

Mansa Ram Vs. Union of India

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Court : Delhi

Decided On : Aug-01-1996

Reported in : 1996IVAD(Delhi)113; 1996(38)DRJ551

Judge : Manmohan Sarin, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

Appeal No. : Interim Application No. 4812 of 1993 and Suit No. 967 of 1993

Appellant : Mansa Ram

Respondent : Union of India

Advocate for Pet/Ap. : L.C. Chechi,; Shams Khwaja,; Sandeep Agarwal and;

Judgement :

Manmohan Sarin, J.

(1) By this order, I would be disposing of I.A.4218/93 filed by the plaintiff under Order XXXIX Rules 1 and 2, read with Section 151 CPC. Plaintiffs have prayed for a restraint on the defendants from demolishing the houses and for taking over possession of property illegally and without following the due process of law. This application has been moved in a suit for declaration filed by the plaintiffs.

(2) The plaintiff numbering 23, all residents of Village Jasola, filed the above suit for declaration bearing No.967/93 on 19-4-1993. The declaration sought is that acquisition proceedings initiated vide notification No.F.4(9)/64 L & H dated 4-4-1964 under Section 4 of the Land Acquisition Act, hereinafter referred to as the Act, culminating in Award No.6A/Supplementary 86-87 are illegal, ultra virus and of no effect in respect of the plaintiffs land admeasuring 21 bighas 11 bids was in Khasra No.246, Village Jasola. The plaintiffs claim that the aforesaid land to be in their ownership, acquired by inheritance and on purchase from one Sh. Mansa Ram. The extent of plot areas claimed to be owned by the plaintiffs are shown in Annexure I to the plaint. It is claimed that the plaintiffs had built their residential houses for their own requirement and use. The land being adjacent to the original settlement of the village abadi. The plaintiffs claim to be having ration cards and residing in the said houses Along with their families. The plaintiffs have also produced house tax receipt for some of the houses.

(3) The plaintiffs' case is that the defendants issued notification under Section 4 to acquire the land on 4-4-1964. A declaration was also made vide notification No.F.4(9)/64 L & H dated 7-12-1966 under Section 6 of the Act. The plaintiffs allege that the publicity as required under Section 4 of the Act was not made in the locality of the village, thereby denying the opportunity of filing objections against the acquisition of the land. Further, that notices under Section 9 and 10 were not served on the plaintiffs and the award was made by the Land Acquisition Collector on 19-9-1986 after a gap of 22 years. The plaintiffs claimed that construction of houses had been initiated prior to notification under Section 4 and the built up area was already made at the time of award by the Land Acquisition Collector. It is claimed that land is shown having built up area in the revenue records for the years 1982-83 and 1983-84. The plaintiffs have challenged the acquisition in the suit on the ground of inordinate delay alleging that it was not the scheme of the Land Acquisition Act to issue a notice under Section 4 of the Act and make the award 24 years after notice of acquisition.

(4) Reliance is also placed on the polp1 icy of the defendants of not acquiring the built up area as enumerated in the letter from Sh.Ganga Dass, Secretary L & B dated 9-8-1986 to the Deputy Commissioner. It is also claimed that the award was

made without the previous approval of the appropriate Government. Reliance is also placed on certain decisions relating to delayed acquisitions. Allegations of discrimination are made in the matter of acquisition of built up areas of the plaintiffs, while leaving the land of others. It is stated that the acquisition of land after a lapse of 20 years has caused huge loss to the plaintiffs and deprived them of a roof over their head. It is stated that the prices of land have gone manifold nearly 100 times since the prevailing price in 1964.

(5) The plaintiffs have also pleaded a number of grounds in challenging the delayed acquisition. The plaintiffs claim to have no knowledge of notifications under Sections 4 and 6. The cause of action for suit is claimed to have arisen when the defendants came for demolition of their houses on 18-4-1993. The plaintiffs have filed written submissions in which reliance has been placed on certain judgments of the Apex Court, wherein dispossession of the land owners was made subject to alternate plot or employment being given and provision being made for resettlement of villagers. Reliance was also placed by the plaintiffs on *Karjan Jalasay Yojana Assargrath SahkarAne Sangarsh Samiti Vs . State of Gujarat & others* : AIR 1987 SC532 and (the cases of *V.N.E. Plot Purchases Association v. Under Secretary, Delhi Administration* in Civil Appeal 139188 decided by the Apex Court and *Ghaziabad Sheromani Sahkari Avas Samiti Ltd. & Another v. State of U.P. and Others*). Written submissions have also been filed by the counsel for the plaintiffs in which the above legal pleas have reiterated. It has also been stated by the counsel for the plaintiff that there was no consolidation and no 'Lal Dora' area reserved for resettlement of villagers and as such the Land Acquisition Act in its application to village Jasola in the presence set of circumstances is an infringement of fundamental rights and the same ought to be struck down in its application to the village Jasola.

(6) The defendants have filed the written statement, wherein it is contended that the suit is barred by non service of the statutory notice under Section 55B of the Delhi Development Act. It is stated that the suit is barred by delays and laches and by limitation. The acquisition of land and the award made in 1986 is sought to be challenged in a suit filed in 1993. It is claimed that the land acquired vide Award No.6 D Supplementary/ 86-87 was placed at the disposal of the Dda by the Land

and Building department under Section 22 of the Delhi Development Authority. It is claimed that 18 bighas out of 21 bighas and 11 bids was of land was placed at the disposal of the Dda vide notification No.F9(4)/79-L&B; dated 5-9-1988. Vacant possession of the land admeasuring 18 bighas was handed over on 22-9- 1986, while symbolic possession of 3 bighas and li bids was has also been taken over by the DDA. It is claimed that the possession of 3 big has and 11 bids was could riot be handed over due to the same having unauthorized structures. The proceedings for getting the unauthorized encroachments removed have been initiated and are in progress. The entire land admeasuring 21 bighas and li bids was is urgently required for the residential scheme of pocket 10 of Village Jasola. It is claimed that the structures on 3 bighas and 11 bids was of land are unauthorized and did not exist at the time of issuance of the notification under Section 4 of the Act and have been admittedly raised thereafter. As regards, the letter of Sh. Ganga Dass, it is claimed that the same is only a matter of internal policy and cannot come in the way of exercise of statutory powers under Section 11 of the Act by the Lt. Governor. Besides the said policy would not confer any right on the plaintiffs and it is applicable only in cases where more than 92% to 100% of the area was built up at the time of issuance of notification, which is not so in the present case. Reliance is placed on Shri. Bhagwan & Another v. Union of India & Others (1991 (2), D L 59 D.B Reference is made to the award in question to canvass that there were only temporary unauthorized structures and any structure that may have come up recently and after 1986 being unauthorized and on land which stood acquired, will not confer any rights on the plaintiffs. It is also pointed out that the plaintiffs have already received the compensation. As regards, the delay in acquisition, not affecting the validity of the notifications, reliance is placed on Ram Chand & Others Vs . Union of India & Others : (1994)1SCC44 and the Full Bench decision of this Court in Roshnara Begum & Others v. Union of India 1996 (1) A.D., Del 6.

(7) I have perused the pleadings, the documents on record and considered the respective submissions and the decisions relied on. It clearly emerges that the acquisition proceedings, which are sought to be challenged are those initiated vide notification of 4-4- 1964. Admittedly, pursuant to the declaration made under Section 6, an award bearing No.6 A supplementary/86-87 was made in 1986. It is in April, 1993, that the acquisition proceedings initiated in 1964 and for which an

award has been published in 1986, are sought to be challenged. The challenge is highly belated. It is nearly 9 years after the award has been published. Not only this, the plaintiffs have received the compensation under the award. Learned counsel for the plaintiff attempted to explain this by saying that the plaintiffs have moved an application and offered to redeposit the compensation with interest. I am afraid the same would not alter the position. As regards the challenge to the acquisition and the delayed making of the award, the same is no longer rest integra in view of the decision of the Supreme Court in *Ram Chand & Others v. Union of India & Others* - Supra and the Full Bench decision of this Court in *Roshnara Begum & Others v. Union of India* - Supra. The Courts declined to quash the acquisition on account of inordinate delay in completing the acquisition proceedings. In the instant case, also possession of 18 bighas out of 22 bighas had already been taken for development of the land for residential purposes for development of Delhi.

(8) The plaintiffs do not, therefore, have a prima facie case for assailing the acquisition proceedings and the award passed. There is also considerable merit in the plea of the defendants that the structures being unauthorized and having been raised after the notification for acquisition had been issued, will not confer any rights on the plaintiffs. On perusal of a copy of the award that had been produced on record by the defendants, (6-D supplementary/86-87 at internal page 16) reveals that the structures that are mentioned and for which compensation has been recommended were present only in Khasra No.87/2 namely two rooms and a Cheaper with an iron gate. Thereafter, in the award it stated 'besides the said structures, there are some structures on the said land which are temporary in nature and built up after the date of notification under Section 4 of the Act. owners of these structures can remove their material and therefore, no compensation is allowed.' It would, therefore, appear that there were no structures or houses of plaintiffs built and in existence at the time of acquisition notices on the land in question in Khasra No.246, Village Jasola. Compensation paid under the award was received by the plaintiffs and the land owners without any protest. It is now sought to be urged that plaintiff/land owners were not aware whether the compensation was being paid for the structures also or for the land alone. This plea cannot be accepted. In these circumstances, the plaintiff have failed to prima

face establish that they had raised structures prior to notification for acquisition and the same were of a permanent character. As far as Sh. Ganga Dass's letter is concerned, apart from defendants' plea that the plaintiffs case does not fall with the guidelines contained in the said letter, the same cannot be of any avail, in view of Division Bench judgment of this Court in Shri Bhagwan & Another v. Union of India & Others - Supra, wherein it is held that the said letter is at best an administrative guideline and subject to modification. It was observed in the said Division Bench decision 'even if it assumed that these guidelines are applicable, though according to respondents, they are not, nevertheless the same were subject to modification and the modification infact did take place when the Lt. Governor, in exercise of his power under Section 11 of the Act gave its approval to the award which were announced in September, 1986.' As far as the decision of the Apex Court relied on by the plaintiffs in cases of Karjan Jalasay Yojana Assargrasth SahkarAne Sangarsh Samiti v. State of Gujarat& others and V.N.E. Plot Purchases Association Vs.-Under Secretary, Delhi Administration- Supra, the observations therein would not advance the case of the plaintiff. The Karjan case was one where the Apex Court vacated the stay granted against dispossession since the land was required by the State Government and the area was to be submerged by reasons of construction of a dam. It was a case which involved the construction of a dam and the Apex Court considering the human problems arising in respect of large number of persons affected gave directions regarding notices to be given prior to dispossession and for provision of alternates plots of land and employment. The case is clearly distinguishable on facts. In Vishwas Nagar Evacuees Plot Purchasers Association and another v. Under Secretary,, the Court repelled the challenge to the acquisition proceedings on account of delay. The Additional Solicitor on behalf of the Government offered one acre of land on certain terms to enable construction of residential quarters for the members of the appellant aside. Similarly, in Ghaziabad Sheromani Sahkari Avas Samiti Ltd. & Another v. State of U.P. & Others - Supra, the Apex Court considered the grievance of the members of the cooperative societies, who were in government service and passed direction regarding provision of a alternates plots to the members of the society, whose land has been acquired. This was done since the society had taken adequate steps before the acquisition of the land for the

Development Authority had been notified. These cases are on a completely different footing. In the present suit, there is neither any claim nor has any relief been sought with regard to the alternate accommodation and the same is not an issue to be considered for the disposal for this application. I am of the view, that the plaintiffs have failed to make out a prima facie case. The balance of convenience is also against them as the land is acquired urgently for residential development scheme of village Jasola by the defendants. In this view of the matter, I.A.4812/93 is dismissed and the order passed on 27-6-1993 is vacated.

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