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UNION OF INDIA

v.

SH. SHIVKUMAR BHARGAVA AND ORS.

JANUARY 17, 1995

B

[K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.]

Land Acquisition Act, 1894 : S.4(1)—Party not the owner as on the date of notifications published—Whether entitled to alternative site as per Government policy—Held, not entitled to as he was not the owner on the date of notification.

C

The respondent filed a Writ petition before the High Court claiming alternative site on the ground that his land was acquired for public purpose and he was thus entitled to the benefit under the policy of the Government. The Single Judge who heard the matter found that though the respondent was not the owner on the date of publication of the notification under S.4(1) of the Land Acquisition Act, but on the date when the acquisition was finalised he became the owner by virtue of purchase and was therefore entitled to allotment of alternative site. The appeal preferred by the Union of India was dismissed by the Division Bench on the ground of delay. Hence this appeal.

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Allowing the appeal, this Court

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HELD: The policy of the Government indicates that the person whose land was acquired means the owner as on the date, notification was notified for acquisition and he alone will be entitled to allotment of alternative site. A person who purchases land subsequent to the Notification may be entitled to claim compensation by virtue of sale made in his favour, namely, the right, title and interest the predecessor had but, he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date on which Notification under s.4(1) was published. Under these circumstances, the respondent cannot be considered to be the owner as on the date of Notification under s.4(1) of the Land Acquisition Act published in the Gazette. The direction given by the Single Judge is accordingly quashed. [356-C-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1711 of 1993. A

From the Judgment and Order dated 21.1.85 of the Delhi High Court in L.P.A. No. 26 of 1985.

N.N. Goswamy, Ms. Niranjana Singh for C.V. Subba Rao for the Appellant. B

V.B. Saharya for Saharya & Co. for the Respondent No. 2.

N. S. Bisht for the Respondent.

C

The following Order of the Court was delivered:

This appeal by Special Leave arises from the Judgment of the Delhi High Court dated 21.2.1985 made in L.P.A. No. 26 of 1985 dismissing the appeal *in limine* as barred by limitation.

D

The respondent filed the Writ Petition which came up before the learned Single Judge claiming alternative site on the ground that his land has been acquired for public purpose and that therefore, he is entitled to the benefit under the policy of the Government. The appellant have denied the right. The Singh Judge found that though the respondent was not the owner on the date when the Notification under s.4(1) of the Land Acquisition Act was published but as on the date when the acquisition was finalised he became the owner by virtue of purchase and that therefore he is entitled to allotment of alternative site. The Division Bench dismissed the appeal on the ground of delay. This Court has condoned the delay and admitted the appeal. E F

The question for consideration is whether the respondent is entitled to alternative site. The Notification under s.4(1) of the Act was published on June 29, 1966. In the S.L.P. it was specifically stated that inspite of giving opportunities to the respondent on 1.12.1981 and 8.3.1982 to produce the record to show that he was the owner as on the date of the Notification, he had not produced the record. In paragraph 5 of the counter affidavit filed by the respondent as well as in the grounds it was stated that "it is irrelevant when the respondent purchased the notified land or not. The relevant question is that when the acquisition was finalised, he was the owner of the land and thus he was within the zone of consideration. It is G H

A not correct that the answering respondent was not entitled to alternative site." In view of these averments and contentions raised by the respondent in the counter affidavit vis-a-vis the allegations made by the appellant in the S.L.P., it is clear that as on the date of the Notification published under s.4(1) of the Act, namely, June 29, 1966 the respondent was not the owner of the land.

B

The policy of the Government indicates that the person whose land was acquired means the owner as on the date, notification was notified for acquisition, and he alone will be entitled to allotment of alternative site. A person who purchases land subsequent to the Notification may be entitled C to claim compensation by virtue of sale made in his favour, namely, the right, title and interest the predecessor had but, he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date on which Notification under s.4(1) was published. This was the view of this Court in another case while considering the Full Bench Judgment of the Delhi High Court. Under these circumstances, D the appeal is allowed. The respondent cannot be considered to be the owner as on the date of Notification under s.4(1) published in the Gazette. The direction given by the learned Single Judge is accordingly quashed. The Writ Petition stands dismissed. No costs.

E G.N. Appeal allowed.