A DELHI ADMINISTRATION & ANR.

v.

KIDARNATH MOHINDERNATH & ANR.

(Civil Appeal No.1888 of 2008)

B MARCH 30, 2017

[ARUN MISHRA AND S. ABDUL NAZEER, JJ.]

Land Acquisition Act, 1894:

ss. 4, 5A and 6 – Notification by appellant u/s. 4 for acquiring C *lands in several villages, including the land of respondent no.1 - Notification also carved out exceptions* inter alia *with respect to lands in respect of which building plans were sanctioned by MCD before 5.11.1980 – Respondent No. 1's land covered under such exemption – Enquiry by appellant u/s.5A seeking objections claiming* D *exemption of land from acquisition on the basis of aforesaid exception – No exemption claimed by respondent no. 1 – Final declaration issued u/s. 6 acquiring lands including respondent no.1's land – Writ petition by respondent no. 1 before High Court, allowed – Plea of appellant that it was incumbent upon respondent no.1 to file objections u/s.5-A to claim exemption and since no such* E *exemption was claimed, the same was deemed to have been waived – Plea of respondent no.1 that since its land was exempted in the notification u/s.4, it remained under the impression that there was no requirement to file any objection seeking exemption u/s.5-A – On appeal, held: Notification issued u/s.4 was with respect to the large chunk of area, comprised in several villages – Thus, it was* F *necessary to claim exemption by filing objections u/s.5A – Otherwise, there was no other mechanism available to ascertain as to which particular piece of land out of the lands so notified were granted sanction for building plan before 05.11.1980 – However, admittedly, respondent no.1 did not file any objection u/s.5-A to seek exemption* G *from acquisition on the basis of the aforesaid sanction – Thus, having failed to do so, respondent no. 1 waived its rights.*

s.6 – Declaration under – Dispute as to whether declaration issued u/s.6 was time barred as per proviso to s.6(1) – Computation of periods referred to in the first proviso – Held: The period during

H

which any action or proceeding to be taken in pursuance of the notification issued u/s. 4(1), is stayed by an order of a Court, shall be excluded. A

Allowing the appeal, the Court

HELD: 1.1 The notification issued under Section 4 of the Land Acquisition Act, 1894 was with respect to the large chunk of area, comprised in several villages, approximately 50,000 bighas was proposed to be acquired. The notification issued under Section 4 intended to exempt the land, with respect to which building plans, had been sanctioned before 05.11.1980. However, the notification under Section 4 was with respect to the entire area in villages, hence, it was necessary to claim exemption and there was no other mechanism available with respect to the ascertainment of the sanction of the building plan before 05.11.1980, with respect to the particular piece of land, it was to be claimed by filing objections under Section 5A of the Act. [Para 11][515-A-C] B C D

2.1 In the instant case, inquiry under Section 5-A had been held and the lands in question were proposed to be acquired and certain other lands were to be excluded as per notification. The report under Section 5-A had been accepted by appropriate Government and thereafter declaration under Section 6 had been issued. According to the report under Section 5-A, the land of Respondent No.1 came to be included in the acquisition by virtue of the final declaration issued under Section 6. [Para 12][515-C-D] E

2.2 Admittedly, Respondent No.1 did not file any objection under Section 5-A to seek exemption from acquisition on the basis of the aforesaid sanction. It was incumbent upon Respondent No.1 to have claimed such an exemption from acquisition, otherwise the land of the entire village was notified under Section 4 for the purpose of acquisition. Having failed to do so, it is apparent that he has waived his rights on the basis of so called sanction. Thus, when the claim had not been raised for exemption of land, inquiry under Section 5-A cannot be termed as illegal and consequently declaration under Section 6. Otherwise several complications and piquant situations may arise if it is held F G H

that it was not necessary to participate in inquiry to claim exemption then it would not be possible to give finality to declaration under Section 6 and it would have to be quashed time and again on such claims for exemptions not set forth at the stage of inquiry under Section 5-A of the Act. [Para 13][515-E-G]

2.3 The only purpose of the inquiry is to ascertain which land is to be excluded from acquisition. In such circumstances, when the land was so to be excluded from acquisition on the basis of exceptions mentioned in the notification under Section 4, it had to be claimed. [Para 14][515-H]

Delhi Administration v. Gurdip Singh Uban and Others **(2000) 7 SCC 296 : [2000] 2 Suppl. SCR 496 – relied on.**

Om Parkash v. Union of India and others **(2010) 4 SCC 17 : [2010] 2 SCR 447 – referred to.**

Case Law Reference

[2000] 2 Suppl. SCR 496	**relied on**	**Para 14**
[2010] 2 SCR 447	**referred to**	**Para 16**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1888 of 2008.

From the Judgment and Order dated 10.03.2006 of the High Court of Delhi at New Delhi in Writ Petition No. 2019 of 1986.

Ms. Rachana Srivastava, Sukrit R. Kapoor, Ms. Nitya Madhusoodanan, Advs. for the Appellants.

Ramesh Singh, A. Y. Patra, (for Ms. Bina Gupta), Advs. for the Respondents.

The following Judgment of the Court was delivered:

1. The respondents questioned the land acquisition proceedings initiated by virtue of issuance of Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and also declaration issued on 07.06.1985 under Section 6 of the Act.

2. M/s. Kidarnath Mohindernath filed Writ Petition (C) No.2019/1986 in the High Court with respect to land bearing Khasra Nos.1619, 1620, 1615/2 and 1616/2 situated in revenue estate of village Chhatarpur,

Tehsil Mehrauli, Delhi. It was averred by the petitioner in the said writ petition that he had purchased the land and that the predecessor-in-interest of the petitioner had submitted a building plan to the Municipal Corporation of Delhi for the construction of a farm house on the aforesaid agricultural land vide file No.34/A/HQ/74 dated 30.03.1974 which was sanctioned by the Municipal Corporation of Delhi (hereinafter referred to as 'MCD') on 16.07.1974.

3. The Delhi Administration issued a Notification under

Section 4 of the Act which carved out certain exceptions with respect to the following lands :

A) Government lands;

B) Land earlier notified either under Section 4 or under Section 6 of the Act;

C) Land in respect of which lay out plans/building plans were sanctioned by MCD before 05.11.1980.

4. Thus, Respondent No.1 herein claimed that the land was exempted from the acquisition as per the Notification issued under Section 4 and ought not to have been included in declaration under Section 6 of the Act. Since, the land of the petitioner had been exempted; it was not necessary to file objections under Section 5-A of the Act, as such petitioner did not file any objection. However, land had been illegally included in the declaration issued under Section 6 of the Act for the purpose of 'Planned development of Delhi'..

5. It was also averred that it was necessary to issue Notification under Section 4, which was not issued with respect to the petitioner's land, as such declaration under Section 6 could not have been issued. The declaration issued under Section 6 was beyond the time, as prescribed in proviso contained under Section 6(1) of the Act.

6. The Writ Petition was not resisted by Delhi Administration by filing a reply for the reasons best known to Delhi Administration, neither reply was filed to the writ application before the High Court nor the decisions rendered by this Court in same acquisition were cited.

7. The High Court had opined that since exceptions were carved out in the Notification issued under Section 4 of the Act, as such declaration issued under Section 6 of the Act did not include the land of the petitioner

A and it had allowed the Writ Petition without quashing the declaration issued under Section 6 of the Act, though, land had been included in declaration issued under Section 6 of the Act. Aggrieved thereby, the Delhi Administration and Land Acquisition Collector had preferred the appeal.

B 8. Learned counsel appearing on behalf of the appellants urged that it was incumbent upon the Respondent No.1 to file objections under Section 5-A of the Act to claim exemption of the land from acquisition on the basis of sanction of building plan granted in the year 1974, otherwise the entire area of the village was covered in Notification issued under Section 4 for the purpose of acquisition. Since no such exclusion/ C exemption was claimed on the basis of the sanction of building plan of 1974, the same is deemed to have been waived. Thus, the inquiry held under Section 5-A, on the basis of which appropriate government directed the acquisition of the land, as indicated in the Report could not be faulted. Declaration issued under Section 6 could not be said to have suffered D with any illegality.

9. It was further urged by learned counsel appearing on behalf of the appellants that question of delay of three years has been considered by this Court in same acquisition and was rejected in Om Parkash versus Union of India and others (2010) 4 SCC 17, and other reasoning employed E by the High Court has been squarely dealt with by this Court in its decision in Delhi Administration versus Gurdip Singh Uban and Others (2000) 7 SCC 296, which also arose out of the same acquisition process.

10. Learned counsel appearing on behalf of the Respondent No.1 has strenuously submitted that since land had been exempted in the F Notification under Section 4, Respondent No.1 remained under the impression that there was no requirement to file any objection seeking exemption under Section 5-A of the Act. It was further submitted by him that since Notification under Section 4 excluded the land by making out exemption, it could not be included in declaration under Section 6. There was no notification under Section 4 with respect to land of the G respondent(s). Thus, the declaration under Section 6 was illegal. He has further submitted that since Respondent No.1 succeeded in the High Court only on the one ground, the other ground is required to be pressed with respect to belated issuance of declaration under Section 6 of the Act. He has contended that it was barred by time as per proviso under H Section 6(1) of the Act.

11. After hearing learned counsel for the parties, we are of the considered opinion that notification issued under Section 4 of the Act was with respect to the large chunk of area, comprised in several villages, approximately 50,000 bighas was proposed to be acquired. Though, it is true that notification issued under Section 4 of the Act intended to exempt the land, with respect to which building plans, had been sanctioned before 05.11.1980. The notification under Section 4 was with respect to the entire area in villages, it was necessary to claim exemption and there was no other mechanism available with respect to the ascertainment of the sanction of the building plan before 05.11.1980, with respect to the particular piece of land, it was to be claimed by filing objections under Section 5 'A' of the Act.

12. In the instant case, inquiry under Section 5-A had been held and the lands in question were proposed to be acquired and certain other lands were to be excluded as per notification. The Report under Section 5-A had been accepted by appropriate Government and thereafter declaration under Section 6 had been issued. According to the report under Section 5-A, the land of Respondent No.1 came to be included in the acquisition by virtue of the final declaration issued under Section 6.

13. Admittedly, Respondent No.1 did not file any objection under Section 5-A to seek exemption from acquisition on the basis of the aforesaid sanction. It was incumbent upon Respondent No.1 to have claimed such an exemption from acquisition, otherwise the land of the entire village was notified under Section 4 for the purpose of acquisition. Having failed to do so, it is apparent that he has waived his rights on the basis of so called sanction as it was not made the basis for claiming exemption and in the circumstances when the claim had not been raised for exemption of land, inquiry under Section 5-A cannot be termed as illegal and consequently declaration under Section 6. Otherwise several complications and piquant situations may arise if it is held that it was not necessary to participate in inquiry to claim exemption then it would not be possible to give finality to declaration under Section 6 and it would have to be quashed time and again on such claims for exemptions not set forth at the stage of inquiry under Section 5-A of the Act.

14. The only purpose of the inquiry is to ascertain which land is to be excluded from acquisition. In such circumstances, when the land was so to be excluded from acquisition on the basis of exceptions mentioned in the Notification under Section 4, it had to be claimed. It

would not follow automatically, such exceptions as reflected in Notification under Section 4 find place in other schemes also. However, such exemptions have to be claimed either on the basis of scheme or on the basis of notification in the course of inquiry. Having failed to do so, the final declaration under Section 6 of the Act which had been issued could not be termed illegal. Similar view has been taken by this Court in Delhi Administration versus Gurdip Singh Uban and Others (Supra), considering the same notification and also the factual matrix that no objection was taken for exemption in the course of inquiry under Section 5-A. This Court has laid down as under :

> "30. The crucial question therefore is *whether* in a situation where each of the seventy odd writ petitioners of 1985 covered specific areas and the brief order dated 14-10-1988 allowed the writ petitions, the said order could be treated as one affecting the entire notification under Section 6 and even cases where objections were not filed under Section 5-A as in the case before us. Question also arises whether the final order dated 18-11-1988 containing reasons as reported in B.R. Gupta v. Union of India could have covered the entire area in the 12 villages, about 50,000 bighas even with regard to the other claimants whose writ petitions were not before the Division Bench and even other cases where no objections were filed in Section 5-A inquiry?
>
> 53. Now objections under Section 5-A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose, (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer, or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is palced, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and Objection (iii) is personal to the objector.
>
> 54. Now in the (ii) and (iii) types of objections, there is a personal element which has to be pleaded in Section 5-A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal and which he could have raised. However, so far as Objection (i) is concerned, even in case objections are not filed,

the affected party can challenge in Court that the purpose was not a public purpose. A

55. Learned Solicitor General Shri Salve rightly argued that in respect of each landowner whose land is acquired, the Section 4 notification if it is sought to be avoided on personal grounds as stated in (ii) and (iii) above, it is necessary that objection be filed to avoid a voidable notification. Otherwise, the notification which is not avoided on any personal grounds, remains operative and personal objections are deemed to be waived. B

56. In the extracts from the Division Bench judgment set out earlier, it will be seen that two different concepts are unfortunately mixed up. Satisfaction regarding public purpose, it was said must be expressed in respect of each "particular land". This view, as already stated, is not correct. If the entire land is needed for a public purpose, it is not necessary for the Government (or here the Ld. Governor) to say in the Section 6 declaration that each piece of land is required for the public purpose. The Division Bench then mixed up this question with individual objections in each writ petition. Obviously, these individual objections of types (ii) and (iii) mentioned above can only be personal to each writ petitioner or peculiar in respect of each of the pieces of land owned. In that event, the rejection of the objections by the Land Acquisition Officer and the "satisfaction" of the Government/Lt. Governor can relate only to each of these pieces of land and not the whole. Therefore, there is no question of the Division Bench holding in its order dated 18-11-1988 that the satisfaction of the Ld. Governor in respect of the entire land is vitiated. As already stated, the satisfaction regarding public purpose was never in issue. C D E F

57. It was then argued that satisfaction under Section 6 for the rest of the land not covered by the 73 writ petitioners or even where no objections are filed under Section 5-A, must be held vitiated because the objections filed in certain other cases were not properly considered by the officer and hence Section 6 satisfaction of the Ld. Governor for the rest of the land is also vitiated. G

58. We are unable to agree that in the cases not before the Division Bench and in particular in cases where no objections are filed, the H

A satisfaction under Section 6 is vitiated because in some other cases, the objections which were filed were not properly disposed of. As to rejection of personal grounds of each writ petitioner, - other than the 73 writ petitions – there was no occasion for the Lt. Governor to apply his mind if objections were not indeed filed. The only question then could have been about the public purpose.

B

59. In the present cases there is no dispute that the purpose is a public purpose. The applicant had not filed objections on grounds personally applicable to him or to this land seeking exclusion from acquisition, and the objections in that behalf must be deemed to have been waived. Such a person cannot be allowed to file a writ petition seeking the quashing of Section 5-A inquiry and Section 6 declaration on personal grounds if he had not filed objections. Points 4 and 5 are decided accordingly against the applicants."

C

(Emphasis supplied)

D 15. In view of the aforesaid decision, it is clear that the decision of the High Court is not correct and impugned order passed by the High Court can not be sustained. Though, aforesaid binding decision was available but it was not placed before the High Court.

16. Coming to the next submission raised by learned counsel for E Respondent No.1 with respect to the declaration under Section 6 whether it was issued after requisite period prescribed under proviso of Section 6 (1) of the Act. Section 6 (1) of the Act makes it clear that in computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4(1), is stayed by an order of a Court shall be F excluded and this aspect has been taken into consideration in respect to the same notification by this Court in the case of Om Parkash (supra) in which it has been laid down :

"71. It is also worth mentioning that each of the notifications issued under Section 4 of the Act was composite in nature. The G interim order of stay granted in one of the matters i.e. Munni Lal and confirmed subsequently have been reproduced hereinabove. We have also been given to understand that similar orders of stay were passed in many other petitions. Thus, in the teeth of such interim orders of stay, as reproduced hereinabove, we are of the H opinion that during the period of stay the respondents could not

have proceeded further to issue declaration/notification under Section 6 of the Act. As soon as the interim stay came to be vacated by virtue of the main order having been passed in the writ petition, the respondents, taking advantage of the period of stay during which they were restrained from issuance of declaration under Section 6 of the Act proceeded further and issued notification under Section 6 of the Act.

72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."

17. Thus submission is liable to be rejected. Apart from that we find that this objection had not been pressed rightly, in view of the aforesaid decision, before the High Court. We are of the opinion that no case for interference is made out on this ground also.

18. It was submitted by the learned counsel for Respondent No.1 that in one such other case, Delhi Administration has accepted a judgment of Delhi High Court thus could not have questioned the order passed by the High Court in the case of the Respondent No.1 only. We are not inclined to accept the submission raised by the learned counsel for Respondent No.1, firstly, for the reason that there is no concept of negative equality, secondly, apart from that, this Court has already decided the matter in the decisions mentioned above which were binding and not brought into the notice of the High Court. Thus, illegal order cannot be permitted to survive.

19. The appeal is allowed. Impugned judgment and order passed by the High Court is set aside. Writ Petition is dismissed. Parties are directed to bear their own costs.

Divya Pandey

Appeal allowed.