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Court : Delhi

Decided On : May-05-2000

Reported in : 2000VAD(Delhi)225; 2000(56)DRJ637

Judge : Vikramajit Sen, J.

Appeal No. : I.A. No. 12470 of 1995 in Suit No. 2867 of 1995

Appellant : Satish Khosla and Another

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Geeta Mittal, Adv.

Advocate for Pet/Ap. : Mr. P.N. Lekhi, Sr. Advocate and; Mr. J.P. Singh, Adv

Judgement :
ORDER

Vikramajit Sen, J.

1. In this suit the Plaintiff has prayed for the issuance of an Injunction restraining the Delhi Development Authority from dispossessing from or interfering with the possession of the Plaintiffs in respect of property or demolishing the gate or the boundary wall. On 12.12.1995 when the application for ex parte ad interim injunction came up for hearing, the injunction prayed for was granted. This application comes up for final disposal.

2. Ms. Geeta Mittal, learned Counsel for the DDA has stated that she will confine her case to the averments contained in the Written Statement. In para 2 thereof, it has been stated that the iron gate and the rooms with boundary walls falls in Khasra No.460/368/36 and 461/368/36 min which were acquired vide Award No. 90/80-81 and, thereforee, possession under Section 22(1) of the DDA Act was taken vide Notification No. F.9(2)/78-L&B; dated 3.2.1981. Accordingly, the Defendant is entitled to remove encroachments on the land under its disposal in terms of the said Notification. In the course of arguments, learned Counsel for the DDA has submitted that the Plaintiffs have concealed material facts and, thereforee, the injunction should be rejected. It is her submission that the questions which are now being agitated in these proceedings, are fully covered by the decision of a Full Bench of this court in a batch of writ petitions entitled Roshnara Begum v. UOI. AIR 1996 206. Civil writ Petition 3318/1991 and C.W.P. 4777/1993 were also disposed of by this common judgment, and the legality of the acquisition proceedings were upheld. Thereafter, the Petitioners as well as other land owners had approached the Hon'ble Supreme Court by means of Special Leave Petitions, and these petitions were also rejected and dismissed in terms of the judgment passed in Murari and Others Vs . UOI and others : (1997)1SCC15 . She has further contended that the Plaintiffs were claiming rights in respect of a transfer during the pendency of the acquisition proceedings. She had stated that the Section 4 Notification in the Land Acquisition Act was made on 23.1.1965, Section 6 Notification on 26.12.1968 and Section 9 in 1976. Immediately, the persons affected by these Notifications including the Plaintiffs had filed Civil Writ Petitions, which were disposed of by the Full Bench, as mentioned above. She further submitted that the representations made by the Plaintiffs, as envisaged in the order of the Hon'ble Supreme Court in Murari's case (supra) have also been rejected. It was her contention that the Plaintiffs had no right in the property and, thereforee, on the ratio of G.M. Modi Hospital and Research Centre Medical Science v. Shankar singh Bhandari and other 58 (1995) DLT 79, the Plaintiffs had no right to claim any injunction.

3. Mr. P.N. Lekhi, learned Senior Counsel appearing for the Plaintiffs has contended that the acquired land, including the suit property, has vested in the U.O.I. He palced reliance on the decision of the Apex Court in Municipal

Corporation of the City of Ahmedabad Vs . chandulal Shamaldas Patel and Others. : (1971)3SCC821 and of this Court Delhi Development Authority Vs . Golcha Properties and Others : 43(1991)DLT314 . He contended that there is no evidence to substantiate that the Central Government had taken possession of the land and had transferred it to the Delhi Development Authority. This being the Position DDA had no locus standi to take any action vis-a-vis the lands in question. he also contended that since the Plaintiffs were in possession, they were entitled to seek the injunctory protection of this Court.

4. Having considered the rival arguments, I am of the opinion that the judgment of My Learned Brother K. Ramamoorti J. in G.M. Modi Hospital's case cannot assist the stand of the Delhi Development Authority in the facts of the present case. The learned Judge had duly considered the decision of the Supreme Court including Krishna Ram Vs . Mrs. Shobha : AIR 1989 SC2097 in which it was held as follows:

'It is well settled in a law in this country that where a person is in settled possession of the property even on the assumption that he had no right to remain in the property, he cannot be dispossessed by the owner of the property except by the recourse of law,'

5. The K. Ramamoorti J. in the facts of the case before him. had held that the Plaintiffs were licencees and were not in settled possession. He, thereforee, set aside of the injunctions granted by the lower courts. What is relevant and necessary in all such cases is to determine the nature of the possession of the Plaintiffs Learned counsel for the Delhi Development Authority has relied on and filed Notification No. F.9(2)/78-L&B; dated 3.2.1981 by virtue of which the lands in question were placed at the disposal of the Delhi Development Authority for the purpose of development, 'As no replication has been filed, it would be fair to assume that, as averred in para 2 of the Written Statement, the suit property falls within the sweep of this notification. thereforee, the contention of Mr. Lekhi, Learned Counsel for the Plaintiffs to the contrary can not be accepted. The following observations in Ramniklal N. Bhutta Vs . State of Maharashtra : AIR 1997 SC1236 would have to govern the decision to be taken in the present case. They are thereforee, reproduced as under:

Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancements to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as 'Asian tigers', e.g. South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons effected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, order by way of stay or injunction are also made. Whatever may have been the practice in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stayinjunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis--vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be aware ded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable

to say. We hope and trust that these consider ations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

6. In view of the proceedings which have already taken place in respect of the acquisition of the land, firstly before the full Bench of this Court and thereafter, in the Hon'ble supreme Court, I am of the opinion that the matter has been fully dealt with and does not call for fresh hearing by this Court. It was contended by learned Counsel for the DDA that in Roshnara Begum's case the Full Bench declined the grant of an injunction in favor of the Plaintiffs. She relied on the following passage from the decision of the Full Bench:

Paras 181, 182 Page 251 of AIR 1996 Delhi 206 Judgment.

Most of the points raised in this writ petition are common with the main points already discussed by us. However, Mr. G.L. Sanghi, Senior Advocate, who appeared for the applicant in C.M. 8269/93 has urged that the land inb question has been developed into a sports complex and modern amenities have been provided and it would be national waste in allowing such constructions to be demolished.

It is urged that the applicant has acquired this land in 1969 before coming into force of the Delhi Land (Restrictions on Transfer) Act, 1972 and thus, there was no bar in the transferee raising constructions. However, it is the admitted fact that all these constructions have been raised after issuance of the notification under Section 4 of the Act. These constructions have been raised obviously with complete Knowledge of the fact that this land is liable to be acquired for public purpose. It is true that transferee of the land such as the applicant is entitled to same benefits and rights as the transferor (see Smt. Gunwant Kaur Vs . Municipal Committee, Bhatinda, : AIR 1970 SC802). However, unless and until it is shown that public purpose for which the land was sought to be acquired by issuing a notification under Section 4 and declaration under Section 6 has elapsed, it would not be possible for this Court to hold that mere fact land has been developed by the petitionerapplicant should lead to the conclusion that public purpose for which the land was sought to be acquired has been achieved. It is pointed out to us that this particular land is required for the residential scheme of Vasant Kunj. so, it

cannot be said that the sports complex built up by the applicant in the land in question is in consonance with the public purpose for which the land has been earmarked in the scheme of the Government. Thus, we do not think that the petitioner/applicant can legally get the notification quashed on any valid grounds in the present matter. However the petitioner/applicant is at liberty to make any representation to the authorities for getting the land released and it is for the authorities to examine whether in view ofs the modern sports complex having been brought into existence in the land in question could it serve the public purpose of acquiring this land for that particular scheme or the scheme is liable to be modified or amended in respect of the land in question. However, the acquisition proceedings are not liable to be quashed on any such plea.

7. Ms. Geeta Mittal, Learned Counsel for the DDA further relied on the following observations of the Hon'ble Supreme Court in Murari's case:

: (1997)1SCC15 .

Some of the learned counsel for the appellant who submitted that even the land shown in green colour in the master plan which has been sought to be acquired but it is not understood as to for what purpose the said land is being acquired. It was also submitted that there are a large number of structures and complexes raised on the land sought to be acquired in which schools, sports and other recreational activities are going on. Shri G.L. Sanghi, learned counsel appearing for the appellants in Civil Appeal arising out of SLP (C) No. 5771 of 1996 and Civil Appeal arising out of SLP (C) No 740 of 1996 as well as other advocates appearing for some other appellants submitted that there exist factories, workshops, godowns and MCD School besides residential houses and quarters over the land belonging to the appellant Partap Singh situated at Roshanara Road, Subzi Mandi, Delhi which has been acquired and that there exists modern and well-developed farmhouse with modern facilities in the land belonging to the appellant Roshanara Begum, where there are a good number of other structures and fruit-bearing trees. Consequently these areas do not require further development as they are already developed and, thereforee, the said land should be released from acquisition. Mr. Sanghi, learned counsel appearing for some of

the appellants urged that the appellant concerned had developed a sports complex providing modern amenities therein and if the same is demolished it would be a great national waste. It was, thereforee, urged that such complexes and built-up areas should be deleted from the acquisition. It may be pointed out that in the master plan the land indicated in green colour is reserved for recreational facilities. The recreational facilities are also part of the planned development of Delhi and it cannot be disputed that recreational amenities are also part of the life of the people and an important feature of a developed society. thereforee, no legitimate objection can be made in the acquisition of such land which is shown in green colour. so far as the structures and constructions made on the land are concerned there is no material to show that they were made before the issuance of notification under Section 4 of the Act. It is also not clear whether such constructions were raised with or without necessary sanction/approval of the competent authority. No grievance thereforee can legitimately be raised in that behalf as the same would be regarded as unauthorised and made at the risk of the landowners. Here a reference of a decision of this Court in the case of State of U.P. V. Pista Devi may be made with advantage, para 7 of which reads as under: (SCC p. 258, para 7)

'It was next contended that in the large extent of land acquired which was about 412 acres there were some buildings here and there and so the acquisition of these parts of the land onb which buildings were situated was unjustified since those portions were not either waste or arable lands which could be dealt with under Section 17(1) of the Act. This contention has not been considered by the High Court. We do not, however, find any substance in it. The Government was not acquiring about 412 acres of land on the outskirts of Meerut city which was described for planned development of the urban area it would not be proper to leave the small portions over which some superstructures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply Section 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application.'

'In the present case also a large extent of land measuring thousands of acres has been acquired and, thereforee, it would not be proper to leave out smoke small portions here and there over which some structures are said to be constructed out of the planned development of Delhi. We may, however, add here that during the course of the arguments Shri Goswami, learned counsel appearing for the respondents-State made a statement that the Government will consider each of the structures and take a decision in that respect. we, thereforee, leave this issue to the discretion of the respondent.

8. In these circumstances, I have reached the conclusion that the Plaintiffs have failed to establish the existence of a prima facie case in their favour. It is also not in controversy that they have acquired rights over the suit property during the pendency of acquisition proceedings. Accordingly, the transfer in their favor is void. Stay of dispossession has been declined by the Full Bench of this Court as well as the Supreme Court. The balance of convenience, in all acquisition matters, especially where their legality had been upheld by the court, would not lie in favor of the Plaintiffs. The contention of the DDA that its planned development work is severely impeded is to be appreciated. The land owners are entitled to and shall no doubt receive, just compensation for their lands Hence, no irreparable loss or injury would be caused to them. For all these reasons the ex parte ad interim injunction granted on 12.12.1995 is recalled and the application is dismissed. There shall, however, no orders as to costs.