(2013) 05 DEL CK 0423

Delhi High Court

Case No: LPA 1006-07 of 2005, C.M. Application 6722 of 2005, 10739 of 2007, 2647 and 7471 of 2008, 8679, 8680, 10259 and 10260 of 2011

Union of India and Others		APPELLANT
	Vs	
Smt. Gunwanti Devi (Deceased) and Others		RESPONDENT

Date of Decision: May 20, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226
- General Clauses Act, 1897 - Section 21
- Land Acquisition Act, 1894 - Section 4, 48, 48(1), 6

Citation: (2013) 137 DRJ 441

Hon'ble Judges: S. Ravindra Bhat, J; Najmi Waziri, J

Bench: Division Bench

Advocate: B.V. Niren, Ms. Geeta Luthra, with Ms. Ashly Cherian in C.M. appl. 10739/2010, 8679/2011 and 2647/2011, for the Appellant; Anand Yadav, Advocate for Resp. Nos. 1A, 1C (i-iii), 1D-1G, Ms. Pinky Anand with Mr. Ankur Mahindroo and Ms. Natasha Sahrawat, Advocates, for Resp. No. 1B and Mr. Atul Kumar, for the Respondent

Judgement

S. Ravindra Bhat, J.

The Union of India, the appellant, questions the judgment of a learned Single Judge in W.P. (C) No. 2017/1990 under Article 226 of the Constitution; by the impugned judgment a direction was issued to the appellants in the present case, to allot a 500 sq. meter plot to respondent Smt. Gunwanti Devi (hereinafter called "the writ petitioner"). The brief facts are that the writ petitioner was married to one Shri Harish Chand; they had four sons. Harish Chand belonged to the Joint Hindu Family (HUF) of one Lala Bengali Mal. That HUF was disrupted and partitioned through a registered deed dated 28.11.1941. It was alleged that prior to execution of the partition deed, Harish Chand had executed a release deed in favor of the writ petitioner and her children. Some time on 21.03.1950, the firm of M/s. Lachmandas

Ram Chand applied to the Union of India for mutation of three plots, i.e. 1, 6 and 7 in favour of Smt. Gunwanti Devi the Petitioner, and her four sons. This was carried out through letter dated 13.06.1950. It was alleged in 1955 that another partition took place pursuant to which Plot 1 fell to the share of the writ petitioner and Plots 6 and 7 to her sons. Separate mutations pursuant to this partition were not sought for. These plots were part of land that was the subject matter of acquisition. In the meanwhile, inspection of the plots was carried out on 03.04.1970, 08.09.1971 and 20.01.1973 during which certain unauthorized constructions upon the plot and some misuse were found. Consequently, Show Cause Notices were issued which were returned undelivered. Later, it is alleged that Gunwanti Devi caused a reply to the Show Cause Notice to be issued which was found unsatisfactory. In these circumstances, the premises which were leasehold and in respect of which certain interest had been granted to the writ petitioner and her predecessor, was re-entered on 03.06.1974.

2. Further to acquisition proceedings, an Award, i.e. 20-A/74-75 (Supplementary) was announced on 29.03.1975. The writ petitioner in the meanwhile had sought for withdrawal of re-entry of the lease deed. The terms for withdrawal of re-entry were given to her 26.03.1979/20.04.1979 through a letter by the appellant. The representation was ultimately rejected on 21.10.1981. In these circumstances, after the award was made the petitioner and certain others situated in similar circumstances had apparently approached the Central Minister of Works and Housing for relief. They strongly relied upon a letter dated 22/23.10.1984, communicating that the extent of 500 sq. meters may be released in favour of the lessee i.e. the writ petitioner and certain others i.e. Bal Krishan Dang, S. Gurbachan Singh and Praveer Ukil.

3. The said letter/communication dated 22/23.10.1984 reads as follows:

Sir,

After careful consideration of all aspects of the matter in the light of the representation from Smt. Gunwanti Devi and Shri Brij Kishore Gupta regarding releasing their land from acquisition proceedings and considering the facts brought out in the L&DO endorsement No. L&DO.L-I-9 (Factory Road) (6)/84 dated 28th July, 1984/1st August, 1984 the Government have taken the following decisions,

i) Out of the land currently under acquisition proceedings, such land may be exempted from acquisition proceedings as is required for bonafide residential use of the applicants calculated on the norm that 500 sq. mtr. may be released in favour of the applicant Lessee and similar land may be released in favour of the adult first descendants.

ii) The release would be subject to the usual conditions as laid down in earlier cases viz. that of Shri Bal Krishan Dang, S. Gurcharan Singh and Shri Pravir Ukil i.e. that the land is used for residential purposes and provisions of Urban Land Ceiling

(Regulation) Act are satisfied, the requirement of which may be looked into by the Land Acquisition Collector before finally excepting the land from acquisition.

iii) The plan sent in this connection with the L&DO''s note may be broadly followed.

iv) Action may be taken in regard to the change of land use as necessitated in accordance with the decision.

v) The land released from acquisition may be allowed to revert back to the applicants on the terms and conditions of the lease under which the land was being held at the time of the commencement of the acquisition proceedings subject to its being used for residential purposes alone.

2. As the matter has been pending from a long time, expeditious action in accordance with the above decisions should be taken.

4. The writ petitioner had approached this Court earlier by filing W.P. (C) 344/1986 for direction to release the acquired land in terms of the letter dated 22/23.10.1984. That writ petition was, however, dismissed. On 23.04.1986 one Smt. Tushi Gupta had filed another writ petition being W.P. (C)491/1986 in which Gunwanti Devi too was impleaded. In these proceedings, Smt. Tushi Gupta laid a claim for the same plots. This Court, by order dated 25.05.1986, issued a direction for granting a hearing to Gunwanti Devi. Thereafter a hearing was consequently granted to the parties concerned but the request was not acceded to. As a result, the Writ Petition i.e. W.P. (C) 491/1986 was dismissed on 25.08.1986. To complete the series, another Writ Petition, i.e. W.P. (C) 1280/1986 was preferred by the four sons of Gunwanti Devi for release of plots in their favour based upon the Government''s decision dated 22/23.10.1984. The Court took note of a suit instituted by Smt. Tushi Gupta and others where Gunwanti and her sons were impleaded, and rights in respect of Plot Nos. 6 and 7 were claimed. In the light of these proceedings, the Court disposed of W.P. (C)1280/1986 preferred by the writ petitioner, in terms of the following observation:

After filing of the present writ petition, as suit (being Suit No. 528/1987) has been filed between the parties. All the issues in this writ petition have been raised in that suit, which in our opinion, is a better forum for deciding the disputes/questions of fact and law. In that view, the learned counsel for the Petitioner wishes to withdraw the writ petition. In view of the pendency of the aforesaid suit without prejudice to the respective contentions of the parties and the intervener, the writ petition is dismissed as withdrawn.

5. In the above background of circumstances, Gunwanti Devi preferred W.P. (C) 2017/1990 complaining that the Central Government had wrongfully denied giving effect to its decision embodied in the letter dated 22/23.10.1984. The learned Single Judge considered the submissions of the parties and was of the opinion that the communication relied upon i.e. the letter of 1984 was long after the issue of entry

had arisen i.e. 1973. The Court further held that the competent authority which took the decision was conscious of the re-entry and, therefore, could not put that as a plea for denying the release of land. The Court further felt that Government could not in any event acquire its own land. To that extent the learned Single Judge relied upon the decision of the Supreme Court in the matter of Sharda Devi Vs. State of Bihar and Another, and thereafter proceeded to hold as follows:

8. In my considered view, judgment of the Supreme Court in Sharda Devi''s case (supra) leaves no manner of doubt and, thus, it is not open to L&DO to claim any such rights on the basis of re-entry which is the reason cited for not honouring the commitment made in terms of the letter dated 22/23.10.1984.

9. In so far as the second issue is concerned, the decision of release of the land in terms of the letter dated 22/23.10.1984 was taken prior to the taking over of possession on 29.01.1986. The acquisition proceedings were, thus, not complete as on the date of the said decision and it is that decision which is sought to be enforced by the petitioner. Not only this, learned counsel for the petitioner has pointed out that one Shri Brij Kishore Gupta was released land in the similar situation and, in fact, the decision taken vide letter dated 22/23.10.1984 is common to the petitioner and the case of Shri Brij Kishore Gupta. The second objection would, thus, also not survive.

10. A writ of mandamus is, thus, issued to respondents No. 1 and 2 to issue necessary communication for allotment of land in terms of the letter dated 22/23.10.1984 within a maximum period of one month from today.

6. The Union of India argues that the impugned judgment is unsustainable, because it has in effect directed the executive to withdraw from acquisition. It is submitted that such an order can be made only on an independent application of mind by the authority concerned, and issued in accordance with Section 48 of the Land Acquisition Act, 1894. A direction which seeks to give effect to the thinking of an official that land should be given to one or some of the land owners whose lands are subject of acquisition, would overreach the provisions of law, and cannot be sustained.

7. It was next submitted that apart from the letter which the petitioner relied upon, there was no scheme of general rehabilitation which mandated allotment of any alternative plot to land owners whose properties were subject to acquisition. In these circumstances, the Court could not have directed the release of land, which amounted to an order to use discretion in a particular manner. This would result in discriminatory treatment, because all others whose lands were acquired were not given any benefit of such release of land, but given compensation according to law; whereas the petitioner, who fell outside any rehabilitation scheme such as allotment of an alternative plot, was, nevertheless, to be given such benefit. It was submitted that just because some others, whose lands were acquired in the vicinity were

promised to be given, or given such benefit, did not in any manner diminish the importance of the fact that no policy existed, and release of such lands was without any policy, and entirely unauthorized. Learned counsel relied on Shanti Sports Club and Another Vs. Union of India (UOI) and Others, and submitted that the impugned judgment, directing release of lands, is unsupportable in law.

8. Mr. Anand Yadav, counsel for some of the heirs of Gunwanti Devi, urged that the impugned judgment does not disclose any error and should not be interfered with. He argued that the Union of India cannot question the basis of the letter issued on its behalf. In this regard, it was highlighted that the letter of 22/23.10.1984 clearly recognised that the other land owners, i.e. Bal Krishan Dang, S. Gurcharan Singh and Pravir Ukil were beneficiaries of the proposal whereby the acquired lands were proposed to be released. All except the petitioner, Gunwanti Devi were handed-over the property. Therefore, the question of any scheme not being in existence could not have been urged by the Union of India. The proposal, communicated through the letter of 22/23.10.1984 itself forms the basis of a scheme and the petitioner being one of the beneficiaries could not be singled-out for hostile discrimination.

9. It was next urged that the Union of India was also estopped from contending that it was not bound by its decision or that no decision was taken to release the lands. In this context, it is submitted that in the previous two proceedings, but for the Union''s submission that the proposal-for release of lands-was under active consideration, the petitioner would well have challenged the acquisition itself. Having thus held out a representation and induced Gunwanti Devi to act to her detriment irrevocably in so far as she gave up the challenge to the acquisition, the Union could not now state that the latter did not amount to a binding decision for the release of lands.

10. From the above discussion, it is apparent that the essential question which the Court has to consider is whether the letter dated 22/23.10.1984 amounted to a binding and enforceable decision. The essential facts are not in dispute; the same lands, especially the plot in question was under the occupation of Gunwanti Devi when it was sought to be re-entered in 1973 by the superior lessor, i.e. Union of India. Apparently, the proposals for restoration of lease were afoot when in the meanwhile the land itself was subject to acquisition under the Land Acquisition Act, 1894. This Court is unpersuaded with the submissions on behalf of the writ petitioner that the Union of India being the lessor could not have also made the suit lands the subject matter of acquisition. In law, it is quite possible for the paramount lessor, as the superior owner of the property, to extinguish all matter of rights, subsisting or residual, in the property while handling it for the purposes of acquisition. This is evident from the decisions of the Supreme Court in The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, whereby the Court held that the Government acquires the sum total of all private interests subsisting in the particular piece of property and it can also extend to "the acquisition of such

interests in the land as do not already belong to the Government..." and that "it is the interests of the occupants which are ascertained and valued and the Government is directed to pay the compensation fixed for them...". The Court clarified that what is acquired is only the ownership over the lands or the "inferior rights comprised therein...". There is also authority in the judgment of Inder Parshad Vs. Union of India (UOI) and Others, that acquisition of Nazul land which are owned by the Government can also lead to situations where compensation is payable for the extinguishment of leasehold rights-which envision re-entry by the Government as the lessor. Similar reasoning was adopted in Union of India and others Vs. A. Ajit Singh, Therefore, the reasoning of the learned Single Judge that the suit lands could not be the subject matter of acquisition since they belonged to the Government, was incorrect, as such a broad proposition cannot be countenanced in law.

11. Now dealing with the next aspect, i.e. whether the letter dated 22/23.10.1984 was binding upon the Government, this Court has no hesitation in holding that it did not. The letter strongly suggests that parts of the acquired land should be released to four people, i.e. Gunwanti Devi and three others. In this regard, the significant aspect is that the proposal did not culminate in a Notification u/s 48, which is the only known mode for the Government or the acquiring body, to withdraw from the acquisition. The judgment in Shanti Sports (supra) is an authority for this proposition. That judgment is also an authority for the proposition that in the absence of any legal sanction, such proposals-to exclude from the statutory process of acquisition-parts or parcels of land which are otherwise notified and for which compensation is sanctioned, determined and deposited cannot "stand-out" all the provisions of law. The Supreme Court had this to say, both in the context of the binding nature of the withdrawal procedure u/s 48 of the Act as well as the complete bar to such informal methods of excluding from the acquisition process, notified lands for which compensation is determined:

As a necessary concomitant, it must be held that the exercise of power by the government u/s 48(1) of the Act must be made known to the public at large so that those interested in accomplishment of the public purpose for which the land is acquired or the concerned company may question such withdrawal by making representation to the higher authorities or by seeking courts intervention. If the decision of the Government to withdraw from the acquisition of land is kept secret and is not published in the official gazette, there is every likelihood that unscrupulous land owners, their agents and wheeler-dealers may pull strings in the power corridors and clandestinely get the land released from acquisition and thereby defeat the public purpose for which the land is acquired. Similarly, the company on whose behalf the land is acquired may suffer incalculable harm by unpublished decision of the Government to withdraw from the acquisition.

28. The requirement of issuing a notification for exercise of power u/s 48(1) of the Act to withdraw from the acquisition of the land can also be inferred from the judgments of this Court in Municipal Committee, Bhatinda Vs. Land Acquisition Collector and Others, , U.P. State Sugar Corpn. Ltd. Vs. State of U.P. and Others, State of Maharashtra and Another Vs. Umashankar Rajabhau and Others, and State of T.N. and Others Vs. L. Krishnan and Others, . In M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, the Court considered the question whether the power u/s 48(1) of the Act can be exercised by the Government without notifying the factum of withdrawal to the beneficiary of the acquisition. It was argued that in contrast to Sections 4 and 6, Section 48(1) of the Act does not contemplate issue of any notification and withdrawal from the acquisition can be done by an order simpliciter. It was further argued that power u/s 21 of the General Clauses Act can be exercised for withdrawing notifications issued under Sections 4 and 6. While rejecting the argument, the Court observed:

When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified." 31. Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition u/s 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he is to be compensated and subsection (3) of Section 48 provides as to how such compensation is to be determined.

12. The above decision, to this Court''s mind, is also a complete answer to the submissions of the respondents with regard to estoppel. The existence of Section 48 which contains the only known procedure in law for withdrawal from acquisition, excludes altogether the possibility of any other method. It, therefore, is a bar which the executive agency is bound to adhere to while dealing with any thinking or proposal for handing-over acquired lands to private parties, including land owners, or for withdrawing from acquisition by whatever process or name called. The existence of such bar-in express terms, completely negates any estoppel against the executive government or acquiring body. Estoppel in such circumstances has to yield to the statute wherever the conditions for its fulfillment lead to prejudice of the statute. The present is one instance where the petitioner''s arguments, if accepted, would amount to violation of Section 48, which clearly cannot be countenanced by the Court. In view of the above discussion, the Court is of the opinion that the

appeal has to succeed. The impugned judgment and order of the learned Single Judge is accordingly set-aside. LPA 1006-07/2005 is, therefore, allowed. C.M. Appl. 6722/2005, 10739/2007, 2647/2008, 7471/2008, 8679/2011, 8680/2011, 10259/2011 and 10260/2011 are disposed of in terms of this judgment. There shall, however, be no order as to costs.