review petition. In this connection, reference can usefully be made to the judgment of this Court in *State of Maharashtra v. Ramdas Shrinivas Nayak* AIR 1982 SC 1249.

Even before this Court, the appellant and/or her advocate did not file an affidavit to disown the admission to which reference has been made in the order of the High court, the relevant portion of which has been extracted hereinabove. Therefore, we are constrained to observe that the acquired land had been transferred to third parties, who raised construction and were running factories at the time of filing of the writ petition by the appellant. The factum of transfer of the acquired land to the third parties is substantially supported by the fact that the occupants / tenants had filed Writ Petition No.2714/1986 to challenge the acquisition of Khasra No.409. It is a different thing that the writ petition was withdrawn in 2007.

As a sequel to the above discussion, we hold that the appellant did not have the locus standi to challenge the acquisition proceedings.

The issue relating to violation of Section 5-A(2) read with Section 6(1) of the Act does not merit consideration because the writ petition filed by the appellant

was highly belated and the High Court would have done well to non-suit her only on the ground of laches. At the cost of repetition we consider it proper to observe that notification for the acquisition of Khasra No.409 was issued on 24.2.1965 and notification for the acquisition of Khasra No. 410/1 was issued on 3.6.1980 (second round). The appellant's father who had challenged the earlier acquisition of Khasra No.410 in Writ Petition No.581-D/1963 died sometime in 1978. In the writ petition filed by her in 2002, the appellant did not aver that she had no knowledge about order dated 16.12.1970 passed by the learned Single Judge in Writ Petition No. 581-D/1963 and judgment dated 31.3.1980 passed in LPA No.109/1971. Therefore, her assertion about lack of knowledge of the acquisition proceedings till April 1999 was clearly an afterthought and we do not find any justification to entertain the appellant's challenge to the acquisition proceedings after 35 years of the acquisition of Khasra No.409 and 20 years of the acquisition of Khasra No.410/1.

In the result, the appeal is dismissed.