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Ram Kala and Ors Vs. Union of India and Ors

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Court : Delhi

Decided On : Dec-23-2014

Judge : Badar Durrez Ahmed

Appellant : Ram Kala and Ors

Respondent : Union of India and Ors

Judgement :

$~5 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

23. 12.2014 W.P.(C) 2780/2014 RAM KALA & ORS .... Petitioners versus UNION OF INDIA AND ORS ..... Respondents Advocates who appeared in this case: For the Petitioner : Mr Ravinder Sethi, Sr Advocate with Mr Rajiv Kr Ghawana, Advocate. For the Respondent : Mr Ruchir Mishra and Mr Mukesh Kr Tiwari No.1/UOI. For the Respondent Nos.2 & 3. : Mr Yeeshu Jain and Ms Jyoti Tyagi. For the Respondent No.4/DDA : Mr Arun Birbal and Mr Sanjay Singh. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE I. S. MEHTA

JUDGMENT
BADAR DURREZ AHMED, J (ORAL) 1. In this writ petition, the point urged is that the acquisition proceedings have lapsed because of the non-compliance of the mandatory condition of making the declaration under Section 6 of the Land

Acquisition Act, 1894 within the stipulated period of one year from the date of the publication of the notification under Section 4 of the said Act.

2. The petitioners in the present writ petition are 194 in number. 192 petitioners are individuals claiming the land in question. Insofar as the petitioner Nos. 193 and 194 are concerned, they are the Resident Welfare Associations of the entire area covered in respect of the said land. It may be further pointed out that 123 out of 192 petitioners were parties to the proceedings which culminated in the Supreme Court decision in Civil Appeal No.4239/2007 decided on 21.03.2012 whereby the Section 17(4) notification giving a go-by to the applicability of Section 5A of the said Act was quashed. The remaining individual petitioners in the present writ petition did not challenge the acquisition proceedings prior to the present writ petition. We may also point out at this stage itself that insofar as all the petitioners are concerned, there was no declaration under Section 6 of the said Act prior to the one that is impugned in this writ petition and which was made on 21.03.2013. In other words, in respect of the subject lands, only one Section 6 declaration has been made and that was on 21.03.2013.

3. The further facts are that on 14.07.2000, the notification under Section 4 of the said Act was published, inter alia, in respect of the subject lands. Some 364 persons including 123 of the petitioners in the present petition challenged the same by filing a writ petition bearing W.P.(C) No.5276/2000 before this Court. On 12.09.2000, a status quo order was passed by this Court. That order continued till the dismissal of the said writ petition (W.P.(C) No.5276/2000) on 09.07.2007. While dismissing the writ petition, this Court had granted certificate for appeal to the Supreme Court. As a result, Civil Appeal No.4239/2007 was preferred by the petitioners of that writ petition. The said civil appeal was filed on 23.08.2007 and the Supreme Court in its hearing on 10.09.2007 granted a stay of further proceedings. The said stay continued to operate till 21.03.2012 when the said Civil Appeal No.4239/2007 was allowed. It is thereafter, on 21.03.2013, that the impugned Section 6 declaration was made.

4. It may also be pointed out that subsequent to the said declaration, an award No.2/2013-14 was also made on 30.12.2013.

5. The present writ petition was filed on 30.04.2014 challenging the entire acquisition proceedings on the ground that the declaration under Section 6 of the said Act was barred by time. Reliance was placed on the Constitution Bench decision of the Supreme Court in the case of Padmasundra Rao and Ors. Vs State of Tamil Nadu:

2002. (3) SCC533 6. The learned counsel appearing on behalf of the respondents submits that the petitioners were the subsequent purchasers/GPA holders and, therefore, they had no locus standi to file the present writ petition and they are not entitled to the declaration to the effect that the acquisition proceedings have lapsed on account of the Section 6 declaration not having been made within the stipulated period of one year. Insofar as the dates are concerned, to which we have referred to in the earlier part of this judgment, there is no dispute. It is a matter of fact that the Section 4 notification was issued on 14.07.2000 and that a period of 59 days had elapsed between that date and the passing of the status quo order by the High Court on 12.09.2000 in W.P.(C) No.5276/2000. It is also an accepted fact that the interval of time between the dismissal of the writ petition on 09.07.2007 and the granting of the stay order by the Supreme Court was 62 days. In other words, a period of (59 days + 62 days) 121 days had elapsed after the publication of the notification under Section 4 of the said Act on 14.07.2000, by the time the Supreme Court granted the stay on 10.09.2007. Thereafter, the civil appeal, as pointed out above, was allowed by the Supreme Court on 21.03.2012 and consequently the time for making the Section 6 declaration once again started to run. The Section 6 declaration, however, was made only on 21.03.2013 exactly one year after the judgment of the Supreme Court dated 21.03.2012. In other words, if the total time period taken for making the declaration under Section 6 is to be computed, it would amount to 1 year and 121 days which is clearly beyond the stipulated period of 1 year prescribed in Section 6 of the said Act. This very issue was the subject matter of consideration in a batch of matters entitled Sunil Goel and Ors. Vs The State and Ors.: WP(C) 3049/2013 and other connected matters decided on 29.04.2014 by a Division Bench of this Court. In similar circumstances, after taking note of the decision of the Constitution Bench of the Supreme Court in the case of Padmasundra Rao (supra), this Court observed as under:

18. Having considered the submissions made by the learned counsel on both sides, we are of the view that the submissions made by the learned counsel for the petitioners ought to be accepted. This is so because the decision of the Supreme Court in the case of Padmasundara Rao (supra) covers the present case on all fours. The very issue before the Supreme Court, as pointed out by us earlier, was - whether, after the quashing of a declaration under Section 6 of the said Act, a fresh period of one year would be available to the State Government to issue another declaration under Section 6. This question has been answered by the Constitution Bench of the Supreme Court in Padmasundara Rao (supra) in the negative. In other words, when a Section 6 declaration is quashed, it does not give a fresh period of one year to the Government to issue another Section 6 declaration. The Section 6 declaration, after such quashing, if at all, can be issued only during the balance period.

7. It is clear that in that case where a Section 6 declaration was quashed, it was held that it did not give a fresh period of one year to the Government to issue another Section 6 declaration and that the Section 6 declaration, after such quashing, if at all, could be issued only during the balance period. But, here, the facts are even better, inasmuch as there was no Section 6 declaration in respect of the subject lands at all. The first Section 6 declaration was made on 21.03.2013 which is far beyond the prescribed limit of one year under Section 6 of the said Act. The consequences of this would be that the acquisition proceedings themselves have to be declared as having lapsed.

8. The contention raised by the learned counsel for the respondents that the petitioners did not have the locus standi to maintain this writ petition is not acceptable. This is so because 123 petitioners admittedly were petitioners before the Supreme Court in Civil Appeal No.4239/2007. When the Supreme Court entertained their writ petition, the respondents cannot now take the stand that they did not have any locus standi. Furthermore, since the Section 6 declaration would be bad because of it being beyond the period of limitation in respect of the 123 petitioners, the same relief cannot be denied to the others in respect of the very same Section 6 declaration. A similar view was taken by the Supreme Court in Union of India and Ors Vs. Krishan Lal Arneja and Ors. (2004) 8 SCC453where

the Supreme Court, in paragraph-37, noted as under:

37. .....This apart, the very same notification being common is quashed at the instance of other writ petitioners. In this view, at this stage, the contention urged on behalf of the appellants that writ petition filed by a tenant was not maintainable, cannot be accepted.

9. Furthermore, reliance had also been placed by the learned senior counsel for the petitioners on the decision of Smt Gunwant Kaur and Ors Vs. Municipal Committee Bhatinda and Ors 1969 (3) SCC769wherein the Supreme Court held as under:

17. It was urged by Mr.Hazarnavis on behalf of the Municipal Committee, Bhatinda, that the three appellants were purchasers of the lands claimed by them after the notification under Section 4 was issued and they had no right to challenge the issue of the notification. If, however, the notification under Section 4 was vague the three appellants who are purchasers of the land had title thereto to challenge the validity of the notification. The appellants have spent in putting up substantial structures considerable sums of money and we are unable to hold that merely because they had purchased the lands after the issue of the notification under Section 4 they are debarred from challenging the validity of the notification, or from contending that it did not apply to their lands.

10. Mr Sethi, the learned senior counsel appearing on behalf of the petitioners also submitted that the transfers or the alleged transfers in the present case in favour of the petitioners were not violative of the Delhi Land (Restriction on Transfer) Act, 1972, inasmuch as the transfers are prohibited under the Act only in cases where the Section 6 declaration has been made. In the present case, as pointed out above, no Section 6 declaration had been made prior to 21.03.2013 and all the transfers/GPAs were executed much prior to the making of the said Section 6 declaration.

11. We are making it clear that in any event we are not concerned here about the title to the lands in question. The limited scope of this writ petition is whether the Section 6 declaration was made within the stipulated period or not. There is no

dispute that the Section 6 declaration was made beyond the period of one year from the date of notification having been published under Section 4 of the said Act. That, in itself, is sufficient to declare that the acquisition proceedings have lapsed.

12. Consequently, the declaration dated 21.03.2013 bearing No.F.10(29)/96/L & B/LA Vol.III under Section 6 of the Land Acquisition Act, 1894 is hereby quashed insofar as the petitioners are concerned. As a result, the notification dated 14.07.2000 being notification No.F.10(29)/76/L & B/Vol.III/5326 under Section 4 of the said Act insofar as the petitioners are concerned would be regarded as having been lapsed. The award No.2/2013-14 made on 30.12.2013 is also quashed.

13. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs. BADAR DURREZ AHMED, J DECEMBER23 2014 dc W.P.(C) 2780/2014

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