

(2008) 05 DEL CK 0102

In the Delhi High Court

Case No : Writ Petition (C) 14608 of 2004 and C.M. 10381 of 2004

Bharat Sewak Samaj

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 26-05-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 4, 4(1), 6

Citation : (2008) 155 DLT 453 : (2009) 1 ILR Delhi 207

Hon'ble Judges : V.K. Shali, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Arvind Kumar Gupta and B.B. Singh, for the Appellant; Sanjay Poddar, for LAC., Rajan Sabharwal and Seema Bhadauriya for UOI and Ajay Verma, for DDA., for the Respondent

Judgement

V.K. Shali, J.—The petitioner by virtue of the present writ petition has challenged the notification bearing No. (9)(60)/2003/L&B/LA/6084 dated 06.07.2004 and the subsequent proceedings taken thereto by virtue of which his land measuring of 12 Bigas 05 Biswas in Khasra No. 301, 493/302 Village Ladha Sarai, New Delhi has been acquired.

2. Briefly stated, the facts of the present case are that the petitioner is a Society registered under the Societies Act, 1860 is the owner of the aforesaid land which was purchased by it from the Union of India for a total consideration of Rs. 18,375/- (Eighteen Thousand Three Hundred Seventy Five) vide sale deed dated 22.02.1962. The said sale deed is duly registered with the office of Sub-Registrar, Delhi. The petitioner Society was formed by the first Prime Minister of India and Late Shri Guljari Lal Nanda was its first Chairman and thereafter high dignitaries were occupying the said office. The Society was formed for the charitable purposes and runs night shelter, Mahila Shilp Kala Kendra, Balwari, Charitable Medical Dispensary, Carpentry, Model Agricultural Farm, Ashram and a library etc. On 06.01.1969 a notification u/s 4 bearing No. F.4(98)/64/LR(ii) was issued by the respondent Nos. 1 to 3 disclosing its intention to acquire the aforesaid

land as a part of the wider parcel of land for the public purpose. The aforesaid notification was followed by a declaration u/s 6 and ultimately an Award No. 27/74-75 was passed in the year 1975. The petitioner filed the suit against Union of India and DDA.

3. Feeling aggrieved by the aforesaid Award a suit bearing No. 274/1975 titled The Bharat Sewak Samaj Trust, Regd. v. The Union of India and Anr. was filed in the Hon'ble High Court of Delhi which was decided ex parte on 7th May, 1993 by the learned Single Judge. In the said judgment the learned Single Judge was pleased to pass a decree in favour of the petitioner Society and against the defendants declaring that the acquisition of the suit land under the Land Acquisition Act, 1894 was illegal and without jurisdiction and did not affect the rights of the plaintiff in the property in question on account of the fact that the property was an evacuee property. Though the petitioner in the said suit stated that the petitioner continues to be in possession of the suit property, this fact was reaffirmed in the present writ petition also. The said factum of the petitioner being in possession has been disputed by the respondents. On 12.08.2004 a fresh notification u/s 4 of the Land Acquisition Act, 1894 was issued by the respondent Nos. 1 to 3 declaring the intention of the Government to acquire the land measuring 301, 493/302 in Village Ladho Sarai, New Delhi. The purpose of acquiring the land was to develop a heritage park which was being developed by the Delhi Development Authority respondent No. 4 in the area of Mehrauli where number of ancient monuments are in existence. Keeping in view the aforesaid fact, the respondent No. 1 to 3 had issued a notification u/s 17(1) of the Act dated 12.08.2004. The stand of the respondent was that the possession of the land was taken by the respondents earlier. The petitioner is aggrieved by this fresh notification u/s 4 of the Land Acquisition Act, 1894 dated 12.08.2004 and the subsequent award passed acquiring the land of the petitioner.

4. The respondent Nos. 1 to 3 have filed their common counter affidavit while as the respondent No. 4 has filed its separate counter affidavit. The sum and substance of the stand of the respondent is that the land has been acquired for the public purpose of developing a heritage park in the Mehrauli area where the land in question is situated. It has also been disputed by them that the possession of land continues to be with the petitioner. On the contrary there has been a specific averment made by the respondents in their counter affidavit to the effect that the possession of the land in question was taken over by the respondent Nos. 1 to 3 on 7th May, 2003, i.e., before the issuance of the present notification u/s 4 of the Land Acquisition Act, 1894 and thereafter handed over the same to the DDA for the public purpose for which it was sought to be acquired. The averment of the respondent No. 4 in the counter affidavit is contained in para 14 in this regard and it has not been disputed by the petitioner in the rejoinder.

5. We have heard the learned Counsel for the parties and perused the record. The learned Counsel for the petitioner has contended that since the land in

question was sought to be acquired in pursuance of the notification dated 6th January, 1969 and the Award subsequent thereto which was passed in the year 1974-75 was quashed by a judicial finding, the said public purpose had ceased to be in existence any more. It was also contended that as the earlier notification was quashed the land in question could not be acquired for the same purpose again. Therefore, the necessary corollary of this submission was that since the land in question was being acquired for a particular purpose which has not found favour with the Hon"ble High Court, therefore, the land could not be acquired for the second time.

6. The second submission of the learned Counsel for the petitioner is that the fact that the possession of the land in question continues to be with the petitioner, therefore, there is absolutely no question of the possession having ever been given to the respondents.

7. As against this the learned Counsel for the respondent has contended that merely on account of the fact that the earlier notification and the Award was quashed by the High Court, it could not be said that the answering respondents are precluded from acquiring the same very land, afresh.

8. We have gone through the record and given our consideration to the submissions made by the respondents. The first question which arises for consideration is that the purpose for which the land was said to be acquired and the notification and the award consequent thereto if the same is quashed whether it is open to the respondent to issue a second notification with regard to the same purpose. There is nothing in the Act which prevents the Government from issuing a fresh notification u/s 4(1) of the Act after the first notification has lapsed or withdrawn. In *Ghansham Dass Goyal and Others Vs. State of Haryana and Another*, it was held that where any earlier notifications were allowed to lapse since the scheme had not been executed the subsequent notification could not be said to be a colourable exercise of power. Further, it has been held in *Bhutnath Chatterjee v. State of West Bengal and Ors.*, (1969) 3 SCC 675 J.C. Shah, J. (as His Lordship then was) observed that when successive notification u/s 4(1) of the Act have been issued in respect of the same land, an inference can be drawn that Government intended to supersede the earlier notifications by later notification.

9. Basing our finding on the aforesaid proposition of law, we are also of the opinion that merely for the fact that the earlier notification issued u/s 4 and the Award which was quashed by the Hon"ble Delhi High Court would not mean that the second notification issued in the instant case acquiring the land in question for public purpose of developing a "heritage park" in Mehrauli area, ipso facto, became bad. On the contrary it is stated that the earlier judgment which were passed was an ex parte judgment and, therefore, in the light of the fact that the purpose for which the land is being acquired is the same would not mean that it could not be done.

10. The area of Mehrauli is bound by various ancient monuments like Qutub Minar and Jamali Kamali and others ancient monuments around it. If a heritage park has been developed by the DDA and for that purpose the land in question is acquired by the respondents it could not be said that it is not a public purpose. Leaving a small piece of land in the vast expanse of the green area where the ancient monument is situated would not only be eye sore but would also not be in consonance with the development of the heritage park. Keeping in view the aforesaid facts, we are of the considered opinion that the purpose for which the land is sought to be acquired by the respondent cannot be found fault with. Accordingly, the validity of the acquisition proceedings, namely, the notification dated 06.07.2004 which is issued u/s 4 of the Land Acquisition Act, 1894 as well as the Award No. 27/74-75 passed in the year 1975 subsequent thereto which has been passed is upheld and the prayer of the petitioner for quashing the notification issued u/s 4 in 2004 and the consequent Award passed is dismissed. Parties shall bear their own costs.