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NEUTRAL CITATION NO: 2022/DHC/002423

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 30.05.2022

Judgment Delivered On: 05.07.2022

W.P.(C) 7815/2022

SH. NARDEV SONI AND ORS.

..... Petitioners

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the petitioner : Mr. Neeraj Kishan Kaul, Senior Advocate (through video-conferencing) with Mr. Azmat H. Amanullah, Ms. Namisha Chaddha, Ms. Nitya Sharma, Ms. Pritma Suri and Ms. Aarzoo Aneja, Advocates.

For the respondent : Mr. Jitesh Vikram Srivastava, SPC with Mr. Prajesh Vikram Srivastava, Advocate (Government Pleader) for UOI/ respondent No. 1.
Ms. Manika Tripathy Pandey, Standing Counsel with Mr. Shubham Hasija and Mr. Ashutosh Kaushik, Advocate for DDA/ respondent No. 3.
Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/ respondent No. 9.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. By this Writ Petition, the Petitioners have challenged and seek quashing of the Notifications dated 13.11.1959 and 18.08.1960 issued



by the Delhi Administration (Respondent No. 2 herein) under Section 4 of the Land Acquisition Act, 1894 with regard to acquisition of property bearing Khasra No.9 admeasuring 10 Bighas 16 Biswas in the estate of Village Kalu Sarai, Delhi (**'evacuee property'**).

Facts emerging from the Petition

2. The evacuee property has been acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (**'the Displaced Persons Act'**) and the same accordingly vests with the Central Government in terms of Section 12(2) of the Displaced Persons Act.

3. A public auction was held on 04.01.1959 in respect of the evacuee property in terms of Section 20 of the Displaced Persons Act. Late Dewan Kesho Dass Soni, the predecessor in interest of the Petitioner Nos. 1 & 2, who was a displaced person under the Displaced Persons Act, emerged as the highest bidder for purchase of the evacuee property with a bid price of Rs. 91,000/-. Late Dewan Kesho Dass Soni executed an Indemnity Bond on 05.01.1959 in favour of the President of India for an amount of Rs. 9,110/- (towards 10% of the purchase price of the said evacuee property as required by the auctioneers).

4. Vide letter dated 14.01.1959, the office of the Regional Settlement Commissioner informed Late Dewan Kesho Dass Soni about acceptance of his bid in respect of the evacuee property with a direction to deposit within 15 days the balance purchase price or to take steps with regard to adjustment of the purchase price against verified claims for property left behind in West Pakistan. Late Dewan Kesho Dass Soni, being a displaced person, vide letter dated 28.01.1959, opted for adjusting his verified amount of Rs. 66,857/-



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towards the balance purchase price. He also informed that he would like to associate with his friend Mr. Radha Kishan Nagpal, who had a verified claim of Rs. 24,243/- and the said amount can also be adjusted towards the balance purchase price. After adjusting the verified amounts, Sale Certificate dated 25.08.1961 was issued in favour of Late Dewan Kesho Dass Soni and Mr. Radha Kishan Nagpal. The provisional possession of the evacuee property was never taken over by Late Dewan Kesho Dass Soni or his associate Mr. Radha Kishan Nagpal.

5. In the meanwhile, the Delhi Administration (Respondent No. 2 now) issued impugned Notification dated 13.11.1959 under Section 4 of the Land Acquisition Act, 1894 and acquired certain portions of land (including two portions of the evacuee property bearing No. 9/2/1 admeasuring 17 Biswas and No. 9/2/2 admeasuring 3 Bighas and 13 Biswas) at public expense for a public purpose i.e., for the planned development of Delhi. Subsequently, vide another Notification dated 18.08.1960 under Section 4 of the Land Acquisition Act, 1894, the balance portion of the evacuee property bearing no. 9/1/1 admeasuring 6 Bighas and 6 Biswas was issued by the Government of Delhi for the purpose of establishment of College of Engineering and Technology.

6. On 25.08.1961, a Sale Certificate was issued to Late Dewan Kesho Dass Soni and Late Radha Kishan Nagpal declaring them the purchasers of the evacuee property with effect from 24.08.1961 in relation to their respective share in the evacuee property.

7. The physical possession of the evacuee property was taken by the Respondent No. 2 on 10.11.1961. The Land Acquisition Collector vide 3 separate Awards, i.e., Award No. 1213 dated 21.10.1961,



Award No. 1251 dated 01.01.1962 and Award No. 1262 dated 02.02.1962, fixed the price of the land at Rs. 4000/- per Bigha.

8. On 28.06.1962, Late Dewan Kesho Dass Soni and Late Radha Kishan Nagpal preferred applications under Section 18 of the Land Acquisition Act, 1894 applying to the Land Acquisition Collector to refer the matter for determination of the Court on the ground that property had been greatly undervalued and that its market value should have been held to be not less than Rs. 50,000/- per bigha.

9. Vide common Judgment dated 07.09.1966 passed in all three cases bearing Land Acquisition Case Nos. 354/1962, 82/1963, 322/1963 the Learned. Additional District Judge, Delhi enhanced the compensation awarded to the predecessors in interest of the Petitioners from Rs. 4,000/- per bigha to Rs. 12,000/- per bigha with 15% solatium and 6% interest from the date of possession till the date of payment.

10. In the year 1967, three Regular First Appeals bearing Nos. 41/1967, 43/1967 and 44/1967 all titled "**Diwan Kesho Dass & another. vs. Union of India & another**" came to be filed before this Court *inter alia* challenging the Order dated 07.09.1966 passed by the Learned Additional District Judge in Land Acquisition Case Nos. 354/1962, 82/1963, 322/1963 respectively.

11. Vide a common judgement dated 28.02.1984 in the three Appeals, this Court allowed the said Appeals and the compensation was further increased to Rs.17,000/- per Bigha, with 15% Solatium and 6% interest from the date of possession till the date of actual payment.

12. In the year 1990, three execution petitions were filed before the Court of the Learned Additional District Judge, Delhi by Late Dewan



Kesho Dass Soni and Late Radha Kishan Nagpal for the execution of the Order dated 28.02.1984 passed by this Court in the three connected Appeals for recovery of the enhanced compensation. During the pendency of the proceedings for enhanced compensation, Dewan Kesho Dass Soni and Mr. Radha Kishan Nagpal expired and their legal heirs (present Petitioners) were impleaded as party to those proceedings. The enhanced amount of compensation has also been accepted by the Petitioners. Two of the three execution petitions came to be disposed of as satisfied in the year 2003. Third execution petition was dismissed for non-prosecution. There was no further challenge and hence the land acquisition proceedings with regard to the evacuee property and the litigations arising out of the said proceedings came to an end in the year 2003.

13. It has been submitted on behalf of the Petitioners that in the year 2013, the Hon'ble Supreme Court in the matter of *Saraswati Devi vs Delhi Development Authority and Others*, (2013) 3 SCC 571 settled the question of law vis-à-vis the validity of the acquisition of properties that had been auctioned under the provisions of Displaced Persons Act. It is the case of the Petitioners that they came to know about the said Judgement of the Hon'ble Supreme Court in the year 2021. The Petitioners submit that thereafter they sought certain information from the Respondents under the Right to Information Act, 2005. Accordingly, the Petitioners came to know that the impugned Notifications are bad in law as the notices under section 4 of the Land Acquisition Act, 1894 had been issued prior to any sort of encumbrance being created on the evacuee property. In view of the same, the Petitioners are challenging the said Notifications in the present proceedings.



Submissions of the Petitioners

14. Mr. Neeraj Kishan Kaul, Learned Senior Counsel for the Petitioners argued that the evacuee property was allotted to Late Dewan Kesho Dass Soni pursuant to him being declared as the highest bidder and despite sale certificate being issued to Late Dewan Kesho Dass Soni, the possession of the evacuee property was never given to him. Later, when Notifications under Section 4 of the Land Acquisition Act were issued by the Land Acquisition Collector, possession was taken by the Government.

15. It was further argued on behalf of the Petitioners that the predecessor in interest of the Petitioners never took provisional possession of the evacuee property and therefore, in view of the law laid down by the Hon'ble Supreme Court in *Saraswati Devi* (supra), no encumbrance was created on the evacuee property prior to the date of issuance of the impugned Notifications. It is the submission of learned Senior Counsel appearing on behalf of the Petitioners that since no encumbrance was created on the evacuee property prior to the date of acquisition, the evacuee property belonged to the Central Government and thus could not have been acquired under the Land Acquisition Act, 1894.

16. The Learned Senior Counsel for the Petitioners admitted the fact that the compensation with regard to the acquisition of the evacuee property was accepted by the predecessor in interest of the Petitioners and they never challenged the land acquisition at any point in time. The Petitioners themselves were impleaded in those proceedings for the enhancement of compensation in respect of the



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evacuee property. The predecessors in interest of the Petitioners were aware of the acquisition proceedings since 1961, however, it is the contention of the Learned Senior Counsel appearing on behalf of the Petitioners that the right to property is a human right and constitutional right guaranteed under Article 300A of the Constitution of India as held by the Hon'ble Apex Court in ***Vidya Devi vs State of Himachal Pradesh and Others***, (2020) 2 SCC 569. In view whereof, it has been argued on behalf of the Petitioners that every citizen has a right to property and by virtue of the law as evolved as on date, if it is evident that the land acquisition in itself is illegal on the date of issuance of the impugned Notifications, this Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, in order to ensure justice to the parties.

Submissions of the Respondents

17. The Learned Counsel for the Respondent No. 9/ LAC opposed the Writ Petition on the ground of delay and laches. It is contended by the Counsel for the Respondent No. 9 that the impugned Notifications were issued on 13.11.1959 and 18.08.1960 and the compensation was paid and settled almost 20 years back. He further submitted that the acquisition proceedings were concluded long back and the Petitioners have already reaped the benefits of the said proceedings by virtue of receiving compensation and also enhanced compensation in respect of the evacuee property. Therefore, the present Petition is barred by delay and laches. The Learned Counsel for the Respondents in support of his contention placed reliance on the Judgement of the Hon'ble Apex Court in ***Delhi Development Authority vs. Shyam Sunder Khanna***, 2004 (72) DRJ 356.



18. It was further submitted on behalf of the Learned Counsel for the Respondent that it was never the intention of the Hon'ble Supreme Court to interfere with the concluded land acquisitions. Even in *Saraswati Devi* (supra) also, the Hon'ble Supreme Court upheld the land acquisition proceedings. The Learned Counsel for the Respondent accordingly prayed for the dismissal of the present Writ Petition.

Legal Analysis based on the facts of the present Petition

19. We have heard learned counsels for the parties at length and examined the documents placed on record by the Petitioners as well as the judgments relied upon by the parties.

20. On perusal of the record and in view of the arguments advanced on behalf of the parties, it emerges that the predecessor in interest of the Petitioners successfully participated in the public auction of the evacuee property on 04.01.1959. He executed an Indemnity Bond in favour of the President of India for the 10% of bid amount on 05.01.1959. He was declared as highest bidder in the said auction and was directed to deposit the balance purchase price on 14.01.1959. Even though, the provisional possession of the evacuee property was offered on 14.01.1959, apparently, the predecessor in interest of the Petitioners, never took the possession of the evacuee property. The predecessor in interest of the Petitioners, on 28.01.1959, accepted the offer made by the Settlement Commissioner and offered their verified amount towards the balance purchase price. After adjusting the verified amounts, the sale certificate was finally issued on 25.08.1961. The Delhi Administration (Respondent No.2 herein) issued the



impugned Notifications on ^{NEUTRAL CITATION NO: 2022/DHC/002423} 13.11.1959 and 18.08.1960 and accordingly acquired the evacuee property.

21. The predecessor in interest of the Petitioners were well aware of the acquisition proceedings in respect of the evacuee property. They accepted the compensation in respect of the evacuee property under protest and sought for enhancement of compensation. The litigations pertaining to the enhanced compensation came to an end in the year 2003 as the execution Petitions were disposed of as satisfied. Hence the process of impugned land acquisition and the litigations emanating therefrom with respect to the evacuee property culminated about 20 years back.

22. The legal position regarding the approach to be adopted in cases challenging land acquisition proceedings is no more *res integra*. The Division Bench of this Court in ***M.S Dewan vs UOI & Ors., W.P(C) No.1974/1986***, (2008) 103 DRJ 255 had examined the question of delay and laches in challenging the land acquisition proceedings. While dismissing the said Petition on delay and laches, the Hon'ble Division Bench observed, *inter alia*, as follows:

“.....There is no explanation as to why the petitioner slept over the matter for more than two decades before filing this petition. The legal position regarding the approach to be adopted in cases challenging land acquisition proceedings has been settled by a long line of decisions of the Supreme Court and that of this Court. The decisions emphasize the need for the petitioner to act diligently and to approach the writ court in good time. Far from showing any diligence, the petitioner has been totally remiss in agitating the matter at the appropriate stage. He has allowed the proceedings to attain finality without raising a little finger against the same. In Aflatoon and Ors. v. Lt. Governor of Delhi and Ors., AIR 1974 SC 2077, the declaration under Section 6 was



issued in the year 1966 ^{NEUTRAL CITATION NO: 2022/DHC/002423} whereas the writ petition was filed in the year 1972. The Supreme Court considered this delay to be sufficient to warrant dismissal of the writ petition on the ground of laches. The Court held that if there was any defect in the notification under Section 4 issued as early as in the year 1959 and a declaration under Section 6 was issued in 1966, there was no reason why the petitioners should have waited till the year 1972 to come to the Court. It was not, declared the court, permissible for the petitioners to sit on the fence, allow the Government to complete the acquisition proceedings on the basis of notifications issued under Sections 4 and 6 of the Act and then attack the same on grounds which were available to them when the notification was published.....”

23. In another case **Pradeep Kumar & Ors vs Union of India & Ors.**, (2014) SCC OnLine Del 3520, a similar view was taken and the Writ Petition challenging the acquisition which was filed after a delay of 10 years, was dismissed.

24. In the present case, there is an inordinate delay of almost 62 years in challenging the acquisition proceedings. The Petitioners accepted the enhanced compensation without reserving any right whatsoever. The law does not permit a person to approbate and reprobate at the same time. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioner. Therefore, now after an inordinate delay of about 62 years after the acquisition, the Petitioners cannot challenge the said acquisition proceedings.

25. That it is the case of the Petitioners that the Hon’ble Supreme Court settled the legal issue in the matter of **Saraswati Devi** (supra) only in the year 2013 and hence in view of the said Judgement of the



Hon'ble Supreme Court, the impugned Notifications are rendered illegal. This Bench finds it difficult to agree with the submissions of the Learned Senior Counsel for the Petitioners. The Court cannot permit the Petitioners to alter a settled position after almost six decades, when the Petitioners have remained silent for decades and have accepted the enhanced compensation awarded to them. It is a settled position of law that delay and laches is one of the factors which is to be borne in mind by the High Court while exercising their discretionary powers under Article 226 of the Constitution. While dismissing a writ petition in an identical situation, the Division Bench of this Court in ***Naresh Kumar vs UOI &Ors.***, W.P.(C) No. 7372/2016, (2019) SCC OnLine Del 7741, observed, *inter alia*, as follows:

“We are of the view that the petitioners cannot after such a long period seek to rake up the issue of acquisition merely on the basis of some recent pronouncements by the Hon'ble Supreme Court even when they accepted the compensation qua acquisition of the land by neither challenging the acquisition proceedings nor the award but on the other hand were only interested in enhancement of compensation for which they have sought a reference. They have also recovered the compensation and for them now to say that they are willing to return that compensation after number of years and should be permitted to assail the acquisition proceedings would not, in our view, be the appropriate direction to be passed.

In view of these facts and circumstances, we are not inclined to entertain the petition seeking to challenge the acquisition proceedings both on grounds of delay and laches as also on account of the acquiescence and conduct of the petitioners qua the acquisition proceedings.



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26. We are in respectful agreement with the ratio laid down by this Court in the above-mentioned matters. The axiomatic delay disentitles a party to discretionary relief under Article 226 of the Constitution of India. Moreover, this Court is not convinced with the explanation rendered on behalf of the Petitioners for such a substantial and inordinate delay in approaching this Court. In view of the aforementioned discussion, this Court finds no merit in the present Petition and the same is dismissed accordingly. No order as to cost.

**GAURANG KANTH
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

JULY 05, 2022

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