

Pradeep Kumar and ors Vs. Union of India and ors

Pradeep Kumar and ors Vs. Union of India and ors

SooperKanoon Citation : sooperkanoon.com/1171183

Court : Delhi

Decided On : Jul-09-2014

Judge : Badar Durrez Ahmed

Appellant : Pradeep Kumar and ors

Respondent : Union of India and ors

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

09. 07.2014 W.P.(C) No.2052/2014 PRADEEP KUMAR & ORS ... Petitioners versus UNION OF INDIA & ORS ... Respondents Advocates who appeared in this case: For the Petitioner : Mr Samrat Nigam and Ms Ankita Mahajan For the Respondents : Ms Anjana Gosain and Mr Pradeep Desodya for respondent Nos. 1 and 5 Mr Yeeshu Jain for respondent Nos. 2 and 3 Mr Ajay Verma for DDA CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. The petitioners have sought a writ of certiorari, or any other writ, order or direction in the nature thereof quashing the acquisition which was initiated by virtue of the notification dated 21.03.2003 under Section 4 of the Land Acquisition Act, 1894. The petitioners also seek the quashing of the declaration dated 19.03.2004 under Section 6 of the said Act on

the ground that the said notifications are contrary to the Constitution. Another prayer has been made for issuance of a direction to the respondents to compensate the petitioners with the profit earned by the respondents by letting out the land acquired from them for private gain.

2. The facts are that the petitioners, who are separate individuals, together own about 25 acres of land in Village Barwala. The said land of the petitioners formed part of the 3000 hectares of land which was sought to be acquired for the public purpose of Rohini Residential Scheme by virtue of a notification dated 21.03.2003 issued under Section 4 of the said Act. As mentioned above, the Section 6 declaration was issued on 19.03.2004. Thereafter the award was made on 05.08.2005. Possession of the land in question was also admittedly taken. It is also the admitted case of the petitioners that compensation has been received by the petitioners on various dates. However, Reference Petitions under Section 18 of the said Act have been filed by the petitioners, which are pending. In other words, it is an admitted position that till date, the petitioners had not objected to the acquisition or the award.

3. It is the case of the petitioners that they have now come to learn through an application made under the Right to Information Act, 2005 that 25 acres of land is sought to be allotted by the DDA to the Ministry of Civil Aviation for the purposes of a Heliport. Our attention was drawn to a copy of the letter dated 01.06.2009 which has been issued by the DDA to the Secretary, Ministry of Civil Aviation on the subject of allotment of 25 acres of land for the construction of a Heliport at Sector 36, Rohini. The letter indicates that the DDA has proposed to allot, on perpetual lease-hold basis, a plot of land measuring 25 acres for construction of a Heliport at Sector 36 - Rohini. In lieu of the allotment of the said land to the Ministry of Civil Aviation, the DDA has demanded a sum of ` 52,94,12,545 plus certain other charges for documentation. Out of this amount, a sum of Rs 51,65,00,000/- is towards the premium for the said land. Ground rent is to be charged @ 2.5 % per annum of the total premium and that amounts to Rs 1,29,12,500/- for one year.

4. It is the case of the petitioners that while the land had been acquired for the public purpose of the Rohini Residential Scheme, the same has not materialized and, instead, the land is being diverted for the purposes of setting up of a Heliport. For this, the DDA is receiving a huge sum of money to the extent of Rs 52.94 crores in the first instance along with recurring receipts of ground rent for each year subsequently. It is the case of the petitioners that the respondents cannot profit at the cost of the petitioners and the fact that they are doing so is in violation of Article 14 of the Constitution and therefore, the acquisition ought to be struck down and the land be returned to them.

5. Mr Verma, the learned counsel, appearing on behalf of the DDA has drawn our attention to a decision of a Division Bench of this court in the case of Naresh Kumar and Ors v. Union of India and Ors: W.P.(C) 2501/2013 decided on 17.04.2013 wherein the very same acquisition had been made the subject matter of challenge. The grievance in that petition was virtually identical to the grievance sought to be raised in the present petition. On going through the said decision, it is evident that the petitioners therein were aggrieved by the fact that after acquiring the land for a particular public purpose, the land was sought to be utilised for various other purposes and even the residential plots were being auctioned. In that decision itself it is noticed that some land was being allotted for the construction of a Helipad. The reference to the Helipad is the very land in question which is before us in this writ petition. The Division Bench by virtue of the said decision in the case of Naresh Kumar (supra) observed as under:

Rohini Residential Scheme like other schemes is in the nature of a mini township. Such a mini township will contain all the essential features, i.e. residential areas, commercial areas, institutional areas. Thus while, there will be development of residential plots, there would also be development of commercial areas to take care of the needs of residents. These may be shopping arcades or there may be hotel sites, etc. Similarly there would be institutional requirements like for purpose of schools, hospitals, community facilities, etc. If land is allotted for all these purposes it cannot be said that the purpose of acquisition has disappeared or there is mala-fide exercise of the power of acquisition. The DDA would spend large amount of monies on development of the area and, to have a transparency

auction is often the method adopted for allotment, at least, with commercial areas while in case of residential areas there may be auction of plots or particular schemes under which plots and flats are allotted. It may be possible even to allot land to certain societies for their needs. Similarly hotel sites and commercial buildings are often auctioned. We are, thus, of the view that the nature of allegations made in this writ petition cannot be said of such a nature as to suggest that there is a mala-fide exercise of power or improper use of the land, which has been acquired.

xxxx W.P.(C) No.2052/2014 xxxx xxxx We are of the view that the petitioners cannot after such a long period seek to rake up the issue of acquisition merely on the basis of some recent pronouncements by the Honble Supreme Court even when they accepted the compensation qua acquisition of the land by neither challenging the acquisition proceedings nor the award but on the other hand were only interested in enhancement of compensation for which they have sought a reference. They have also recovered the compensation after number of years and should be permitted to assail the acquisition proceedings would not, in our view, be the appropriate direction to be passed. In view of these facts and circumstances, we are not inclined to entertain the petition seeking to challenge the acquisition proceedings both on grounds of delay and laches as also on account of the acquiescence and conduct of the petitioners qua the acquisition proceedings.

6. Mr Jain, the learned counsel, appearing on behalf of the Land and Building Department of the Government of NCT of Delhi drew our attention to a decision of another Division Bench of this court in the case of Adil Singh v. Union of India and Ors:

171. (2010) DLT748(DB) wherein this court after examining several decisions of the Supreme Court on the subject observed as under:

From all these decisions, a clear line of thought is discernible, and that is, that where land is acquired for one public purpose and part of it is left unused, the same can be used for another public purpose. In case this is done, merely because the unused land is used for another public purpose would not be a

ground for challenging the original acquisition itself. It is further clear that once the land has vested in the State either by virtue of Section 16 of the said Act or by virtue of Section 17(1), in urgent cases, there is no question of the land being re-vested in the erstwhile owners. The Government can withdraw from the acquisition only upto the point it does not take possession of the land sought to be acquired. Once possession has been taken, the acquisition cannot be given up. It is also clear that though part of the land acquired for one public purpose could be used for another public purpose, without invalidating the acquisition itself, land acquired for a public purpose cannot be used for a private objective. But, even if part of the land is sought to be used for a commercial purpose, the same would not revert to the original owner though the appropriate Government would be subject to an action in case the allotment for commercial use is arbitrary or unreasonable. Where a portion of the land acquired for a public purpose is left unused, it would be open to the State Government to utilize the same for a commercial purpose provided it is done in a transparent manner either through an open tender or through an auction.

7. From these decisions it is evident that the petitioners cannot now challenge the acquisition and their case is clearly covered by the aforesaid decisions. This is so because the land has vested in the State by virtue of Section 16 of the said Act and there is no question of the land being re-vested in the erstwhile owners. It is also not a case of mala-fide acquisition as has been made clear by the decision of the Division Bench in the case of Naresh Kumar (supra).

8. The learned counsel for the petitioners, however, sought to draw a distinction between the present case and that of Adil Singh (supra). He referred to the said decision and submitted that in that case the land which had been acquired for a public purpose had in fact been utilized for the same and only a part of it was left unused. Whereas, in the present case, according to him, the land in question has not at all been utilized for the public purpose of the Rohini Residential Scheme. This argument is no longer available to the petitioners in view of the decision of the Division Bench in the case of Naresh Kumar (supra), which we have referred to above. Consequently, we see no distinction between the present case and that of Adil Singh (supra). It is an admitted position that the land in question stood

acquired and the acquisition proceedings had been completed by virtue of the fact that the land vested in the State. That being the position, the erstwhile owners cannot ask for return of the land to them. If the Government, after the acquisition, does not utilize the land in a legal manner, it would be open for challenge but, at the same time, it would not be open for return of the said land to the erstwhile owners.

9. In view of the foregoing, we see no merit in the present writ petition. As such the same is dismissed. There shall be no order as to costs. BADAR DURREZ AHMED, J JULY09 2014 SU W.P.(C) No.2052/2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com