
(1996) 05 DEL CK 0088

Delhi High Court

Case No: Civil Writ Petition No. 190 of 1990

Lajwanti

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 8, 1996

Acts Referred:

- Slum Areas (Improvement and Clearance) Rules, 1957 - Rule 9

Citation: (1996) 63 DLT 854

Hon'ble Judges: Chander Mohan Nayar, J

Bench: Single Bench

Advocate: R.K. Venkataraman, E.X. Joseph, S.T. Siddiqui and Dalip Singh, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is filed for :

(A)a Writ of Certiorari or any other appropriate writ praying for the quashing of Impugned order dated 30th March, 1989 acquiring the property No. 797/VIII, Ajmeri Gate, Delhi u/section 12(1) of the Slum Areas (Improvements & Clearance) Act, 1956 (hereinafter referred to as "the Act") as vocative of mandatory provisions of Sections 6A, 9 and 10 of the said Act and of Article 300A of the Constitution of India. (b) declaration that Section 15 of the Act is ultra virus of Article 14 of the Constitution of India. (c) issuance of a writ of mandamus to the respondent Nos. 3, 4 and 5 to provide alternative allotment to the petitioner and her legal heirs in accordance with Rule 9 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 and in the alternative to release the property No. 797/ /VIII owned by the petitioner from acquisition.

(2) The brief facts of the case are that in the year 1966 the petitioner had purchased property No. 797/VIII from one Shri Rehmat Ali son of Shri Sarfaraz Ali vide registered sale deed dated 12th August, 1966. The said property is situated in the

notified slum area of the walled city of Delhi and was covered by Slum Clearance order issued u/s 9 of the Act. The petitioner allegedly does not own any other residential house or plot in the Union Territory of Delhi and was also assessed to house-tax in respect of the above property. At the time of purchase of the property there were three tenants living therein namely Shri Hari Chand, Shri Atma Ram and Smt. Balu Devi. The petitioner took proceedings against the tenants for eviction but it will not be necessary to state further details in respect of those proceedings as they are not of much relevance to the pleas raised in the present petition. There is, however, no dispute that the petitioner has purchased the property as referred to above by a valid registered sale deed. On 6th October, 1985 the petitioner came to know that her property had been demolished and she lodged a report with police regarding illegal and forcible demolition of her property. The learned Counsel appearing for her also served notice on Delhi Development Authority (for short DDA) claiming compensation of Rs. 2,00,000.00 for unauthorised demolition. Meanwhile, the Director (Slum and JJ) allegedly during public hearing granted to the husband of the petitioner advised to file an application for issue of "No Objection Certificate" for reconstruction of the property and the petitioner filed an application on 2nd December, 1985 for issue of "No Objection Certificate u/s 6A of the Act and on 3rd December, 1985 she was asked to deposit a fee of Rs. 100.00 for issuance of the said Certificate. Meanwhile Competent Authority (Slum) issued show cause notice on 19th September, 1986 to the petitioner to the effect that the Lt. Governor of Delhi has accorded permission to acquire the property u/s 12(1) of the Act. The petitioner, as a consequence was given liberty to file objections. The petitioner filed Cwp No. 2160/86 in this Court impugning the above action and the Competent Authority was directed to decide the show cause at the earliest. The Lt. Governor held vide order dated 30th March, 1989 that the acquisition of the property was in public interest and directed that it may be finally acquired under the Act and further proceedings be taken in accordance with law. The writ petition, as a consequence, was dismissed as it had become infructuous on July 4, 1989 when the following order was passed :

"MR. Jain says that a decision has been taken by the respondents to acquire the property and an order has been passed u/s 12(1) of the Slum Areas (Improvement and Clearance) Act, 1986 on 30th March, 1989. In an affidavit dated 28th July, 1988 filed by Mr. Janak Juneja, Secretary, Delhi Development Authority, it has been asserted that property in question forms part of the notified clearance area and is a part of the approved Re-development Scheme known as "D.A.G. SCHEME" Phase-I. We find no merit in the matter. Dismissed."

(3) The question of alternative allotment was not decided and the Land and Building Department of Delhi Administration insisted on handing over possession of the property. The notification acquiring the property was issued which is dated 8th November, 1989 and is filed as Annexure Jj to the Amended Writ Petition. The said notification may be re-produced as follows :

NOTIFICATION No .F. 5(75)/89-L&B/Admn./: Whereas the Administrator of Union Territory of Delhi vested with powers of Central Government vide Notification No. S.O. 1210 dated 18th March,1976 is satisfied that the land is required for executing works of Improvement and Clearance in declared Slum Area and Clearance Area, it is hereby notified that the land described in the specification below is acquired for the said public purpose. This declaration is published under the provision of Section 12(1) of the Slum Areas (Improvements & Clearance) Act, 1956 for information of all to whom it may concern. The Competent Authority appointed under the Slum Areas (Improvement & Clearance) Act is directed to take order for the acquisition of the said land. A plan of the land may be inspected at the officer of the Competent Authority and Commissioner (Slum & JJR) Delhi Development Authority, Vikas Bhawan Annexe, I.P. Estate, New Delhi - 110 002. Speciation Location Area NO. Of Boundaries Property No. 797 186.37 Sq. M Land under House No. Ward No. Viii 797, Ward No.VIII Ajmeri Gate, with super structure Delhi, and bounded as under : North: Property No-798-799. South: Other Property No. 1300-1301. East: Property No. 1212-1213 West: Property No. 794-796. (GEETA Sagar) Joint Secretary (L&B)

(4) The learned Counsel for the petitioner contends that the only plea which now survives and is pressed is that a writ of mandamus be issued to respondents 3, 4 and 5 to provide alternative allotment to the petitioner and her legal heirs in accordance with Rule 9 of Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 and in the alternative to release the property No. 797/ Viii owned by the petitioner from acquisition. Rule was issued in the writ petition on 4th December, 1991 and an interim order was made for reservation of one plot of land for the petitioner in Vishal Enclave, if available or anywhere else.

(5) The main contention of the petitioner, Therefore, is that she must be allotted an alternative plot in lieu of the compulsory acquisition of her property in accordance with law. Similar questions were raised in the other connected petition Civil Writ No. 2846/92 entitled Shri Devinder Kumar and Others v. Union of India and Others, decided on 28th November, 1995 which has since been disposed of. The learned Judge on similar facts considered the law on alternative allotment as contained in Rule 9 and held as follows :

"BARE reading of this Rule shows that different categories of owners have been made eligible for allotment of alternative accommodation namely, (1) the owner who owns and reside in the building in respect of which Slum Clearance Orders have been made. Secondly, those owners whose land has been acquired under the Act could apply for allotment of nazul land in lieu of his land having been acquired in accordance with the Slum Clearance Order or acquired under the Act subject to the minimum size of the plot of land being 67 sq. meters and not exceeding 111.48 sq. meters. Then other conditions are laid down under this Rule. Reading of this Rule nowhere indicate that only that set of owners will be entitled to alternative accommodation who are actually residing in that premises. Other set of owners

whose land has been acquired under the Act have also been made eligible for alternative accommodation. This interpretation has been fairly conceded by Mr. E.X. Joseph Counsel for the respondent. Therefore, rejection on this ground was not justified. No other ground was taken. Admittedly petitioners have not received any compensation till date hence the condition (b) of the Rule 9 would not apply in this case. Condition (b) of the Rule 9 stipulates that if the owner accepts the alternative accommodation then he will not be entitled to compensation payable under the Act. Mr. Venkataraman appearing for the petitioners contends that petitioners are prepared to give an undertaking that on allotment of alternative accommodation they will not claim compensation payable under the Act."

(6) The law is, Therefore, settled that the person whose property is acquired in accordance with Slum Clearance Order is eligible to alternative allotment. The learned Counsel appearing for the respondents has not been able to distinguish the facts in the present case in comparison to the facts which arose in the case as cited above. The petitioner, Therefore, is entitled to allotment of an alternative accommodation and one plot of land has already been reserved for her by an interim order made by the Division Bench on 4th December, 1991 in Vishal Enclave, if available or anywhere else. Therefore, it is directed that the respondents shall comply with the order and allot an alternative plot to the petitioner within eight weeks in accordance with Rule 9 as referred to above. The petitioner shall comply with the formalities as required for getting such allotment. The Writ Petition is allowed in the above terms and the Rule is made absolute. There will be no order as to costs.