SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Godfrey Philips India Ltd. Vs. Union of India (Uoi) and ors.

Godfrey Philips India Ltd. Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/711370

Court : Delhi

Decided On : Nov-18-2005

Reported in : 125(2005)DLT207; 2005(85)DRJ491

Judge : T.S. Thakur and; Badar Durrez Ahmed, JJ.

Acts : Constitution of India - Article 226

Appeal No. : W.P.(C) No. 19621/2005

Appellant : Godfrey Philips India Ltd.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Chetan Sharma, Sr. Adv. and ; A.A. Khan, Adv. for R-1, ; Aj

Advocate for Pet/Ap. : N.S. Vashisht and; Daleep Kr. Dhayani, Advs

Disposition : Petition dismissed

Judgement :

T.S. Thakur, J.

1. These writ petitions are destined to dismissal not only because the petitioners, as purchasers subsequent to the notifications, do not have the locus standi to challenge the same but also because the challenge to the validity of the acquisition proceedings comes 25 years after the issue of the preliminary

notification. The facts are few and may be summarised as under:

2. A large extent of land situate in different villages in South Delhi including that in village Sahurpur was notified for acquisition for the public purpose of 'Planned Development of Delhi' as early as in November, 1980. A Declaration under Section 6 followed on 7th June, 1985 and an award in May, 1987. Four years thereafter, the land in question was sold by the owners concerned in favor of the petitioners herein in terms of different instruments all executed on 27th February, 1991. The petitioners claim to have applied for grant of building permission to the Municipal Corporation of Delhi for raising construction on their respective portions of land. There is, however, no clear assertion in the writ petitions whether any construction was raised by the petitioners or anyone of them, pursuant to the sanctions allegedly issued in their favor by the municipal authorities. There is no evidence even to show that any such construction has, in fact, come up in the land purchased by the petitioners. The petitioners have, all the same, prayed for a declaration that the lands purchased by them are free from and outside the scope of acquisition proceedings initiated, in terms of the preliminary notification dated 25th November, 1980, declaration under Section 6 of the Act dated 7th June, 1985 and the award made pursuant thereto. A mandamus, directing the respondents not to interfere in the peaceful possession of the petitioner over the lands in question has also been prayed for.

3. We have heard, Mr. Vashisht, learned counsel for the petitioner at some length and perused the record.

4. As noticed above, there is no prayer in the petitions for a writ of certiorari, quashing the notifications under Sections 4 and 6 of the Act or the award made pursuant thereto. What has been prayed for is a mandamus and/or a declaration to the effect that the lands in question are free from acquisition proceedings initiated under the notifications mentioned earlier. It is difficult to appreciate how the petitioners can possibly seek a declaration like the one prayed for by them especially when the entire land situate in the revenue estate of villages Sahurpur, Maidan Garhi, Chattarpur, Satbari and Rajpur Khurd stood notified under the notification in question. The fact that the land which the petitioners purchased from

the erstwhile owners is situate in village Sahurpur, Tehsil Mehrauli, which was one of the villages included in the preliminary notification and the declaration under Section 6 is not in dispute. It is also not disputed that an award has been made by the Collector determining compensation for the land in dispute. That being so, the petitioners ought to have assailed the validity of the notifications in order that the land purchased by them could be excluded from the acquisition proceedings. This, the petitioners have not done. They have without challenging the validity of the notifications, sought a declaration which prayer is wholly misplaced in the absence of a challenge to the notification.

5. Even if one were to ignore the defect in the format and the inappropriateness of the prayer made in the petitions there are substantial difficulties which the petitioners have to surmount before they can agitate issues regarding the validity of the acquisition proceedings. The first and foremost, out of these difficulties, arise on account of the petitioners being purchasers subsequent to the issue of the notifications. The question whether a subsequent purchaser has the locus standi to challenge the validity of the acquisition proceedings is no longer rest integra having been authoritatively answered by the Supreme Court in a number of decisions delivered by their Lordships. We may briefly refer to some of those decisions.

6. In Star Wire (India) Ltd. v. State of Haryana and Ors., : (1996)11SCC698 , the Court held that the purchaser of a property, covered by a notification under Section 4, subsequent to the issue of such a notification, did not acquire any title and had no right to challenge the acquisition proceedings much less the award. The Court observed:

'In this case, admittedly, the petitioner has purchased the property covered by the notification under Section 4(1) after it was published and, thereforee, its title is a void title. It has no right to challenge the acquisition proceedings much less the award. The Division Bench of the High Court has exhaustively reviewed the case-law to negate the claim of the petitioner. We do not find any illegality in the judgment of the High Court warranting interference.'

7. To the same effect is the decision of the Supreme Court in U.P. Jal Nigam v. Kalra Properties (P) Ltd. and Ors., : [1996]1SCR683 , where the Court held that any encumbrance created by the owner after the issue of the notification under Section 4 did not bind the Government and that the purchaser does not acquire any title to the property, hence cannot challenge the validity of the notification. The following passage is, in this regard, apposite:

'After the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. The sale is void against the State and the purchaser acquired no right, title or interest in the land. Consequently, the subsequent purchaser cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6.

The original owner has the right to the compensation under Section 23(1) of the Act. Consequently, though the respondent acquired no title to the land, at best be would be entitled to step into the shoes of the owner and claim payment of the compensation, but according to the provisions of the Act. It is settled law that the price prevailing as on the date of the publication of the notification under Section 4(1) is the price to which the owner or person who has an interest in the land is entitled to. thereforee, the purchaser as a person interested in the compensation, since he steps into the shoes of erstwhile owner, is entitled to claim such compensation.'

8. Reference may also be made to the decisions of the Apex Court in State of U.P. v. Pista Devi, : [1986]3SCR743 ; Gian Chand v. Gopala and Ors., : [1995]1SCR412 ; Mahavir and Anr. v. Rural Institute, Amravati and Anr., : (1995)5SCC335 & Ajay Krishan Shinghal and Ors. v. Union of India and Ors., : AIR 1996 SC2677 , in which the Court has taken the same view.

9. In Ajay Krishan Shinghal's case (supra), the Supreme Court held that the legal position regarding the locus of a purchaser subsequent to the issue of the notification under Section 4 was firmly settled by the decisions rendered by their Lordships in the cases referred earlier.

10. It is, in the light of the settled legal position, manifest that the challenge to the validity of the acquisition proceedings, even assuming that the prayers made by the petitioners in the petitions would involve such a challenge, is not maintainable at their instance. The petitioners being purchasers subsequent to the notification cannot assail the validity of the acquisition proceedings.

11. Equally formidable for the petitioners is the difficulty arising out of inordinate delay and laches. The preliminary notification was in the present case issued on 25th November, 1980, i.e., nearly 25 years before the filing of the petitions. The declaration under Section 6 also came as early as on 4th June, 1985, i.e., more than 20 years ago. The award followed in May, 1987. A challenge to the validity of the notifications and the award coming at such a distant point of time is clearly barred by inordinate delay and laches. The legal position regarding maintainability of such petitions after the owners have allowed the acquisition proceedings to go on has been the subject matter of a string of decisions delivered by the Supreme Court, to which we may refer at this stage.

12. In Aflatoon and Ors. v. Lt. Governor of Delhi and Ors., : [1975]1SCR802 , one of the questions that fell for consideration of the court was whether the petitioners could be allowed to challenge the validity of the notifications even after publication of a declaration under Section 6 of the Act. The challenge to the acquisition proceedings in that case was primarily on the ground that the preliminary notification did not specify any particular public purpose for which the acquisition had become necessary. Repelling the contention, the Supreme Court held that a valid notification under Section 4 being a sine qua non for initiation of the proceedings for acquisition of the property, there was no reason why the petitioners should have waited to challenge the validity of such a notification on a ground that was available to them on the date the notification was issued. The Court held that the petitioners could not sit on the fence, allow the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then turn around to attack the notification on grounds which were always available to them. The following passage is, in this regard, apposite:

'Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in nor challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under S. 4 is a sine non qua for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners.'

13. In the instant case, the erstwhile owners of the lands do not appear to have challenged the acquisition proceedings although some of the owners in the village had according to Mr. Vashisht filed a writ petition, namely, C.W.P. No. 270/1984, which they subsequently withdrew with liberty to file a fresh petition. No petition was however filed by the vendors of the petitioners. This implies that the original owners had accepted the acquisition proceedings to be valid and allowed the Collector to make an award. Four years after the making of the award they had in terms of sale deeds dated 27th February, 1991 sold different parcels of land to the petitioners herein, who too did not find fault with the validity of the acquisition proceedings till September, 2005 when the present writ petitions were filed. The only inference that can be drawn from these facts is that the predecessors in interest of the petitioners had acquiesced to the proceedings and the petitioners had remained content with their acquiescing only a right to claim compensation for the land purchased by them as they could not acquire by reason of the said purchase the locus to challenge the proceedings. Even if the petitioners could legally maintain petitions to assail the validity of the proceedings, they did nothing from 1991 till 2005 to agitate the matter in any forum or Court to have the proceedings quashed.

14. In State of Rajasthan and Ors. v. D.R. Laxmi and Anr., : (1996)6SCC445 , the High Court had, notwithstanding the completion of the acquisition proceedings, interfered with the same, on the ground that no third party rights had been created. In appeal, the Supreme Court reversed the judgment, holding that the High Court should not have exercised its powers to quash the proceedings when the award had already been made and the possession of the land taken over. Discretionary power of the Court under Article 226 of the Constitution, observed their Lordships had to be exercised, taking the relevant factors into pragmatic consideration. The following passage is, in this regard, apposite:

'When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The order or action, if ultra virus the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.'

15. To the same effect is the decision of the Supreme Court in Market Committee, Hodal v. Krishan Murati and Ors., : (1996)1SCC311 , where the Supreme Court did not approve of the High Court's interference with the acquisition proceedings after the award had been made. Reference may also be made to the decisions of the Supreme Court in Senjeevanagar Medical & Health Employees Cooperative Housing Society v. Mohd. Abdul Wahab and Ors., : [1996]2SCR308 and Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors., : AIR 2000 SC671 , where the Court relying upon its earlier decision in C. Padma v. Dy. Secy. to the Government of Tamilnadu, : (1997)2SCC627 observed:

'It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defeats equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favors a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.'

16. Decisions rendered by the Supreme Court in Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd., : AIR 1997 SC482 , Northern India Glass Industries v. Jaswant Singh and Ors., : AIR 2003 SC234 and Larsen & Toubro Ltd. v. State of Gujrat and Ors., : [1998]2SCR339 take a similar line of reasoning.

17. On behalf of the petitioners, it was argued by Mr. Vashisht that the delay in the filing of the petitions was explained by the facts and circumstances of the present cases and in particular the judicial pronouncements rendered during the intervening period. He submitted that the validity of the acquisition proceedings based on the notification in question had been examined by this Court in Balak Ram Gupta v. Union of India, : 37(1989)DLT150 , which decision was held to be a judgment in rem, implying thereby that the acquisition proceedings stood quashed not only qua the petitioners who had filed the writ petitions, challenging the same but also qua others who had not done so. It was argued that the judgment of this Court in Balak Ram's case followed by the decision of this Court in Balbir Singh v. Union of India (WP(C) 1639/1989), where the Court granted relief to the owners by way of a mandamus directing return of the lands taken over from them even in cases where the owners had not assailed the validity of the acquisition

proceedings, had created an impression in the minds of the petitioners that the entire acquisition proceedings stood quashed making it unnecessary for anyone of the petitioners to seek any further relief in that regard.

18. In Balbir Singh's case (supra) this Court had, no doubt, issued certain directions for the return of the land owned by the owners, subject to the deposit of the amount of compensation received by them but that direction was based on an assumption that the judgment delivered by this Court in Balak Ram's case had the effect of quashing the notifications in question for the entire area included therein. That view was affirmed even by the Supreme Court in Delhi Development Authority v. Sudan Singh and Ors., : (1997)5SCC430 .

19. In Abhey Ram and Ors. v. Union of India and Anr., : [1997]3SCR931 , the question whether the judgment delivered by this Court in Balak Ram's case was a judgment in rem or a judgment in personam, was examined at some length. In the said judgment, Balak Ram's case was held to be a judgment only in personam. Dealing with the earlier decision, delivered in Sudan Singh's case, on the same question, the Apex Court in Abhey Ram's case observed:

'It is true that a Bench of this Court has considered the effect of such a quashing in Delhi Development Authority v. Sudan Singh. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. thereforee, the ratio therein has no application to the facts in this case. It is also true that in Yusufbhai Noormohmed Nendoliya case this Court had also observed that it would ensure the benefit to those petitioners. In view of the fact that the notification under Section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued under Section 5-A.'

20. The above view was reiterated by their Lordships in DDA v. Gurdip Singh Uban, : AIR 1999 SC3822 , where the Court held that it was bound to follow the view taken in Abhey Ram's case (supra) in preference to that taken in Sudan Singh's case. The Court observed:

'Then coming to the effect of the judgment of the Division Bench dated 18-11-1988 of the High Court, we are of the view that the three Judge Bench judgment in Abhey Ram's case has interpreted or declared the effect of the said High Court judgment dated 18-11-88. That judgment is binding on us. We cannot go by the two Judge Bench judgment in Sudan Singh's case (43) 1991 DLT 602 because we are bound by the judgment of the three Judge Bench in Abhey Ram's case : [1997]3SCR931 . Further, the judgment in Abhey Ram's case takes notice of Sudan Singh's case and it cannot be contended that they have not looked fully into the judgment in Sudan Singh's case or fully into the judgment of the Division Bench of the High Court dated 18-11-88 in B.R. Gupta's case : 37(1989)DLT150 .'

21. The issue was once again examined by their Lordships of the Supreme Court in a review petition filed against the above judgment reported in Delhi Administration v. Gurdip Singh Uban and Ors., AIR 2000 SC 3737. The Court framed eight points for consideration in the said review petition. Point No. 3 related to the effect of the short order passed by the High Court in Balak Ram Gupta's case on 14th October, 1988 and the subsequent reasoned order passed by it on 18th November, 1988 and whether in the latter order, the High Court could have quashed the land acquisition proceedings even in writ petitions which were not before it. Question No. 3 was framed in the following words:

'3). Whether the order of the Division Bench in Balak Ram Gupta's case, where there are two orders, the order D/- 14-10-88 allowing the writ petitions in 73 Civil Writ Petitions (reasons to follow) controlled the subsequent order passed in those cases on 18-11-98 containing the reasons and whether in the latter order, the High Court could have quashed land acquisition proceedings in writ petitions which were not before them?'

22. Answering the above question, the Court held that order dated 18th November, 1998, passed in Balak Ram Gupta's case which contained detailed reasons for the operative order passed by the High Court on 14th October, 1988 could not go beyond the four corners of the operative order by which the writ petitions were disposed of. In paras 32 and 34 of the report the Court held:

'32. In our view, if the Court allows a writ petition and reasons were to follow later, the first order allowing the writ petition and issuing the writ absolute is the operative order. If reasons thereforee are supplied later, as a matter of convenience, the latter order containing reasons cannot go beyond the four corners of the rule absolute already issued.

34. Obviously, in law, the order dated 14-10-88 extracted above is the operative order as the rule was made absolute in each of the 73 cases only. Thus, this operative order dated 14-10-88 could apply in each of the 73 writ petitions to the land covered thereby.'

23. It is evident from the above that the legal position in regard to the judgment of this Court in Balak Ram's case stood authoritatively determined by the Supreme Court in the year 1997 with the pronouncement of the judgment in Abhey Ram's case (supra). Even assuming that the judgments of this Court in Balak Ram and Balbir Singh cases as also the decision of the Supreme Court in Sudan Singh's case (supra) could create an impression in the minds of the land owners that the acquisition of their lands stood quashed without their having filed any petition yet that impression should have been dispelled by the decision of the Supreme Court in Abhey Ram's case delivered in the year 1997 itself. There was no justification for the inaction of the land owners after the delivery of the judgments in Abhey Ram and Gurdip Singh Uban's cases. If the submission made, on behalf of the petitioners, that the decision delivered in Balak Ram's case enured for the benefit of all land owners was accepted and their inaction explained on the theory that the decision of Balak Ram's case was a judgment in rem, all the same, the petitioners ought to have come to the Court soon after Abhey Ram's case was decided in the year 1997 instead of waiting for another 8 years thereafter to file the petitions in 2005. There is, in that view of the matter, no merit in the contention that the decision in Balak Ram's case provided any justification for the petitioners to remain inactive in the matter.

24. That apart, the right to challenge the notifications available to the original land owners having been lost by the original owners by their acquiescence and silence till the year 1991 when the land was transferred to the petitioners, there was no

question of any such right being exercised by the transferees 15 years thereafter. The inaction and acquiescence of the owners before the sale of the land in favor of the petitioners would by itself conclude the controversy. But even if one were to look at the delay from the point of the petitioners also, there is no Explanationn whatsoever for their silence from 1991 when they purchased the land till 2005 when they actually filed the petitions.

25. In the result, there is no merit in these petitions, which fail and are hereby dismissed but in the circumstances without any order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com