Northern Indian Glass Industries vs Jaswant Singh And Ors on 29 October, 2002

Equivalent citations: AIR 2003 SUPREME COURT 234, 2003 (1) SCC 335, 2002 AIR SCW 4685, (2003) 2 CGLJ 4, (2003) 1 JCR 62 (SC), 2002 (8) SCALE 336, (2002) 5 ALL WC 3495, 2002 (6) SLT 275, 2003 (1) UPLBEC 169, 2003 (1) SRJ 252, 2003 (1) UJ (SC) 66, (2003) 3 ALLINDCAS 313 (SC), (2002) 9 JT 240 (SC), 2003 UJ(SC) 1 66, (2003) 1 LANDLR 375, (2003) 1 PUN LR 332, (2003) 1 UPLBEC 169, (2002) 7 SUPREME 607, (2002) 4 RECCIVR 784, (2003) 1 ICC 894, (2002) 8 SCALE 336, (2003) 2 INDLD 848

Bench: Doraiswamy Raju, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 7023 of 1993

PETITIONER:
NORTHERN INDIAN GLASS INDUSTRIES

RESPONDENT:
JASWANT SINGH AND ORS.

DATE OF JUDGMENT: 29/10/2002

BENCH:
DORAISWAMY RAJU & SHIVARAJ V. PATIL

JUDGMENT:

JUDGMENT 2002 Supp(3) SCR 534 The following Order of the Court was delivered:

The appellant-company approached the State of Haryana for acquisition of land for establishing a sheet glass factory. The State Government, on being satisfied, took a decision to initiate proceedings in respect of the land in question. Preliminary notification under Section 4 of the Land acquisition Act was issued on 2.7.1973. Thereafter declaration was made under Section 6 on 4.9.1973 The Collector passed the award on 20.6.1974 in respect of the said land, awarding compensation to the land owners i.e. respondent Nos. 1-5 herein, a sum of Rs. 3,93,688.12. The amount of compensation was also paid to the respondents on 16.10.1974 and the possession of the land was also taken on the same date. The respondents made an application for reference under Section 18 of the Act. The Additional District judge, Rohtak enhanced the compensation amount by a sum of Rs. 59,349. The respondents 1-5 not being satisfied with the enhanced amount of compensation, approached the High Court by filing an appeal. The High Court by judgment dated 2.6.1988 enhanced the

compensation by an amount of Rs. 8.10 lakhs.

The respondents filed Civil Writ Petition No. 14735/1991 in the High Court on 25.9.1991 praying for quashing the notifications issued under Sections 4 and 6 of the Land Acquisition Act and for other reliefs. The said writ petition was allowed by the High Court on 5.3.1992. Hence, this appeal by the company for whose benefit the land was acquired.

Learned counsel for the appellant contended that the High Court was not right in entertaining the writ petition condoning the delay and laches on the part of respondents in approaching the High court almost after a period of 17 years, that too when the acquisition proceedings had attained finality and possession also had been taken as early as on 16.10.1994 on which date the land vested with the State free from all encumbrances. The High Court committed an error in quashing the acquisition proceedings and directing restoration of the land to the respondents, even though the land was not utilized for the purpose for which it was acquired. The learned counsel cited a few decisions in support of his submissions.

Learned counsel for the respondents 1-5 made submissions in support of justification of the impugned judgment. He contended that having regard to the facts and circumstances of the case, particularly, when the appellant failed to utilize the land acquired for the purpose for which it was acquired and when it was making unjust enrichment out of the land acquired, the High Court was just and right in passing the impugned judgment.

It may be stated that the State has also filed appeals challenging the impugned judgment in Civil Appeal Nos. 7024 & 7025-7030 of 1993. The learned counsel for the State submitted that the State has already initiated proceedings for resumption of the land acquired. He stated that this submission was made before the High Court also but, unfortunately, the same was not considered.

It is not in dispute that the writ petition was filed almost after 17 years from the date of passing the award and after taking possession of land. There is no explanation for inordinate delay and laches except the statement made in para 8 of the writ petition to the effect, that although the possession of the land was taken 17 years back in 1973, the compensation was not paid fully and the acquisition was mala fide and illegal and that the acquisition was made only to pay down the prices. It is also not in dispute that respondents 1-5 accepted/received the amount of compensation as early as on 16.10.1974 on the basis of the award passed; they sought reference under Section 18 of the Act for enhancement of the compensation and further they pursued the matter in the High Court seeking further enhancement of the compensation till 1988. Three years thereafter they filed writ petition challenging the acquisition proceedings. In our view, in the absence of any explanation for inordinate delay and laches on the part of the respondents 1-5 in approaching the High Court, the writ petition ought to

have been dismissed on this short ground, It appears that the High Court was impressed by two circumstances -(1) that even after 17 long years the respondents were not paid enhanced compensation and (2) if the acquisition proceedings are not quashed and if no direction is given to revest the land in respondents 1-5, there would be unjust enrichment by the appellant-company. According to the High Court, this was extra-ordinary situation, which warranted exercise of its writ jurisdiction to quash the acquisition proceedings.

This Court in Larsen & Toubro Ltd. v. State of Gujarat and Ors., [1998] 4 SCC 387 in para 21 has stated thus:-

"This Court has repeatedly held that writ petition challenging the notifications issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting a premium on dilatory tactics."

In Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. and Ors., [1996] II SCC 501, after reviewing the entire case law, this Court held that a person who approaches the court belatedly to question the legality of the notification under Section 4(1), declaration under Section 6 and the award of the Collector under Section 11, shall not be granted relief. Touching the question of delay and laches, in para 29, it is stated that "it is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226."

Looking to the facts of the present case and conduct of the respondents 1-5, the High Court was not at all justified in ignoring the delay and laches and granting relief to them. As already noticed, the respondent 1-5 approached the High Court by filing writ petition almost after a period of 17 years finalization of the acquisition proceedings. They accepted the compensation amount as per the award and sought for enhancement of the compensation amount without challenging the notification issued under Section 4 and 6. Having sought for enhancement of compensation only, they filed writ petition even three years after the appeals were disposed of by the High Court in the matter of enhancement of compensation. There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to condone the delay and laches, in filing the writ petition. In our view, the High Court was also not right in ordering restoration of land to the

respondents on the ground that the land acquired was not used for which it had been acquired. It is well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land-is not used for the purpose for which it is acquired, the land owner does not get any right to ask for revesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in Gulam Mustafa and Ors., v. The State of Maharashtra and Ors., [1976] 1 SCC 800 in para 5 has stated thus:-

> "At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."

In Chandraguda Ramgonda Patil and Anr. v. Slate of Maharashtra and Ors., [1996] 6 SCC 405, it is stated that the acquired land remaining unutilized was not intended, to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of notification.

Yet again in C. Padma and Ors., v. Dy. Secretary to the Government of T.N. and Ors., [1997] 2 SCC 627, it is held that acquired land having vested in the State and the compensation having been paid to the claimant, he was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose.

If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant company.

We have to deal with one more contention of the learned counsel for the respondents 1-5 that a different procedure has to be followed for acquisition of land by the State for the purpose of a private company. There is no dispute on that point. We fail to understand how this contention advances the case of the respondents when they did not challenge the acquisition proceedings, even on that ground if it was available within reasonable time. It was too late for them to challenge the acquisition proceedings on that ground as well.

For all that is stated above, the impugned judgment of the High Court cannot be sustained. It is set aside. The writ petition filed by the respondents 1-5 is dismissed. For the same reason the judgments dated 4.9.1992 in C.W.P, Nos. 8181-8166 of 1992 are also liable to be and are hereby set aside, having regard to the fact that the judgments in these cases have been rendered merely by following

the decision dated 5.3.1992 in C.W.P. No. 14735 of 1991.

The appeals are allowed accordingly. There shall be no order as to costs.