

(1978) 08 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Appeal No. 247 of 1978

Bihari Lal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-08-1978

Acts Referred:

Citation : AIR 1979 Delhi 84 : (1978) 2 ILR Delhi 415

Hon'ble Judges : V.S. Deshpande, J;M.L. Jain, J

Bench : Division Bench

Advocate : J.M. Lal and Charanjit Talwar, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The admission of this writ petition depends on the applications of section 17(1) of the Land Aquisition Act (herein called the Act), to the facts pleaded in the petition, the reply to the show cause notice and the rejoinder. On 16th December, 1977 notifications under sections 4, 6 and 17(1) of the Act were issued by the Administrator of Delhi in respect of certain lands including field No. 401 belonging to petitioner No. 1. Argument of Shri J. M. Lal, learned counsel for the petitioners, was confined to field No. 401. The validity of the notification u/s 17(1) alone was canvassed in the long oral argument, though initially the prayer in the writ petition included the quashing of the notifications under sections 6 and 6 of the Act also. The reasons advanced for the invalidity of the order passed by the Administrator u/s 17(1) requiring immediate possession to be taken of the land without hearing objections to the section 4 notification u/s 5A of the Act advanced by the learned counsel are dealt with below :

(2) (1) The main contention is that the land is neither arable nor waste within the meaning of section 17(1). This is a question of fact. In the petition it was said that section 17(1) was not applicable to the land, because it was neither waste nor arable and the same has been certified to that effect by the Deputy Commissioner at the behest of the Delhi Administration. The request of the Delhi

Administration to the Deputy Commissioner was made because he was the authority to issue for the certificate. It does not mean that the Delhi Administration was dictating to the Deputy Commissioner or that the Deputy Commissioner was told not to apply his mind to the request before granting the certificate or that he should grant the certificate whether the land is arable or waste or not.

(3) It was these said in the petition that the petitioners have been using the land for residential purposes for quite a long time and that they did not cultivate the same for the last many years. This allegation has been denied in the reply to the show cause notice and it is alleged that the land is waste or arable and that the petitioners have not been using the land for residential purposes as there are no buildings for residential purpose built on the said land.

(4) In the rejoinder the petitioners have said that the lands are being used for purposes other than agricultural. Four annexures are filed to support the allegations of the petitioners. In the first annexure Khagra No. 401 is shown to be a nursery on which a tube-well and a pucca house existed in the year 1975. In the rejoinder the petitioner have stated that during the emergency the Delhi Administration illegally demolished the pucca buildings on the land. Thereafter the petitioners have put up semi-pucca buildings on their lands.

(5) Annexure II is a notice u/s 81(2) of the Delhi Land Reforms Act complaining that in Khasra No. 400/1, area 1.00, was being used for non-agricultural purposes. This means that action was threatened for the ejectment of the present using agricultural land for non-agricultural purposes. This notice calls upon the owner to appear in the court on 31-12-1975 and may be relating to the time when the pucca building existed on the land.

(6) But the mere construction of a building on every agricultural land does not convert it into non-agricultural land. In section 3(13) of the Delhi Land Reforms Act, 1954 land is defined to include land occupied for purposes connected with agriculture and includes buildings appurtenant thereto. In fact, u/s 3(12) a dwelling house erected on the holding by the tenure-holder is regarded as an improvement. Similarly, a tubewell or well is also regarded as an improvement. Shri Lal has not, Therefore, succeeded in showing that this land was not agricultural land merely because a house and a tube-well at one time existed on it.

(7) On the contrary, in annexure IV, it is shown that these lands were cultivated in 1967-68 and that Kharif was sown in 1973, Rabi in 1974 and Kharif in 1974. The documentary evidence produced by the petitioners themselves thus shows that (a) the lands have been agricultural, (b) the construction of a farm house and a tube-well on them did not convert them into non-agricultural lands and (c) that even the pucca houses were demolished during the emergency so that in December, 1977 no pucca house existed on the lands.

(2) The next objection of Shri Lal was that the respondents have not taken up a

definite stand that the land was either arable or waste. On the other hand, they are using both the words to qualify the land so that it may be either arable or waste. If the land is such that it could not be either of the two and in either event section 17(1) is applicable, the respondents cannot be blamed if they wish to avail themselves of both the provisions. According to the Oxford Dictionary "arable land" is "land which is capable of being ploughed or fit for tillage". It is not necessary that the land should be actually cultivated. It is sufficient if it is capable of being cultivated, (see *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, citing *Chattarton V. C.* in (1990) 24 Ir R. 110 in paragraphs 22 and 23. The court concluded at the end of paragraph 23 that arable land means not only land capable of cultivation but also land which is actually cultivated).

(8) In *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, the question was whether forest land was arable land. It was pointed out that forest land was neither arable nor waste. It was held to be not arable in paragraph 5 of the judgment. because "in the context of S. 17(1) of the Act the expression must be construed to mean land which are mainly used for ploughing and for raising crops". This observation was made to exclude forest land from being regarded as arable because they are not mainly used for ploughing and for raising crops. Immediately proceeding the observations, the definition in the Oxford Dictionary is cited to show that arable land is that which is capable of being ploughed. It follows, Therefore, that land which is capable of being cultivated is arable land whether it is actually cultivated or not. The lands in the present case were undoubtedly cultivated at one time. Whether the cultivation has now ceased or not is not known.

(3) It was then contended that before applying section 17(1) the Government must consider whether objections u/s 5A cannot be heard quickly and it is only if this cannot be done that section 17(1) should be invoked. The decision in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, was relied upon.

(9) The notifications under sections 4, 6 and 17(1) were issued on 16th December, 1977. The reason for acquisition is given on 26th May, 1977 by the Assistant Engineer, Public Witness D., as follows :

".....One additional raised carriageway in the last 1 Km. stretch of Delhi-Gurgaon Road is to be provided on East side of the existing D.G. Road as the existing one gets submerged during the rainy season and interrupts the continuous flow of traffic.... . It is Therefore requested that necessary action for issue of notification may kindly be taken at the earliest possible so that the execution of work may be taken up on top priority basis as desired by Government of India."

In the notifications dated 3-12-1977 and 9-12-1977 produced by the respondents also it is stated that section 17(1) should be invoked because the work has to be done within one month as the existing road gets submerged during the rainy

season. Shri Lal argued that objections u/s 5A could have been heard during the time from May to December, 1977. But he fails to notice that the notification u/s 4 itself could not be issued till December, 1977 and the question of hearing objections till then could not arise. No amount of delay on the part of the Government prior to the issue of the notification u/s 4 is relevant. It is only when section 4 notification is issued that it has to be considered whether compliance with section 5A should be dispensed with and action u/s 17(1) should be taken after issuing notification u/s 6. This was considered by the Government. It is well known that Delhi gets rains not only in the rainy season but also in the winter months. It cannot be said, Therefore, that the need of dispensing with compliance of section 5A was not present in December, 1977. It cannot be said that Government must comply with section 5A even though rains in winter could cause inconvenience to the traffic on this road.

(4) It was then said that there was no urgency which required action to be taken u/s 17(1). A Full Bench of this court in *S.K. Gupta Vs. The Union of India and Others*, has pointed out that the urgency has to be in the opinion of the Government. It would follow, Therefore, that it is not a matter on which an independent decision of this court can be invited. It is well settled that it is only the existence and not the sufficiency of the material before the Government which can be examined by the court. The material existed because of the possibility of rains in winter 1977-78. Whether such material was sufficient for invoking section 17(1) was for the Government to decide and not for this court. The formation of the opinion by the Government u/s 10 of the Industrial Disputes Act offers a close analogy to the formation of opinion u/s 17 read with section 17(4) of the Act. The latest law as to the scope of judicial review in such a case is summed up by the Supreme Court in *Shambu Nath Goyal Vs. Bank of Baroda*, .

(10) "THE initial burden of proof to show urgency was on the Government u/s 106 of the Evidence Act as pointed out by the Supreme Court in *Narayan Govind Gavale's case* (supra), but after the possibility of winter rains was taken into account that burden was discharged. It was then for the petitioner to show that the urgency did not exist. The petitioner has made no attempt to do so.

(11) We are of the view, Therefore, that the petitioners have not made out any prima facie case for the admission of this writ petition by us. They have not shown either that the land was not arable or waste nor have they shown that there was no urgency for taking possession of the same. The writ petition is, Therefore, dismissed in limine, after hearing both the sides.