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Court : Delhi

Decided On : Sep-25-2003

Reported in : 2004IAD(Delhi)46; AIR2004Delhi22; 107(2003)DLT156; 2003(71)DRJ77

Judge : Sanjay Kishan Kaul, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4; Delhi Land (Restriction on Transfer) Act, 1972

Appeal No. : C.W.P. No. 5308 of 2002

Appellant : Hirday Kumar

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Gaurav Sarin, Adv. for respondent No. 1 and ; Sanjay Poddar, Adv for respondent No. 2

Advocate for Pet/Ap. : Anil Kumar, Adv

Disposition : Writ petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. The right of a purchaser of agricultural land after issuance of notification under Section 4 of the [Land Acquisition Act, 1894](#) (hereinafter to be referred to as, `the said Act') to claim an alternative plot under the scheme of the respondents for grant of such alternative plots on large-scale acquisition of land has given rise to the present writ petition.

2. The factual matrix is not in dispute.

3. The notification under Section 4 of the said Act was issued on 24.10.1961 and the Award was published on 27.02.1967. During this interregnum period of time, the father of the petitioner purchased the land on 14.05.1965 vide a registered sale deed. This was so as at that time there was no prohibition in law for such purchase as came into being subsequently in view of the Delhi Land (Restriction on Transfer) Act, 1972 (hereinafter to be referred to as, `the Land Restriction Act'). The physical possession of the land was taken over from the father of the petitioner on 09.06.1967. The father of the petitioner Shri Moti Ram passed away on 23.03.1972 and prior to his demise has executed a Will in favor of the petitioner on 28.01.1971. The issue of grant of compensation was finally settled only on 12.03.1999 in view of the grant of probate of the Will. The petitioner applied for allotment of alternative plot under the Large Scale Development and Disposal of Lands in Delhi Scheme, 1961 (hereinafter to be referred to as, `the said Scheme') on 07.06.1999. The petitioner deposited the relevant documents, but the claim of the petitioner was rejected finally on 05.02.2002 and thereafter the present writ petition has been filed seeking a writ of mandamus for grant of such alternative plot.

4. Learned counsel for the petitioner has strongly relied upon judgment of the learned Single Judge this Court in Smt. Prem Saini v. Lieutenant Governor & ORs. 1992 (2001) DLT 331. The said case was also one of the purchase of land after issuance of notification under Section 4 of the said Act. The Court found that in identical cases, recommendation had been made for allotment of alternative plot to relations of dignitaries and persons holding public office and, thus, the Court was of the view that the petitioner therein could not be discriminated against. The learned Single Judge also took note of the judgment of the Full Bench of this Court

in Smt. Shiv Devi Virley v. Lieutenant Governor of Delhi & ORs. AIR 1987 Delhi 46 and judgment of the Division Bench of this Court in CWP Nos. 591 & 612/1982 titled 'Udey Raj girl v. Union of India & ORs. ' decided on 22.04.1983.

5. Learned counsel for respondent No. 2, on the other hand, has referred to judgment of the Supreme Court in Shen Prabha & ORs. v. State of U.P. & Anr., : AIR 1996 SC540 , which was followed by the Division Bench of this Court in Jaswant Kaur v. Lt. Governor, : 65(1997)DLT512 .

6. Learned counsel for respondent No. 2 has submitted that in Smt. Prem Saini's case (supra), the respondents were unrepresented and judgments of the Supreme Court and the Division Bench of this Court were not brought to notice of the learned Single Judge. It is further submitted that primarily the judgment is based on the issue of discrimination and the mere fact that the said judgment has been sustained till the Supreme Court would not assist the petitioner as the dismissal was in limbo and there is no pronouncement on merits of the controversy for which only the judgment of the learned Single Judge can be referred to.

7. Learned counsel while referring to the judgment in Sneh Prabha's case (supra) has submitted that the principal question considered and decided in the case is that alienation of land after publication of notification under Section 4 of the said Act would only entitle the purchaser to receive compensation and the petitioner cannot be given the benefit of any scheme for alternative plot. The Supreme Court held that non-grant of benefit to such subsequent purchaser of a scheme for alternative plot would not amount to invidious discrimination and even otherwise any equality clause does not extend to perpetuate the wrong.

8. In fact, on this proposition, learned counsel has also referred to judgment in Jalandhar Improvement Trust v. Sampuran Singh, : AIR 1999 SC1347 , where it was held that where an allotment is made contrary to statutory rules, the same would be contrary to law and the principles of promissory/equitable estoppel cannot be invoked to protect illegal allotments.

9. Learned counsel has referred to the Division Bench judgment of this Court in Jaswant Kaur's case (supra) where the Full Bench judgment of this Court in Smt.

Shiv Devi Viriley's case (supra) as also judgment of the Supreme Court in Sneh Prabha's case (supra) were elaborately discussed. The Division Bench also considered the ramification of the bar created for the first time by the Land Restriction Act and as to whether the absence of the said enactment could imply that the persons, who have purchased the land after issuance of Section 4 notification prior to the said special enactment, would not be covered by the principles laid down in Sneh Prabha's case (supra). The requirement under the said Scheme for allotment of the plot is 'to individuals whose land has been acquired'. After noticing the decision of the Full Bench in Smt. Shiv Devi Viriley's case (supra), where it was held that the expression 'anyone' means owner of the land at the time of acquisition and not at the time of issuance of notification under Section 4 of the said Act; the consequence of the judgment in Sneh Prabha's case (supra) were discussed. In Sneh Prabha's case (supra), it was held that alienation of land after publication of notification under Section 4 of the said Act does not bind the Government or the beneficiary under the acquisition and the only right of the subsequent purchaser is to receive compensation for the land. The Division Bench thereafter in Jaswant Kaur's case (supra) proceeded to state the legal position as under :-

' 17.1 A perusal of the Full Bench decision in Shiv Devi's case (supra) reveals their Lordships having proceeded on two premises : (i) that a mere notification under Section 4 does not bar the land owner from transferring the land; (ii) a bar on transfer of land forming subject matter of Section 4 notification was for the first time imposed by Delhi Land (Restriction on Transfer) Act, 1972 and that would made a difference for the applicability of the scheme on pre-Act and post-Act transfers.

17.2 The law laid down by the Supreme Court and as noticed in paras 13 to 16 above clearly indicates that Section 4 notification takes away the power of the land owner to transfer the land or to create any encumbrance thereon. Such transfer or encumbrance would be null and void creating no title or interest in favor of the transferee. At least such a transfer cannot be set up against the State. The only right which their Lordships of the Supreme Court have recognised in favor of such transferee is the right to claim compensation apparently because the transferor-

land owner having realised the price from the transferee cannot be permitted to realise the same twice over by way of claiming compensation from the State.

17.3 The applicability of the law laid down by the Supreme Court does not depend for its efficacy on the provisions of Delhi Land (Restriction on Transfer) Act, 1972. Even if this Act would not have been enacted the law as to the effect of Section 4 Notification would have remained the same as has been laid down by their Lordships of the Supreme Court.

17.4 Be that as it may, we are bound by the law as laid down by the Supreme Court that being the law of the land. We are, therefore, clearly of the opinion that under the Scheme transferee of land having acquired it subsequent to the date of Section 4 notification cannot in law claim for allotment of alternative plot of land consequent to acquisition.'

10. I have considered the submissions advanced by learned counsel for the parties.

11. There is no doubt that in Smt. Shiv Devi Viriley's case (supra), the Full Bench was of the considered view that Section 4 of the said Act does not create any impediment in law for owners of the land to transfer the same till such time the Land Restriction Act came into force. However, the observations of the Supreme Court in Sneh Prabha's case (supra) show that the Hon'ble Supreme Court has held that there cannot be any alienation of land after publication of notification under Section 4 of the said Act and in case there is such alienation, the only right of the purchaser is to get compensation and nothing more or less.

12. The conclusion set forth in the judgment in Jaswant Kaur's case (supra) leaves no manner of doubt in respect of all the issues raised in the present writ petition and there is no distinction between pre-1972 and post-1972 position in this behalf. In fact, it has been observed in para 17.3 that the applicability of the law laid down by the Supreme Court does not depend upon the efficacy of the provisions of the Land Restriction Act. It was, thus, held that under the Scheme, the transferee of land having acquired it subsequent to the date of Section 4 of the said Act cannot in law claim for allotment of alternative plot of land consequent to the application.

13. In Smt. Prem Saini's case (supra), none of the aforesaid judgments were brought to notice of the learned Single Judge. In fact, the respondents were not even represented and that appears to be the reason for the same. Not only this, the primary reason given in the said judgment is the issue of discrimination and the allotment to similarly situated persons while denying allotment to the petitioner in that case. This is not so in the present case and, thus, the judgment in Prem Saini's case (supra) would apply to facts of that peculiar case.

14. It may also be noticed that the notification in question issued under Section 4 of the said Act in Jaswant Kaur's case (supra) is dated 24.10.1961. It is under the very notification, the land has been acquired in the present case.

15. In view of the aforesaid legal position, the petitioner would not be entitled to an alternative plot of land having purchased the land after issuance of the notification under Section 4 of the said Act.

16. The writ petition is accordingly dismissed leaving the parties to bear their own costs.