

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 16.03.2010

+ **WP (C) No.12974-75 of 2006**

MR. KALKA PRASAD AGARWAL & ANR. ...PETITIONERS
Through: Mr. V.P. Singh, Sr. Advocate with Mr.
Mukul Dhawan, Advocate.

Versus

LIEUTENANT GOVERNOR OF DELHI & ORS. ...RESPONDENTS
Through: Mr. Sanjay Poddar, Advocate
for the LAC.
Mr. Rajiv Bansal & Mr. Harshit
Agarwal, Advocates for the DDA.
Ms. Sudershani Ray, Advocate
for the MCD.

+ **WP (C) No.7754 of 2007**

SHRI AJEET PRASAD AGGARWAL ...PETITIONER
Through: Mr. Anand Yadav, Advocate.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Mr. Sanjay Poddar, Advocate
for the LAC.
Mr. Rajiv Bansal & Mr. Harshit
Agarwal, Advocates for the DDA.
Ms. Sudershani Ray, Advocate
for the MCD.

+ **WP (C) No.2286 of 2008**

SHRI AMBA PRASAD AGGARWAL & ANR. ...PETITIONERS
Through: Mr. Anand Yadav, Advocate.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Mr. Sanjay Poddar, Advocate
for the LAC.
Mr. Rajiv Bansal & Mr. Harshit
Agarwal, Advocates for the DDA.
Ms. Sudershani Ray, Advocate
for the MCD.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

SANJAY KISHAN KAUL, J. (Oral)

1. These petitions raise a common question of law about the validity of an award under the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) where the award deals with a notification under Section 4 of the said Act which does not pertain to the land in question.
2. In order to appreciate the controversy the factual matrix of the matters are being set out separately hereinafter:

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3. The two petitioners are sons of late Shri Moti Ram. A notification was issued under Section 4 of the said Act on 13.11.1959 and the land of the petitioners was not covered under the said notification. However, another notification was issued under Section 4 of the said Act on 24.10.1961 which included the land of the petitioners as part of block No.20. The land is situated in khasra No.1295/84 which measures 9 bighas. A part of the land had been sold by the predecessor-in-interest of the petitioners, being the father late Shri Moti Ram. The land in question measuring 1 bigha 1 biswa (equivalent to 1050 sq.yds) being part of this 9 bighas is in question.

4. Undisputedly no objections were filed under Section 5A of the said Act to the notification issued under Section 4 of the said Act dated 24.10.1961. A declaration was made on 15.12.1966 and the award No.223/86-87 came to be made on 17.9.1986. Shri Moti Ram, in the mean time, had passed away on 30.3.1984. The possession of the land was undisputedly not taken over.
5. Late Shri Moti Ram during his lifetime filed CWP No.2685/1981 praying that the land bearing No.1283/67/2 was not part of notification under Section 4 of the said Act dated 13.11.1959 as the same was situated on the southern boundary of Ring Road and western boundary of Mathura Road. This writ petition was disposed of on 21.4.1982 holding that in view of the disputed questions raised the same could not be decided in the writ proceedings. Late Shri Moti Ram thereafter filed a suit for declaration and permanent injunction claiming the same relief in July, 1982 and subsequently passed away on 30.3.1984 leaving behind four sons and two daughters as his legal heirs.
6. The award No.223/86-87 was passed on 17.9.1986 predicated on the notification under Section 4 of the said Act dated 13.11.1959 referring to the land in khasra No.1295/84 measuring 9 biswas. This is despite the undisputed position that the notification under Section 4 of the said Act dealing with khasra No.1259/84 was dated 24.10.1961.
7. The legal heirs of late Shri Moti Ram enjoyed interim stay from 1.8.1988 on the ground of notification dated 13.11.1959 not applying to the land in question. On the demise of late Shri Moti Ram a suit

for partition was filed by one of the sons against the other legal heirs and a compromise decree was passed on 26.5.1989 in terms whereof the two petitioners herein got one-half undivided share each in the land forming part of khasra No.1295/84 in Village Kilokari, Mathura Road, New Delhi.

8. The Union of India sought to amend their written statement in the declaratory proceedings on 24.1.1984 seeking to state that a clerical error has crept in the award and the notification under Section 4 of the said Act was actually dated 24.10.1961 and not 13.11.1959. This application was, however, dismissed on 20.11.2004 and a CM (Main) Petition challenging the order of dismissal of the application for amendment is pending consideration in the Delhi High Court.
9. The petitioners wanted sanction from the MCD for construction and on seeking so, the Deputy Secretary (LA) informed the Senior Town Planner of the MCD that as per the land record register a notification dated 24.10.1961 under Section 4 of the said Act had been issued in respect of the land in question followed by the declaration under Section 6 of the said Act on 15.12.1966. This information was sent on 5.7.2005.
10. It is the plea of the petitioners that the Government of NCT of Delhi is now threatening to grab the land of the petitioners under the award No.223/86-87 even though the whole award is predicated on a notification dated 13.11.1959 issued under Section 4 of the said Act in respect of the land of the petitioners while no such notification exists. The only notification issued under Section 4 of the said Act is

dated 24.10.1961 in respect of which no award has been made till date.

11. The petitioners claim knowledge of these proceedings only when they sought sanction of the plan in the year 2005 and the status of the land was inquired into. This is the explanation for the delay in approaching the Court. The factual matrix is not really disputed by the LAC as per the counter affidavit but the plea of delay and laches has been raised as the award was announced on 19.9.1986. It has been further pleaded that the declaration under Section 6 of the said Act was issued on 15.12.1966 and the petitioners had taken no care to file objections to the notification under Section 4 of the said Act dated 24.10.1961, which covered the land of the petitioners. The stand of the DDA is no different.

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12. The facts of this case are identical to WP (C) No.12974-75/2006 except that this writ petition pertains to land measuring 18 biswas (850 sq.yds.) forming part of the same khasra No.2195/84.

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13. Late Shri Jagannath purchased a piece of land at Village Kilokari, Mathura Road, New Delhi on 2.1.1940 and is stated to have constructed shops thereon. This area ceased to be a rural area and became part of urban area on 4.3.1954 and the shops were given municipal number No.429 to 429/25. Shri Jagannath also paid house tax in respect of the same. Late Shri Jagannath executed a Will dated 17.7.1956 bequeathing the said property in favour of his grandsons including the petitioner. Thereafter the facts are similar as the parties

are the same and the partition suit filed included this property and in pursuance to the final decree the property bearing No.335-A, Jagannath Market, Hari Nagar, Ashram, Mathura Road, New Delhi fell to the share of the petitioner and was mutated in the records of the MCD accordingly in 1996.

14. The petitioner agreed to sell the property to M/s. Panna Lal Om Parkash & Company Private Limited on 1.9.2005 and the transaction was to be completed on or before 31.8.2006. M/s. Panna Lal Om Parkash & Company Private Limited filed a suit for specific performance against the petitioner on 28.8.2006 and interim orders against the petitioner were granted 30.8.2006. It is at the stage of filing of the replication that the petitioner came to know of pendency of some acquisition proceedings and the petitioner filed an application under the Right to Information Act on 11.6.2007. The petitioner was informed by the Land & Building Department of the Government of NCT of Delhi on 3.8.2007 that the property of the petitioner was notified and a declaration under Section 6 of the said Act had been made on 15.12.1966. The award No.221/86-87 was announced on 17.9.1986. This resulted even in some criminal proceedings against the petitioner.
15. On receipt of the award through efforts made by the petitioner it came to light that the same pertained to the notification under Section 4 of the said Act dated 13.11.1959 and a declaration under Section 6 of the said Act dated 6.1.1969. A corrigendum dated 22.9.1986 to award bearing No.221/86-87 was issued as some trees had been

inadvertently left out of the award and the award was modified under Section 13A of the said Act allowing for compensation for trees.

16. The petitioner has further alleged that the award pertains land bearing khasra No.1193/70 measuring 1 bighas and 3 biswas of the petitioner and khasra No.1202/1194 owned by Shri Daljit Singh and others. On the land owned by Shri Daljit Singh and others a kothi is stated to have been constructed and the same form part of Nathu Ram Sweets, Friends Colony and has been given property No.91. The shops of the petitioner and the kothi are stated to have been constructed almost at the same time. Surprisingly, the declaration under Section 6 of the said Act dated 6.1.1969 refers to the total area of 4 bighas and 6 biswas of khasra Nos.1193/70 and 1702/1194. Thus, the declaration under Section 6 of the said Act does not mention the khasra number of Shri Daljit Singh and others as mentioned in the award as the award mentions the khasra No.1202/1194 while the declaration under Section 6 of the said Act mentions the khasra No.1702/1194.
17. The respondents have filed no counter affidavit to the said petition despite opportunity granted and it is the stand of the learned counsels that the counter affidavits filed in WP (C) No.12974-75/2006 would suffice.

The Common Ground:

18. A discussion of all this factual matrix, thus, makes it abundantly clear that undisputedly while making the awards reference to the notifications under Section 4 of the said Act is not in respect of the land of the petitioners but some other notification. Not only that the complete award runs and repeatedly gives the date of 13.11.1959 and

even determines the compensation on that basis. Thus, the plea of the petitioners is that there is actually no notification existing under Section 4 of the said Act and the same cannot be styled as a mistake. Without prejudice to that it is the case of the petitioner that the mistake, if any, can only be remedied as per Section 13A of the said Act, which reads as under:

“[13A. Correction of clerical errors, etc. - (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction, which is likely to affect prejudicially any person, shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under subsection (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue.]”

19. It is, thus, the submission of the petitioners that the period of six (6) months as stated aforesaid has long passed and no mistake has been corrected. It is also the submission of the petitioners that the plea of the respondents that the petitioners can get their compensation determined under Section 18 of the said Act is also misconceived as the reference court would have to go by the date of the award of 13.11.1959 which is not the relevant date for determination of compensation. It is pleaded that in such a case delay and laches

cannot come in the way of the petitioners which delay and laches are in any case explained as the petitioner had no knowledge about the proceedings. It has been urged that in any case the respondents conduct also has to be examined in respect of delay & laches as the scheme of the Act envisages the respondents to take possession but admittedly no possession was taken over in the last half a century.

20. On the other hand, the respondents have rested their case on the aspect of delay & laches in challenging the award and on the principle that the award is only an offer of compensation after its determination and the option is available to the petitioners to seek enhancement of compensation.
21. In order to appreciate respective pleas learned counsels for the parties have referred to various judgements.
22. Learned counsels for the petitioners referred to the Division Bench judgement of this Court in Sandeep Kakkar & Ors. Vs. Union of India & Ors. 111 (2004) DLT 291. It was observed in the said judgement that once there is no notification issued under Section 4 of the said Act qua the land of the petitioners any further action vis-à-vis declaration under Section 6 of the said Act or passing of award would be without jurisdiction and *ultra vires*. In the said case neither possession was taken over nor award enforced nor any objections raised by the respondents to the maintainability of the writ petition on ground of delay, laches or waiver as no return had been filed.
23. Learned counsel also submitted by reference to Matwal Chand Vs. Union of India 2004 (75) DRJ 461 that if the notification under Section 4 of the said Act excluded evacuee property from acquisition

and undisputedly the land was evacuee property, the notification did not cover the said land and the declaration issued under Section 6 of the said Act was consequentially illegal.

24. Learned counsels for the petitioners emphasized that it should not be lost sight of that proceedings under the said Act are expropriatory in nature and the provisions of the statute should, thus, be strictly construed as it deprives a person of his land without consent in view of the observations of the Supreme Court in Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chennai & Ors. JT 2005 (8) SC 470.
25. On the other hand learned counsel for the LAC made elaborate submissions to defend the conduct of the respondents and to canvass the plea that despite the awards referring to some other notification under Section 4 of the said Act, the notification should not be struck down and at best the petitioners should be left to the remedy of seeking enhancement of compensation under Section 18 of the said Act by reference to the notifications of a subsequent date which covered the land of the petitioners. In this behalf learned counsel referred to the judgement of the Division Bench of this Court in Babu Ram & Ors. Vs. Union of India 125 (2005) DLT 259. It was submitted that the plea of Section 6 of the said Act being void *ab initio* and *non est* in the eyes of law and thus delay and laches not standing in the way of the petitioners had been rejected. A void order may be challenged at any stage but once the order is enforced any writ petition filed subsequent to such enforcement would give rise to consideration of delay. Learned counsel sought to draw a distinction

between a voidable order and a void one to advance the plea that the award in question at best could be said to be voidable. In this behalf learned counsel referred to the observations made in the following paragraphs:

“17. Dealing with the question of invalidation of an order, H.W.R. Wade and C.F. Forsyth have in their treatise Administrative Law – Eighth Edition observe:

“The truth is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be ‘a nullity’ and ‘void’ but these terms have no absolute sense: their meaning is relative, depending upon the Court’s willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of *ultra vires*, rigidly applied, would produce unacceptable results.”

18. We may also at this stage refer to the following passage from the decision Smit Vs. East Elloe Rural District Council (1956) AC 736, where Lord Radcliffe has emphasized the need for resorting to legal proceedings to establish the cause of invalidity of an order and to have it quashed for otherwise the order remains valid:

“An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the case of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

19. As to what is void and what is voidable, has been subject matter of numerous judicial pronouncements but before we refer to some of those decisions, we may usefully extract the following passage from De Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, Fifth Edition, para 5-044, where the concept of void and voidable has been summarized as follows:

“Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is *ultra vires* in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is

intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by *certiorari* for error of law on the face of the record.”

26. Learned counsel, thus, submitted that the words of Lord Radcliffe as upheld in Babu Ram & Ors. case (supra) that the impugned notification does not “bear the brand of invalidity upon its forehead” would equally apply to the present case.
27. Learned counsel also sought to draw strength from observations made by a Division Bench of this Court in Santosh Kumar & Ors. Vs. Union of India & Ors. 2006 VII AD (Delhi) 7 for the plea of delay & laches. The said judgement relied upon the observations in Aflatoon & Ors. Vs. Lieutenant Governor of Delhi & Ors. AIR 1974 SC 2077 where while observing that a valid notification under Section 4 of the said Act was a *sine qua non* for initiation of proceedings for property it was held that there was no reason why the petitioner should wait to challenge the validity of such a notification on the ground that the particulars of public purpose was not specified therein. Another judgement referred to in that case is State of Rajasthan & Ors. Vs. B.R. Laxmi & Anr. (1996) 6 SCC 445 on the Supreme Court setting aside the exercise of power by the High Court under Article 226 of the Constitution of India in case where an award was passed and possession was taken. In that context it was observed that though the order may be void, if a party does not approach the Court within reasonable time which is always a question of fact and have the order invalidated, it would amount to it having acquiesced or waived by its conduct.

28. Learned counsel also referred to the recent judgement of the Supreme Court in Om Parkash Vs. Union of India & Ors. 2010 (2) SCALE 153 to advance the plea of delay & laches.
29. Lastly learned counsel referred to his Bible of Roshanara Begum Vs. Union of India AIR 1996 Delhi 206 to advance the plea not to quash the awards. It was observed in para 121 as under:

“121. So, even if there are glaring errors committed by the Collector in making the awards and there has been non-application of mind or even mechanical signing of the award by the Collector and before that by the authorised officer on behalf of the Government in giving prior approval would not mean that the awards have not been made within the stipulated period because if the awards are not acceptable to the aggrieved persons, they can always seek reference to the courts concerned for enhancement of the compensation. The awards so made which come into existence on signing of the awards by the Collector are valid and enforceable against the Government whose authorised officer had appended his signatures on the award giving the prior approval. That in our view would meet with the requirements of law and the petitioners have no locus standi to challenge the awards on the ground that prior approval has been given in a mechanical manner and the awards have been signed by the Collector also in a mechanical manner without application of mind. A large number of judgments lay down that non-service of notices under Sections 9, 10 or under Section 12 of the Act do not vitiate the acquisition proceedings. (See *Ezra Vs Secretary of State* (supra), *Kasturi Pillai Vs Municipal Council* Air 1920 Mad 417, *ShivdevSinh Vs State of Bihar & Others*, AIR1963Pat201 , *Prasanna Kumar Dass & Others Vs State of Orissa* 1956 Orissa 114, *Yousuf Begam Vs State of Andhra Pradesh & Others*, AIR1969AP10 , *P.KShaikh Vs State of West Bengal & Others*, AIR1976Cal149 , *Lakhbir Chand Vs Land Acquisition Collector, Delhi & Others*, AIR1979Delhi53 , *State of Punjab Vs Gurdial Singh & Another*, MANU/PH/0130/1984, *Manakchand Sarupchand Lunavat & Others Vs State of Maharashtra & Others*, AIR1989Bom339 and *Dr.G.H.Grant Vs State of Bihar*. [1965]3SCR576 .)”

30. Interestingly the aforesaid judgement in Roshanara Begum case (supra) has also been referred to by learned counsels for the petitioners to contend that paragraphs from the judgement cannot be

read in isolation but have to be read as a whole and in that context what was observed in paras 196 & 197 is stated to be apposite to the present case, which read as under.

“196. It has been urged before us that the writ petition has been brought belatedly as Section 6 declaration had been issued in 1969 whereas the writ petition had been filed in 1981. It is not the case where any defect in the Section 4 notification is being highlighted like that the same was not published in accordance with the provisions of the Act. What has been pointed out is that the notification issued on 13th November 1959 did not at all pertain to the land in question as it was evacuee land at that time. If the notification on the face of it is not applicable to the land in question, the same is honest and any proceedings taken for acquiring the land on the basis of such a notification issued under Section 4, which did not pertain to the land in question, would be void ab initio and without jurisdiction.

197. In our view, once it is shown that there was no notification issued under Section 4 pertaining to the particular land, the subsequent proceedings being void, the petitioner would not be debarred from challenging such proceedings even belatedly. So, this petition is liable to be allowed.”

31. We have examined the rival pleas. The factual matrix is not in dispute. The awards in question are predicated on a notification under Section 4 of the said Act dated 13.11.1959. The complete awards not only use the date of the notification as 13.11.1959 in one place but the same date is repeatedly referred to in the award. If one may say so the thread which runs through the award is of the notification dated 13.11.1959 and compensation has also been computed on that basis. A question arises whether the same can be said to be a mistake or even a non-application of mind which would not call for interference by this Court but would relegate the parties to have their compensation adjudicated under Section 18 of the said Act? In our view the answer to the same is in the negative.

32. The respondents cannot be permitted to hide behind the plea of a mere typographical error or mistake in the award nor the date of the notification under Section 4 of the said Act could be said to be inadvertently incorrectly recorded. The very compensation has been calculated on that basis as on 1959. The petitioners are right in contending that the mistake, if any, had to be corrected in terms of Section 13A of the said Act. That is the procedure prescribed under the said Act and must be strictly followed. We are fortified in our view because of the observations made in Hindustan Petroleum Corporation Limited case (supra) that the provisions of the said Act being expropriatory in nature must be strictly construed. We cannot ignore the fact that though the right to the land is no more a fundamental right but it remains a constitutional right under Article 300A of the Constitution of India. The procedure by which the LAC hears parties and frame awards requires it to be vetted by the higher authorities. None of these authorities deemed it fit to scrutinize the papers carefully enough though the mistake was apparent. Not only that the so called mistake was never sought to be corrected by exercising rights under Section 13A of the said Act. In the third case such a right was exercised but only to include an element of compensation which was excluded while calculating compensation for trees.
33. The respondents cannot be permitted to plead in such a case where Section 4 notification does not even pertain to the land of the petitioners that the petitioners should be relegated to their remedy

under Section 18(1) of the said Act of seeking enhancement of compensation. The Section 18 (1) of the said Act reads as under:

“PART III

Reference to Court and Procedure Thereon

18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.”

34. A reading of the aforesaid provision shows that on making the reference the Court would deal with objections as to measurement of land, amount of compensation, the person to whom it is payable or apportionment of compensation. The said amount of compensation has to relate to the date of acquisition which is the notification under Section 4 of the said Act. It is the moot point whether the Court can really modify the date itself with reference to which the compensation has to be calculated.
35. The plea of the petitioners is fortified by the conduct of the respondents in not only an award being made on the premise of a notification under Section 4 of the said Act which does not pertain to the land of the petitioners but to the factum of the respondents having taken no steps to take possession of the land. The procedure under the said Act is to be completed with possession of the land being taken as the purpose of acquisition is a public purpose. The idea is not to complete paper work to acquire the land and thereafter sit quiet for half a century. Thus, there is force in the contention of the petitioners even on this account.

36. If the factum of the awards being predicated on a notification under Section 4 of the said Act not pertaining to the land of the petitioners and compensation being calculated accordingly is coupled with the failure of the respondents to take any steps to take possession of the land for almost half a century, we have no doubt that the only result can be to quash the awards in question insofar as the petitioners are concerned. The Bible of the respondents, Roshanara Begum case (supra), in fact, supports the case of the petitioners if the observations in paras 196 & 197 are taken into account. Learned counsels for the respondents has tried to distinguish this case on the basis that in that case there was no Section 4 notification while in the present case there is a Section 4 notification though the same does not form the basis of the award. We see no difference on account of the same since the award is predicated on a Section 4 notification which does not cover the land of the petitioners.
37. We are, thus, of the view that the impugned awards dated 17.9.1986, & 19.9.1986 are liable to be quashed and set aside qua the petitioners in view of the facts set out hereinabove and the Rule is made absolute leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

MARCH 16, 2010
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VEENA BIRBAL, J.