

Mohd. Ishaq and Others Vs. D.D.A. and Others

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Court : Delhi

Decided On : Sep-04-2001

Reported in : 2002(61)DRJ699

Judge : Mr. Manmohan Sarin, J.

Acts : Land Acquisition Act - Sections 4; Delhi Development Act - Sections 22; Evidence Act - Sections 114

Appeal No. : CW No. 1677 and CM 2964/97

Appellant : Mohd. Ishaq and Others

Respondent : D.D.A. and Others

Advocate for Def. : Ms Gita Mittal and ; Ms Shobhna Takiar, Adv.

Advocate for Pet/Ap. : Mr. S.P. Pandey, Adv

Disposition : Writ petition dismissed

Judgement :

ORDER

Manmohan Sarin, J.

1. Petitioners, four in number, have filed this writ petition seeking a writ or direction, to the respondents not to demolish houses bearing No. 86-A to 86-A/IV

on Khasra No. 17, Revenue Estate of Bhalol Pur Khadar, Sarai Kale Khan, New Delhi. Petitioners also seek a prohibition on the respondents from dispossessing them from their houses. Protection and recognition of their civil rights is also sought.

2. Petitioners' case is that their forefathers were residing in Kacha houses/Jhuggis built on the land, comprised in Khasra No. 17, prior to partition. It is claimed that the land forms part of the abadi of the village Sarai Kale Khan. The predecessors-in-title of the petitioners, it is claimed had sold part of the land. In the Jamabandi of 1948-49, name of Faiza, late father of petitioner Nos. 1 and 2, had been duly entered. A Mosque and a Madarasa were constructed on part of this land in course of time. Petitioners aver that the respondents are seeking to demolish their houses and dis-possess them on the ground that the land in question stands acquitted.

3. Petitioners admit that in 1959, a notification under Section 4 of the Land Acquisition Act was duly issued, which covered Khasra No. 17 also. It is, however, claimed that since the number of built up houses on the land were more than 200, the possession of land and built up structures was not taken up by the respondents even after the notification. Petitioners submit that even though the award had been passed, petitioners neither filed any claim for compensation nor received any compensation. Petitioners did not apply for any increase in compensation by filing a reference or an appeal for enhancement.

4. It is claimed that the respondents made an abortive attempt to dispossess the petitioners in 1993. Again in September, 1996, respondents took action for demolition in which some of the structures and the Madarasa, was partly demolished. However, petitioners' houses remained untouched. Petitioners claim to be the bonafide residents in uninterrupted possession for over decades. It is claimed that their houses are assessed to house tax and they have been making payments for the same. Reliance is placed on revenue records, showing possession of petitioners.

5. Petitioners along with some others admit having filed a suit for injunction, bearing No. 363/93 titled Ali Hussain and Ors. v. Delhi Development Authority,

seeking to restrain the respondents from demolishing their houses and dispossessing them. This suit, it is stated was dismissed in default. The application for restoration of the suit was not pursued and hence got dismissed.

6. On the above averments, Mr. S.P. Pandey, learned counsel for the petitioner, urges that in view of the continuous uninterrupted possession of over decades, petitioners' houses should not be demolished and petitioners be not dispossessed. It is claimed that petitioners being bonafide residents, having ration and voters card and paying house tax for their houses, are factors, which would dis-entitle the respondents from forcibly dispossessing them at this stage belatedly.

7. Learned counsel for the petitioner, Mr. Pandey, submits that the report of possession having been taken on 17.9.1996 is false and a manipulated one. He submits that petitioners are in actual physical possession even today. It is also urged that in the instant case, Land Acquisition Collector, who was entitled to take possession after acquisition and place the same at the disposal of DDA, has not done so. The notification under Section 22 of the Delhi Development Act has also not been issued. As regards the suit for injunction, previously instituted, learned counsel candidly submits that since a suit was not a property remedy, in a case of threat of demolition following the acquisition, filing of the writ petition being the proper remedy was resorted to. Learned counsel during the course of arguments had shown certain photographs to assert that the structures were still existing and petitioners were in possession.

8. Ms. Gita Mittal, learned counsel for the respondent/DDA objected to the photographs/documents being referred to at the belated stage. The photographs after perusal were returned to Mr. Pandey to move an appropriate application, if he wanted to file them on record and rely on them. Arguments were also completed and judgment reserved.

9. The case of the respondent/DDA on the other hand is that the land in question was duly acquired vide a notification under Section 4 and the requisite procedure for the acquisition was duly followed. Admittedly, petitioners did not challenge the notifications or the award, under which petitioners were also the awardees of

compensation. It is further claimed by the respondent/DDA that action for demolition was taken. Respondent/DDA, therefore, duly manifested their desire and intention to take possession. It is stated that possession was taken by the Land Acquisition Collector and handed over to DDA on 17.9.1996. It is stated the petitioners had attempted to illegally and unauthorizedly raise construction and the Madarasa was demolished on 19.9.1996. Learned counsel for the respondent/DDA has drawn my attention to the award bearing No. 44/82-83 dated 2.12.1982, by which the land in question was acquired. The award itself shows that petitioner Nos. 1 and 3 had filed their claim for compensation. The petitioners appear in the award at S. Nos. 29 and 30 of page 29 of the paper book. The Land Acquisition Collector has specifically recorded as regards the existence of structure in Khasra No. 17 as under:-

'There are temporary structure on Khasra Nos. 17 and 23 but these have been raised after the date of notification under Section 4 and hence no compensation is assessed for the structures.'

In view of this specific finding in the acquisition award, wherein petitioner Nos. 1 and 2 are stated to have filed their claim for compensation, it is not open for the petitioners to assail or question the finding that the temporary structures were raised after the date of notification under Section 4. This is specially so, since the petitioners have not challenged the acquisition proceedings and the award made and published. Respondent/DDA has produced on record the possession report.

10. Learned counsel for the petitioner had placed reliance on State of Bihar Vs . Dr. G.H. Graht and another : AIR1960 Pat382 Full Bench and Balwant Narayan Bhagde Vs . M.D. Bhagwat and others : AIR 1975 SC1767 to urge that the land forming subject matter of acquisition vests in the Government only when it proceeds to take possession of the acquired land. Further that it must take actual possession of the land since all interest in the land is sought to be acquired by it. It was held that 'There can be no question to taking symbolic possession in the sense understood by judicial decisions under the Code of Civil Procedure.' These authorities would not advance the case of the petitioner any further. On the question of manner, in which possession is required to be taken, it is now well

settled that it would suffice if authorities take steps which manifest their intention of taking possession and in furtherance to which they act. Reference in this connection is invited to the decisions of the Supreme Court in *Tamil Nadu Housing Board Vs . A. Viswam (dead) by Lrs. : [1996]2SCR402* . The Supreme Court in this case considered the observations in *Balwant Narayan Bhagde's case (Supra)* and after noting the observations of *Untwalia, J.* and *Bhagwati, J.* in para 9 of the judgment held as under:

'It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchanama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.'

The court also held that in such a case presumption under Section 114(iii)(e) of the Evidence Act would arise. Reference may also be invited to the decision of the Supreme Court in *Balmokand Khatri Educational and Industrial Trust, Amritsar Vs . State of Punjab and others : [1996]2SCR643* . The Supreme Court observed as under:

'It is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchanama in the presence of the Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.'

The court further went on to uphold that merely because the previous owner retained possession of the acquired land, the acquisition cannot be said to be bad in law. In *Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs . Suresha Nand Juyal alias Musa Ram (deceased) by Lrs. and others : [1997]2SCR1128* , the Supreme Court held as under;

'Obviously, after consideration of all the objections and rejection thereof, declaration under Section 6 was published. As stated earlier, the award was made and symbolic possession was taken on 17.12.1988. Under the circumstances, the land stood vested in the State free from all encumbrances.'

From the foregoing discussion, it would be seen that there is no merit in the petitioner's contention that since they continue to retain actual possession the acquisition would stand vitiated and they are entitled to restraint on demolition of the structures.

11. Learned counsel for the respondent/DDA has submitted that at the time of acquisition and issuance of the notification, houses and the structures were not in existence, except the temporary ones, which too had been raised after the notification under Section 4. She submits that petitioners and their predecessor-in-title have after the acquisition sub-divided the land and sold out various plots. These subsequent actions cannot create any right in favor of the petitioners or other occupants of structures. Similarly, the mere payment of house tax will not confer any title in respect of the land. The non issuance of notification under Section 22 of the Delhi Development Act will not confer any right on the petitioners to obtain the relief sought or vitiate the acquisition. There is no merit in these contentions.

12. Besides petitioners and others, who had earlier taken their chance by filing a suit for injunction and failed in obtaining the injunction, should not be permitted to invoke writ jurisdiction for seeking the similar relief subsequently. There is thus merit in the contention of the learned counsel for the respondent that petitioners or those to whom they have transferred various plots, would have the status of unauthorised occupants and they cannot be permitted to continue to occupy the public land.

13. The writ petition has no merit and is liable to be dismissed and is, accordingly, dismissed. While parting with the case, it may be noted that the dismissal of the writ petition would not debar the petitioners from representing to the State Government for rehabilitation or alternate allotment, if so eligible under any of the schemes.

