

Unreportable

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

+ **W.P.(C) No. 3635 of 2008**

% **Reserved on: December 02, 2008.**
Pronounced on: February 27, 2009.

Manu International . . . Petitioner

through : Mr. Subhash Oberio, Advocate.

VERSUS

Union of India & Others . . . Respondents

through Mr. Sanjay Poddar, Advocate
Mr. Ajay Verma, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. This writ petition was heard along with W.P.(C) No. 829/2007 as question of law in both the cases is identical and has arisen under the same factual background. The petitioner herein had earlier challenged Section 4 & 6 Notifications dated 25.11.1980 and 07.06.1985 respectively by filing W.P. (C) No. 677/1987 in this Court. This writ petition was dismissed vide orders dated 11.05.2007 on the ground that objections under Section 5-A of the Land Acquisition

Act, 1894 were not filed. The petitioner filed review petition No. 308/2007 against the aforesaid order, which was dismissed as well. Even SLP there against was also dismissed by the Supreme Court. These orders have attained finality. The petitioner has now filed this writ petition challenging the same notifications on the ground that the petitioner has now come to know that objections were filed by the erstwhile owner M/s. Nahar Theatre Pvt. Ltd.

2. Though the two writ petitions were heard together and judgments reserved on the same date, we have pronounced judgment in W.P.(C) No. 829/2007 on 20.02.2009 dismissing the said writ petition holding that the writ petition cannot be barred by the principles of *res judicata*. Following that judgment, present writ petition has to meet the same fate.
3. We also note in the present case that the petitioner had admittedly purchased the land from the erstwhile owner M/s. Nahar Theatre Pvt. Ltd. after the issuance of Section 4 of the Notifications dated 25.11.1980 whereas the petitioner has itself stated in the writ petition that he had purchased the property from the erstwhile owner M/s. Nahar Theatre Pvt. Ltd. vide Sale Deed dated 20.01.1989. This is an additional ground on which the petitioner would be precluded from challenging the Acquisition Notifications. In this behalf, the following legal position is explained by the Land Acquisition Collector in his counter affidavit:

“9. That it is submitted that the land owner who acquired the right after Section 4 notification is only entitled to receive compensation and cannot challenge the acquisition proceedings. The present petition is liable to be dismissed on this ground alone as the petitioner has raised the same issue in the Review Petition filed by it bearing Review No. 308 of 2007. It is submitted that in the review petition, the petitioner has alleged that the objections under Section 5-A of the Act was filed by the predecessor in interest of the petitioner, namely M/s. Nahar Theatre Pvt. Ltd. through Shri Balram Bhasin. The petitioner filed an affidavit of Shri Balram Bhasin alleging that the objections were filed by him on behalf of Nahar Theatre. Apart from this, the petitioner had also placed on record a copy of the report of the Collector under Section 5-A of the Act dated 3.6.85 wherein the name of Shri Balram Bhasin appeared at Sl. No. 239. It is submitted that the above writ petition was heard by this Hon’ble Court together with the review petition filed by one Ganesh Das Family Trust. Both the matters were listed before this Hon’ble High Court on 14.09.07. This Hon’ble Court while issuing notice in Ganesh Das Family Trust was pleased to dismiss the review submitted that the pleas taken by the petitioner in the review petition was altogether different than the plea taken in the writ petition as would be clear in the averments in the writ petition filed by the writ petitioner bearing No. 667/2007. The petitioner did not mention that any objections were filed by it or its predecessor in interest. The only objection to the acquisition was taken by the petitioner is about the delay of more than three years in issuance of Declaration under Section 6 of the Act. It is submitted that this plea has already been rejected by the Full Bench of this Hon’ble Court in the case of **Balak Ram Gupta Vs. Union of India**, 1987 Delhi 239. In view of this averment, the petition was taken for hearing and the same was initially dismissed vide order dated 11.5.2007 in the presence of counsel for the petitioner. No such plea was raised at that point of time and thus the petitioner is not permitted to raise a new plea in the present writ petition. The present writ petition is an abuse of the process of court and has been filed as an afterthought. It is submitted that in the similar circumstances in the case of **Narender Kumar Vs. Union of India WP(C) No. 1228/1986**, this Hon’ble court dismissed the writ petition. The review was also dismissed, SLP filed against the said order was also dismissed by the Hon’ble Supreme Court; review seeking the dismissal of the SLP has also been dismissed by the Hon’ble Supreme Court. In the present case also, the SLP filed by the petitioner against the order of dismissal dated 11.5.2007 (page 160 of the Paper Book) and order dated 14.9.2007 whereby the review was dismissed (page 164 of the Paper Book) has been dismissed by the Hon’ble Supreme Court in SLP (CC) No. 9865/2007 vide order dated 29.10.2007 (page 165 of the Paper Book). On dismissal of the SLP, the matter stands concluded.

Now, it is not open to the petitioner to raise the issue over and again and challenge the same in the present proceedings.”

4. It is also interesting to find out that the petitioner accepts the position that when its earlier writ petition was dismissed, the judgment in the case of *Chatro Devi Vs. Union of India* (137) 2007 DLT 14, had already been pronounced and that was within the knowledge of the Bench. However, in spite thereof, the petition of the petitioner was dismissed. The petitioner made another attempt to seek the benefit of *Chatro Devi* (supra) by filing review petition in which also it failed. Therefore, on same self grounds fresh Writ Petition is barred by the principles of *res judicata*.
5. We accordingly dismiss this writ petition with costs quantified at Rs.15,000/-.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

February 27, 2009.

pmc