REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 204-205 OF 2004

Bhimandas Ambwani (D) Thr. Lrs. …Appellants

Versus

Delhi Power Company Limited & Ors. …Respondents

with

C.A. No. 203/2004

O R D E R

CIVIL APPEAL NOS. 204-205 OF 2004

1. These appeals have been preferred against the impugned judgment and order dated 22.3.2002, passed by Delhi High Court in LPA No.46 of 1983 and judgment and order dated 21.5.2002 passed in Review Application C.M. No.893 of 2002 therein by way of which the appeal filed by the respondents

against the judgment and order of the learned Single Judge dated 26.11.1982 had been allowed.

2. Facts and circumstances giving rise to these appeals are that :-

A. The appellants had been conferred title over the land in Khasra No.307 admeasuring 3 bighas and 3 biswas situate in the revenue estate of village Kilokri, Delhi and the Conveyance Deed for the same was registered on behalf of the President of India in favour of the appellant on 6.6.1962.

A Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued on 5.3.1963 in respect of the land admeasuring 139 bighas and 2 biswas including the aforesaid land of the appellants. A declaration under Section 6 of the Act was made in respect of the said land on 22.8.1963. The Land Acquisition Collector made the award under the Act on 29.11.1963. However, no award was made in respect of the land measuring 23 bighas and 7 biswas including the suit land as it had been shown to be the land of Central Government. However, the possession of the land in respect of which the award was made and the land transferred to the appellants was also taken and the Union of India handed it over to

Delhi Electric Supply Units (for short 'DESU') for the construction of staff quarters on 5.7.1966. The appellants claimed to have been deprived of the land without paying any compensation whatsoever, thus, there was a regular correspondence by the appellants and in view thereof Section 4 Notification under the Act was issued on 7.10.1968 in respect of the land admeasuring 31 bighas and 15 biswas including the land in dispute. The said Notification under Section 4 was not acted upon, but a supplementary award No. 1651-A dated 16.2.1974, was made in respect of the land in dispute, making reference to Section 4 Notification dated 5.3.1963.

B. Aggrieved, Predecessor in interest of the appellants filed Writ Petition No.307 of 1972 before Delhi High Court and the said writ petition was disposed of vide judgment and order dated 26.11.1982 making it clear that acquisition proceedings emanating from Notification dated 5.3.1963 came to an end rather stood superseded by second Notification dated 7.10.1968 and therefore, supplementary award No.1651-A dated 16.2.1974 was illegal and without jurisdiction and thus, the award was quashed. The respondents were directed to handover the vacant possession of the suit property to the appellants by 31.12.1983. However, liberty was given to the State to issue a

fresh Notification under Section 4 of the Act within a period of one year and till then the possession could be retained by the respondents.

C. It was in view thereof, a Notification dated 26.3.1983 was issued under Section 4 of the Act in respect of the suit land and in the meanwhile, the respondents preferred LPA No.46 of 1983 against the said judgment and order of the learned Single Judge dated 26.11.1982.

D. Declaration under Section 6 of the Act dated 30.5.1983 was issued in respect of the suit land and the respondents did not complete the acquisition proceedings rather abandoned the same.

E. The Division Bench allowed the said LPA vide judgment and order dated 22.3.2002. Review Petition against the said LPA filed by the appellant was dismissed on 21.5.2002.

Hence, these appeals.

3. Shri Arvind Kumar and Ms. Henna George, learned counsel appearing for the appellants have submitted that there had been 3 successive Notifications under Section 4 of the Act. Therefore, the second Notification superseded the first and the third Notification superseded the second notification. In response to the first Section 4

Notification there was no award as the Land Acquisition Collector considered that the suit land belonged to the Central Government. The supplementary award was made subsequent to the second Section 4 Notification making reference to the first Section 4 Notification dated 5.3.1963 which had already elapsed. The learned Single Judge has rightly decided the issue and in pursuance of the same once the third Section 4 Notification was issued on 26.3.1983 and no further proceedings were taken, it also stood elapsed. Therefore, in law, there had been no proceedings regarding acquisition of the land in dispute. The respondent-authorities cannot be permitted to encroach upon the land of the appellants without resorting to the procedure prescribed by law. The Division Bench erred in reversing the judgment of the learned Single Judge under the misconception that there was a valid award in respect of the land in dispute as it could be made referable to Notification under Section 4 dated 7.10.1968 and therefore, the appeals deserve to be allowed.

4. Per contra, Ms. Avnish Ahlawat, learned counsel appearing for the respondent no.1 and Shri Vishnu Saharya, learned counsel appearing for DDA have opposed the appeal contending that their

land had been acquired by the Union of India and handed over to the respondent no.1 after taking the amount of compensation from it. Therefore, the said respondent cannot be penalised at such a belated stage for the reason that DESU has deposited a sum of Rs.10,16,400/- towards the price of land on 24.5.1966. The judgment of the High Court does not require to be interfered with and thus, the appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. There cannot be any dispute to the settled legal proposition that successive Notifications under Section 4 or successive Declarations under Section 6 of the Act can be made, however, the effect of the same would be that earlier notification/declaration stands obliterated/ superseded and in such a fact-situation, it would not be permissible for either of the parties to make any reference to the said notifications/ declarations which stood superseded.

7. In **Bhutnath Chatterjee v. State of West Bengal & Ors.**, (1969) 3 SCC 675, this Court held that where second Section 4 Notification has been issued, the market value is to be determined in

terms of the later notification for the reason that there was an intention to supersede the previous notification and if the Government did not choose to explain the reasons which persuaded it to issue the second notification, the court is justified in inferring that it was intended to supersede the earlier notification by the later notification.

8. In **Land Acquisition Officer-cum-RDO, Chevella Division, Ranga Reddy District v. A. Ramachandra Reddy & Ors.**, AIR 2011 SC 662, while dealing with the same issue, this Court held:

> "….. the Government after considering the facts and circumstances, with a view to avoid further challenge, issued a fresh notification dated 9.9.1993 (gazetted on 19.11.1993) followed by final declaration dated, 16.2.1994. The State Government did not subsequently cancel/rescind/ withdraw the notifications dated 9.9.1993 and 16.2.1994. The State Government had clearly **abandoned the earlier notifications** dated 3.1.1990 and 10.1.1990 **by issuing the subsequent notifications** dated 9.91993 and 16.2.1994. The appellant cannot therefore contend that the second preliminary notification is redundant or that first preliminary notification continues to hold good….." (Emphasis added)

(See also : **Raghunath & Ors. v. State of Maharashtra & Ors.**, AIR 1988 SC 1615; **Hindustan Oil Mills Ltd. & Anr. vs. Special Deputy Collector (Land Acquisition)**, AIR 1990 SC 731; and **Raipur**

Development Authority v. Anupan Sahkari Griha Nirman Samiti & Ors., (2000) 4 SCC 357).

9. In view of the above, Section 4 Notification dated 26.3.1983 and Declaration under Section 6 dated 13.5.1983 superseded all earlier notification/declaration. However, no proceedings were taken in pursuance of the said notification/declaration issued in the year 1983 and after commencement of the Amendment Act 1987, the said notification/declaration made in the year 1983 stood elapsed as no award had been made within the period stipulated under the Act. Thus, there can be no sanctity to any of the acquisition proceedings initiated by the respondents so far as the suit land is concerned, though the appellants stood dispossessed from his land in pursuance of the Notification under Section 4 dated 5.3.1963. Thus, we have no hesitation in making a declaration that the appellants had been dispossessed without resorting to any valid law providing for acquisition of land. The Court is shocked as the appellants had been dispossessed from the land during the period when right to property was a fundamental right under Articles 31A and 19 of the Constitution of India and subsequently became a constitutional and human right under Article 300A.

10. This Court dealt with a similar case in **Tukaram Kana Joshi & Ors.** thr. Power of Attorney Holder **v. Maharashtra Industrial Development Corporation & Ors.**, (2013) 1 SCC 353, and held :

> "……There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a 'subject' of medieval India, but not as a 'citizen' under our constitution.
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> Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his

> fundamental/constitutional/human rights, under the garb of industrial development.
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> The appellants have been deprived of their legitimate dues for about half a century. In such a fact-situation, we fail to understand for which class of citizens, the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory benefits are accorded, in accordance with the law".

11. The instant case is squarely covered by the aforesaid judgment in **Tukaram's** case (supra) and thus, entitled for restoration of possession of the land in dispute. However, considering the fact that the possession of the land was taken over about half a century ago and stood completely developed as Ms. Ahlawat, learned counsel has submitted that a full-fledged residential colony of employees of DESU has been constructed thereon, therefore, it would be difficult for respondent no.1 to restore the possession.

12. In such a fact-situation, the only option left out to the respondents is to make the award treating Section 4 notification as, on this date, i.e. 12.2.2013 and we direct the Land Acquisition Collector to make the award after hearing the parties within a period of four

months from today. For that purpose, the parties are directed to appear before Land Acquisition Collector, C/o The Deputy Commissioner, South M.B. Road, Saket, New Delhi on 26.2.2013. The appellants are at liberty to file a reference under Section 18 of the Act and to pursue the remedies available to him under the Act. Needless to say that the appellants shall be entitled to all statutory benefits.

13. With these directions, the appeals are allowed. The judgments impugned herein are set aside.

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14. In view of the order passed in C.A. Nos. 204-205/2004, the appeal is dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

New Delhi;
February 12, 2013