

ï»¿CASE NO.:
Review Petition (civil) 21 of 2000

PETITIONER:
HAR KIRAN COMMAR

RESPONDENT:
DELHI ADMN. AND ORS.

DATE OF JUDGMENT: 21/11/2000

BENCH:
M. JAGANNADHA RAO & M.B. SHAH

JUDGMENT:
JUDGMENT

2000 Supp(5) SCR 6

IN CIVIL APPEAL NO. 4656 OF 1999

The following Order of the Court was delivered :

This is a review application by the petitioner Mrs. Har Kiran Commar. She is the sister of Gurdip Singh Uban who had also filed a review application earlier and whose review application was dismissed and who had thereafter filed other I.As. The I.As filed by Gurdip Singh Uban were disposed of by an elaborate judgment of this Court on 18th August 2000 Delhi Admn, v. Gurdip Singh Uban & Ors. reported in JT (2000) 9 SC 245. Gurdip Singh Uban was given some limited relief only on the concession of the respondents. In the present application filed by the petitioner it is contended by learned senior counsel, Dr. Abhishek Singhvi, that this case is no different from that of petitioner's brother and, therefore, a similar relief is to be given.

We have heard learned Solicitor General of India in reply. While disposing of the case of the petitioner's brother on 18th August 2000 this Court made reference to a letter of the Joint Director dated 6,2.96 (F 9 (2) 90/CRC/South/ S-71 which read as follows :

"Acquisition proceedings/Notification has been quashed by the Hon'ble High Court in case of Shri B.R. Gupta and Ors.

You are, therefore, requested to kindly approach the MCD for approval of the building plans and ADM(R) for getting N.O.C. for construction on the said land."

That would mean that apart from stating that the land acquisition proceedings stood quashed, there was a further statement that Mr. Gurdip Singh Uban could go in for further construction.

On the basis of the said letter of the Joint Director it was contended by Shri Gurdip Singh Uban in his I.As that inasmuch as he has made further Construction pursuant to the permission granted by the Joint Director allowing him to approach the M.C.D. with his plans, he had made further construction and, therefore, it would not be equitable to allow the land acquisition to go on in respect of this property. He, therefore, sought permission to file an application under Section 48 of the Land Acquisition Act, In response to this submission learned Solicitor General of India filed written submission as follows (as recorded in the judgment dated 18th August 2000):

"In a case where the Joint Director (New Lease) of the Delhi Development Authority (DDA) has expressly represented that the proceedings stand quashed, then the government would consider the question of de-notification

under section 48 provided.

(a) The applicant who has constructed upon the land is the original owner and was the owner prior to the issuance of the notification under section 4. It is made expressly clear that even those transferees who have acquired the land with permissions/NOCs under the Delhi Land (Restrictions on Transfer) Act, 1972 are not covered by this.

(b) The construction has been made after obtaining the approval of the MCD for the building plans.

(c) the constructions as exists is in strict compliance with the sanctioned plans and does not exceed the maximum built up area permissible in respect of farm houses - which is the applicable norm under the Building by-laws.

(d) The extent of deacquisition would be in the discretion of the Govt

(e) If compensation has not been paid."

It will be noticed that the above said concession was made by the learned Solicitor General of India in the context of the order dated 6.2.96 by the Joint Director in favour of Shri Gurdip Singh Uban permitting him to make additional construction. It is true that the opening paragraph of the concession, which we have extracted, merely refers to a representation that the proceedings stood quashed, but the said sentence has to be read along with the letter dated 6.2.96 of the Joint Director which contains a further permission to the petitioner's brother to approach the M.C.D. and submit his plans for additional construction, In order words, the first paragraph of the concession has to be read as follows:

"In a case where the Joint Director (New Lease) of the Delhi Development Authority (DDA) has expressly represented that the proceedings stand quashed and has made further representation permitting further construction enabling the person to submit plans for approval and obtain N.O.C. for construction on the land."

So far as the petitioner before us is concerned there is no letter similar to the one dated 6.2.96, which was there in favour of her brother, by the Joint Director, permitting her to make any additional construction. On the other hand, the only letter which she can reply upon is the one of March 1989 written by Mr. MRs. Gita Sagar, Joint Secretary (LSG) to the Deputy Commissioner Mr. D.S. Negi. The said letter reads as follows :

"I draw your kind attention to the judgment of the Delhi High Court dated 18.11.88 in the case of Sh. B.R. Gupta v. Union of India, CWP No. 1639/85 quashing the land acquisition proceedings que section 4 notification dated November. 1980 pertaining to 11 South Delhi villages.

In this connection, I am to inform you that the Administration has not preferred any appeal against the aforesaid judgment of the High Court dated 18.11.88 and therefore, you may kindly rake necessary action to release the lands.

The legal! advice has been that the judgment covers only those lands which have still not been taken over by the Government and, therefore, the lands which have been taken over by the Govt, are not to be released. You may kindly issue necessary instructions accordingly,"

This letter has now been held by us to be inoperative. Our decision dated 18th August 2000 is that all other land acquisition proceedings in cases not dealt with by the Division Bench of the Delhi High Court originally remained in force and that was the view of the three-Judge Bench of this Court in the case of Abhey Ram v. Union of India, [1997] 5 SCC 421. Hence the land acquisition in respect of all other cases including MRs. Har Kiran Commar did not stand quashed but remained valid, in the light of the said

judgments, the letter of March 1989 cannot be relied upon by the petitioner before us. it cannot be contended that her case is similar to the case of her brother Shri Gurdip Singh Uban. Therefore the petitioner cannot seek a direction similar to the one granted by us in the case of Shri Gurdip Singh Uban. This application is, therefore, dismissed.

JUDIS