
(1975) 05 DEL CK 0020

In the Delhi High Court

Case No : Letter Patent Appeal No. 91 of 1970

Brahmakuriprakash Mani and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 21-05-1975

Acts Referred:

Citation : (1975) 2 ILR Delhi 478 : (1974) ILR Delhi 478 : (1975) RLR 431

Hon'ble Judges : Yogeshwar Dayal, J; V.S. Deshpande, J

Bench : Division Bench

Advocate : H.S. Marwah, L.C. Vats and C.K. Mahajan, for the Appellant;

Judgement

Yogeshwar Dayal

(1) This is an appeal under clause 10 of the Letters Patent against the judgment of the learned Single Judge of this Court, dated April 23, 1970, dismissing the writ petition filed on behalf of the appellants for quashing the Notification, dated 23rd November, 1965, published in Delhi Gazette, dated 2nd December, 1965, issued u/s 6 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act).

(2) It was urged in the writ petition, which was filed under Article 226 of the Constitution that Brahma Kumari Ishwariya Vishwa Vidhyalaya (petitioner No. 2) is a religious institution commanding a very large following and having its principal office at Mt. Abu and its centres all over the country including 12 centres in Delhi, where religious instructions are imparted. It is alleged that in Delhi there is a centre at Kamlanagar and also at Rajouri Garden, besides others which are regularly visited by a large number of persons. Petitioner No. 1, Brahma Kumari Prakash Mani is alleged to be the administrative head of the institution. It was also alleged that petitioners I and 2 are the owners in possession of the plot of land measuring about 2 bighas. It bids was bearing khasra No. 94 mill and 97 min in khewat No. 317 in Khatauni Nos. 920, 919 and 924 situated in village Naraina, Ring Road, near Rajouri Garden, New Delhi. In the said piece of land, a Shiv Ling has been installed and is being regularly

worshipped. Besides there is a boundary wall all around and there is a proposal to construct a Meditation Hall, spiritual study roads and library besides accommodation for other activities such as spiritual exhibition, religious gatherings etc. of the institution. It is further averred in the petition that on or about 13th November, 1959, the Delhi Administration issued a Notification u/s 4 of the Act and clause 2(d) of the said Notification excepted from acquisition the lands under graveyards, tombs, shrines and the lands attached to religious institutions and wakf properties. Thereafter, the respondents issued a Notification u/s 6 of the Act, dated 16th August, 1962, including the land of the petitioners. It is further averred that the institution made representations to the Housing Commissioner of the Delhi Administration and eventually on or about the 27th of July, 1963, Shri Jagmohan, Deputy Housing Commissioner, Delhi Administration, acting for the Chief Commissioner amended the aforesaid Notifications under sections 4 and 6 of the Act and deleted the land of the petitioners and thereby notified the release of the land in dispute from acquisition, vide copy of the said notification dated 27-7-1963 attached as Annexure B to the petition.

(3) It was further averred in the writ petition that on 5th August, 1963, the Delhi Administration issued another letter (Annexure C to the petition) to the petitioners stating that there was no objection to the construction of a building for the Brahma Kumari religious institution from the point of view of acquisition of land by the Delhi Administration. It was further stated in the said letter that after the institution had submitted plans to the Delhi Municipal Corporation and got it approved, they could write to the Land and Housing Department and also enclosed a copy of the approved plan. Thereafter on 17th December, 1964, the Delhi Municipal Corporation sanctioned the layout plan of the petitioners for construction of building on the aforesaid land but the plans submitted by the petitioners for construction of the building are still pending. Now the impugned Notification dated 23-11-1965 has been issued u/s 6 of the Act once again. The second Notification issued u/s 6 of the Act was challenged on various grounds, namely :

(I) The Notification, dated 13th November, 1959, issued u/s 4 of the Act expressly exempted the land of the petitioners and the said exemption is contained in paragraph 2(d) of the Notification, and in the absence of Notification u/s 4, no Notification u/s 6 could have been issued. In this connection it was submitted that the land in dispute is attached to the religious institution and Therefore it was not covered by Notification, dated 13th November, 1959, issued u/s 4 of the Act.

(II) Even if it be assumed that Notification, dated 13th November, 1959, issued u/s 4 of the Act covered the land of the petitioners and the land of the petitioners was not exempted by section 4 Notification, and assuming further that it was notified for acquisition under section 6 by Notification, dated 16th August, 1962, yet in view of the Notification, dated 27th July, 1963, it stood released from acquisition and section 4 Notification, in pursuance of which

Notification, dated 16th August, 1962, was issued, stood exhausted and no fresh Notification under section 6, dated 23rd November, 1965, could be issued without there being a fresh section 4 Notification.

(III) That, in any case, the corrigendum was issued for the purposes of releasing the land of the petitioners from acquisition in view of their representation dated 26-4-63.

(4) Various other grounds were also taken in the writ petition but these were the three main grounds which were taken before the learned Single Judge. The same three grounds have been canvassed before us.

(5) On the first ground relating to the question whether the petitioners' land was covered by Notification, dated 13th November, 1959, the learned Single Judge took the view that it was a disputed question of fact and the present proceedings under Article 226 of the Constitution were not appropriate for its decision.

(6) The second and third grounds were negatived by the learned Single Judge on the ground that Notification dated 27th July, 1963, issued by way of corrigendum did not have the effect of releasing the petitioners' land from acquisition. The learned Single Judge also held that as there was no order u/s 48 of the Act, Notification, dated 23rd November, 1965, issued u/s 6 of the Act was valid. Unfortunately the records of the acquisition proceedings were not before the learned Single Judge but the respondents have very fairly produced the records before us.

(7) Without going into the first ground which was negatived by the learned Single Judge, we find that this appeal must succeed on the second and third grounds both on the factual as well as legal aspects. For appreciating the submissions of the learned counsel for the appellants, it is necessary to state a few more facts.

(8) It will be noticed that the land in dispute was originally purchased by Shri Data Ram and Shri B.T. Kriplani by sale deed, dated 31-1-1958, which was registered on 11th March, 1958. An affidavit, dated 3-4-1958, was filed by Shri Data Ram before the Municipal Corporation authorities stating that the land had been purchased by him for petitioner No. 2 institution of which Data Ram was a member and that neither he nor his heirs had any connection with said land and the same had been donated to the said institution of his own sweet will and without anybody's pressure. Petitioner No. 1 by her letter, dated 10-7-1958, sent a blue print of the site plan and of the boundary wall plan to the Corporation for approval for construction of the building etc. In reply thereto on 7th August, 1958, the architect of the Municipal Corporation of Delhi informed petitioner No. 1 that there was no objection to the erection of 3 ft. high boundary wall, as proposed in her plan. In the meantime Notification, dated 13th November, 1959, u/s 4 of the Act was issued and was later followed by Notification u/s 6, dated 16th August, 1962 in respect of the land in dispute. In spite of section 6 Notification, Shri Data Ram and Shri B. T. Kriplani allegedly executed gift deeds

in favor of the petitioners and on 26-4-1963 petitioner No- I on behalf of petitioner No. 2 gave a representation to the Housing Commissioner Delhi. It was stated in the representation that the land in dispute had been purchased for their religious institution in the year 1958 and in the same year the institution applied for permission to construct the boundary wall and also submitted plan to the Corporation for construction of the building. The petitioner obtained permission for construction of the boundary wall and the Corporation also acknowledge receipt of the building plan on 11th July, 1958, and accordingly the petitioner institution temporarily erected a wall fencing on the site and the institution held some religious congregations on the site from time to time and later on a Shiv Ling was also installed to sanctify the place. It was further stated in this representation that the institution is purely religious having various centres all over India, having eight service centres in various parts of Delhi, and this plot of land was purchased by the donors with the sole aim of constructing a religious Ashram so as to serve as Headquarters and to serve religious congregations of all the centres. It was also stated that this tract of land does not come under the purview of the Notification issued u/s 6 (probably it meant section 4) because it is meant for a purely religious institution and was purchased for that very purpose much before the issue of Notification and a copy of the registered gift deed in favor of the petitioner institution was also sent in which it was prayed by the institution that the land may be released from acquisition at an early date so that Ashram could be built with further delay. Copy of the building plan was also submitted.

(9) On this representation being received, enquiries started being made by the office of the Housing Commissioner. The noting relating to the petitioners' land was dealt with in Puc II. On receipt of the representation, Mr. Jagmohan made the following noting:

"THE essential pre-requisite to the issue of a 'no objection certificate' is that the land should be deleted from section 6 notification. In my opinion, there is no harm in issuing the 'no objection certificate', on the lines of the certificate issued to Dewan Anand Kumar, provided the development schemes of the area are not affected, Hc has already seen the spot and if its situation is such that it does not affect the development schemes, we may issue"

"NO objection certificate" and also de-notify the land at an appropriate stage.

SD/-

Jagmohan

10-5-63

WE find further nothings as under :

"DISCUSSED with H.C. (Housing Commissioner) He has seen the lands owned by 'Brahma Kumari', Its exclusion would not affect (affect) the Dda, development schemes in the area. We may, Therefore, issue no objection certificate on the

lines of the certificate, given to Dewan Anand Kumar. PI. put the file relating Dewan Anand Kumar and also verify whether Kh. No. in question was included in section 6 notification or not.

SD/-

OFFICE(Mr. Kholi)

SD/-

21-5-1963"

"KHASRANos. 94 and 97 of V. Naraina owned by Brahma Kumaris have been notified u/s. 6 vide notification No. F.4(1)/62-L&H dated 16-8-1962.

SD/-

11-6-1963"

"DHC:

DISCUSSEDwith H. C. We should issue a corrigendum deleting the khasra numbers in question from section 6 notification. Thereafter, we should issue a "no objection certificate" on the lines of the certificate issued in the case of Dewan Anand Kumar.

SD/-

(Jagmohan)

11-6-1963.

THESEnothings appear on pages 35 to 38 of file No. F. 18 (5)/62 L & H. In the same file at pages 30, 31 and 32, the following other similar nothings appear:

BEFOREthe two kh- Nos. 94 and 97 are deleted, it is necessary that the ownership of the Brahma Kumari should be verified. I have asked Shri D. D. Verma NT. to do the verification personally by tomorrow.

D.H.C.

SD/-

25-7-1963

SD/-

Jagmohan

25-7-1963

THEtotal area of kh. Nos. 94 and 97 of V. Naraina is 5 bighas and 2 bis. out of which 2bighas and Ii bis. has been transferred in favor of Brahma Kumari by Sarvashri B. T. Kirplani and Datta Ram through mutation No. 1863 attested on 23-5-1963. As directed I have verified this from record of the circle Patwari.

SD/-

SD/-N.T.

A.H.C.26-7-1963

26-7-1963

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THE draft notification has been amended accordingly, may kindly be signed for issue.

SD/-

ANWAL Nain

26-7-63.

SD/-

Jagmohan

26-7-1963

ISSUED corrigendum No. F. 4(1)/62-L&H dated 27-7-63.

(10) A combined reading of these nothings shows :

(1) That the authorities were satisfied that khasra Nos. 94 and 97 of village Naraina were owned by the petitioners.

(2) That Notification u/s 6 of the Act, dated 16-8-1962 did include these khasra numbers.

(3) Its exclusion from acquisition would not affect the development scheme in the area framed by the Delhi Development Authority.

(4) That the earlier section 6 Notification, dated 16-8-1962 was valid.

(5) That the authorities had no objection to the deleting of khasra numbers in question from section 6 Notification, dated 16-8-1962.

(6) That the petitioners were the owners at the time of making their representation and the corrigendum was being issued in pursuance of their representation that the land was required by the petitioners for religious institution.

(7) That after the corrigendum deleting the khasra numbers in dispute from section 6 Notification issued earlier is issued, the authorities will issue a "no objection" certificate for the purpose of construction.

(11) In the counter-affidavit it is not denied that the petitioners are a religious institution. Not only this, a letter, dated 5-8-1963, was also issued by the Administration to the petitioners to the effect that they had no objection for the

construction of the building from the point of view of acquisition, and this letter was issued in view of the petitioners" representation dated 26-4-1963.

(12) The result of all these decisions was to release the land of the petitioners from acquisition although the corrigendum, dated 27-7-1963, merely deleted the khasra numbers in dispute from the section 6 Notification, dated 16-8-1962. One reaches the same result from legal aspect as urged in the second ground mentioned earlier.

(13) At this stage it will be useful to examine the state of law under the Land Acquisition Act, 1894, before its amendment by Land Acquisition (Amendment and Validation) Act, 1967.

(14) A controversy was raging in courts as to whether, once a declaration u/s 6 was made notification u/s 4(1) was exhausted and the latter section was not a reservoir from which the Government might from time to time draw out land and make declarations with respect to it successively. The ultimate conclusion was that there can be no successive notifications u/s 6 with respect to land in the locality specified in one notification u/s 6. This ultimate conclusion was arrived at by the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, . While dealing with the scope of sections 4, 5-A and 6 of the unamended Act, the Supreme Court observed in the aforesaid decision in paragraph 16 as under :-

"IT is clear from this intimate connection between Ss. 4, 5-A and 6 that as soon as the Government has made up its mind that particular land out of the locality it requires, it has to issue a declaration under S. 6 to that effect. The purpose of the notification under S. 4(1) is at this stage over and it may be said that it is exhausted after the notification under S. 6.....and the notification u/s 4(1) cannot be further used thereafter. At the stage of S. 4 the land is not particularised but only the locality is mentioned; at the stage of S. 6 the land in the locality is particularised and thereafter it seems to us that the notification under S. 4(1) having served its purpose exhausts itself. The sequence of events from a notification of the intention to acquire [S. 4(1)] to the declaration under S. 6 unmistakably leads one to the reasonable conclusion that when once a declaration u/s 6 particularising the area out of the area in the locality specified in the notification u/s 4(1) is issued, the remaining non-particularised area stands automatically released."

(15) An argument was also made before the Supreme Court in the aforesaid case that section 48 of the Act is the only provision which deals with the withdrawal from acquisition and this is the only way in which the Government can withdraw from acquisition and unless, section is taken u/s 48(1) notification u/s 4(1) would remain, presumably for ever. It was urged that the only way in which the notification u/s 4(1) can come to an end is by withdrawal u/s 48(1). This argument was not accepted by the Supreme Court. The Supreme Court observed :

"WE are not impressed by this argument. In the first place, u/s 21 of the General Clauses Act (No. 10 of 1897), the power to issue a notification includes the power to rescind it. Therefore, it is always open to Government to rescind a notification under S. 4 or under S. 6 and withdrawal under S. 48(I) is not the only way in which a notification under S. 4 or S. 6 can be brought to an end. Section 48(1) confers a special power on Government of withdrawal from acquisition without cancelling the notifications under Ss. 4 and 6, provided it has not taken possession of the land covered by the notification under S. 6..... It seems that S. 48 refers to the stage after the Collector has been asked to take order for acquisition under S. 7 and has issued notice under S. 9(1). It does not refer to the stage prior to the issue of the declaration under S. 6..... Section 48(1) thus gives power to Government to withdraw from the acquisition without cancelling the notifications under Ss. 4 and 6 after notice under S. 9(1) has been issued and before possession is taken. This power can be exercised even after the Collector has made the award under S. 11 but before he takes possession under S. 15..... The argument that S. 48(1) is the only method in which the Government can withdraw from the acquisition has, Therefore, no force, because the Government can always cancel the notification under Ss. 4 and 6 by virtue of its power under S. 21 of the General Clauses Act..... Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under S. 9(1) ..."

(16) Sarkar J. in a separate but concurring judgment in the aforesaid case while dealing with this argument observed :

"THIS argument seems to me clearly ill founded. Now a notification under S. 4 will be exhausted if a declaration is made under it in respect of the entire area covered by it. Likewise, it seems to me that if the correct interpretation is that only one declaration can be made under S. 6, that also would exhaust the notification under S. 4; that notification would no longer remain in force to justify successive declaration under S. 6 in respect of different areas included in it..... We are concerned not with a withdrawal but with the force of a notification under S. 4 having become exhausted. That is a different case and has nothing to do with a withdrawal."

(17) It will thus be seen that it was this state of the law, as declared by the Supreme Court in the case of Vishnu Prasad Sharma (supra) "which led to the issuance of Ordinance on January 20, 1967, styled The Land Acquisition (Amendment and Validation) Ordinance (1 of 1967), as the result of the judgment was that except for the first section 6 notification which was issued in pursuance of section 4 notification, the rest of all the successive notification issued u/s 6 of the Act became void as they were not preceded by fresh notification issued u/s 4.

(18) The scheme of the Ordinance was that the Land Acquisition Act of 1894 was to have effect, subject to the amendment specified in Section 3 and 4 of the

Ordinance. Section 3 purported to amend Section 5-A of the Land Acquisition Act (hereinafter referred to as the principal Act) by enabling different reports to be made in respect of different parcels of land u/s 5-A of the Act. Similarly, Section 4 of the Ordinance purported to amend Section 6 of the principal Act by enabling different declarations to be made from time to time in respect of different parcels of land covered by the same notification u/s 4. Section 5 of the Ordinance purported to validate all acquisitions of land made or purporting to have been made the principal Act before the commencement of the Ordinance notwithstanding any judgment, decree or order of any court to the contrary.

(19) On April 12, 1967, Parliament passed an Act (Act 13 of 1967) styled The Land Acquisition (Amendment and Validation) Act, 1967, on the limits of the Ordinance.

(20) The effect of the Ordinance and the amending Act apart from validating earlier acquisitions was that short-comings in the original Act as to want of provision to enable the appropriate authorities to issue more than one declaration u/s 6 was removed. The only material change relevant to the present controversy, as made by the amending Act was that it gave power to the appropriate Government to make different section 6 declarations in respect of different parcels of land at different times within a fixed period, if they were covered by section 4 declaration. What is to be noted is that even the amending Act did not treat section 4 notification as a reservoir for all times for a particular piece of land to be covered by a valid declaration u/s 6 and then de-notify and again make it the subject-matter of second section 6 declaration. If a particular piece of land is covered by section 4 notification and it is followed by a valid section 6 declaration, section 4 notification has exhausted itself so far as that particular piece of land is concerned and if section 6 declaration with respect to that particular piece of land is withdrawn, in the circumstances like the present one, it does not mean that section 4 notification continues to be operative. So far as section 4 declaration is concerned qua this particular land, it stands exhausted and as the land is further released from the operation of section 6 declaration, in law it has the effect of being released from acquisition. As observed by the Supreme Court in the case of Vishnu Prasad Sharma (supra) we are not concerned with the withdrawal of acquisition u/s 48 but with the force of section 4 notification having exhausted; it has nothing to do with withdrawal. Even otherwise, it may be noted that at this stage when the corrigendum dated 27th July, 1963, was issued, no notice u/s 9 of the principal Act had been issued in pursuance of declaration u/s 6, dated 16-8-1962. The only effect of section 48 is that the Government has the liberty to withdraw from acquisition even after issuing notice u/s 9, provided the possession has not been taken. Once possession has been taken, the Government loses even that liberty to withdraw from acquisition.

(21) The amended section 6, merely preserves section 4 notification for other different parcels of land in a locality to be followed by successive section 6

declarations. The amending Act did not treat the section 4 notification for a particular piece of land to remain operative for all times for the Government to issue Section 6 declaration for that particular land covered by it and then to withdraw section 6 declaration and again issue declaration u/s 6 and so on.

(22) In the case of *Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others*, , the Government of Gujarat had issued section 4 notification and an enquiry u/s 5-A was also held and thereafter notification u/s 6 of the Act was also issued. The appellant there filed a writ petition in the High Court of Gujarat praying for an order quashing the notification issued u/s 6. The acquisition in that case was made for a company. The Government having found that the notification issued u/s 6 was in violation of the proviso to section 6, withdrew the notification u/s 6 as the Government had no power to issue a notification for acquisition for a public purpose where the compensation was to be paid entirely by the company, and a fresh valid notification was issued u/s 6 after cancelling the earlier section 6 notification. It was in these circumstances that the Supreme Court held that by issuing the earlier section 6 notification which was invalid, the Government had not effectively exercised its power u/s 6 and Therefore the Government could still issue a fresh notification u/s 6 in accordance with the provision of that section.

(23) A similar question like the one in the present case arose before the Gujarat High Court in the case of *Doongarsee and Sons and Others Vs. State of Gujarat and Others*, . In that case *Bhagwati C. J.* (as his lordship then was) and *N. K. Vakil J.* held that on issue of first notification u/s 6 of the notification u/s 4 is exhausted and if subsequently section 6 declaration is withdrawn, there is no notification u/s 4 to support the second notification u/s 6. The learned judges also observed that section 48(1) does not require any particular formula to be adopted for the purpose of withdrawing from the acquisition. No specific words are required to be used in order to effectively exercise the power of withdrawal. One of the modes in which the Government may express its will to withdraw from the acquisition is by issuing a notification cancelling the notification u/s 6. When the Government cancels the notification u/s 6 cancellation being prospective in operation, what has gone before is not obliterated but only the future course of the acquisition proceedings is arrested. The question is not what was the intention of the Government in issuing the notification but what was the effect of the cancellation which was made by the notification.

(24) We are in respectful agreement with the observations of the learned Judges of the Gujarat High Court

(25) In the present case, as held by us earlier, not only the nothings show clear intention of releasing the land from acquisition but in law also issuing of corrigendum had the effect of releasing the land from acquisition.

(26) The error in which the learned Single Judge fell in relying upon the case of *Udai Ram Sharma and others v. The Union of India and others* AIR 1968 S. C.

1138 (4) was that the learned Single Judge presumed as if the law laid down in the case of Vishnu Prasad Sharma (supra) has been changed for all purposes by the amending Act referred to above. We have shown earlier, the only effect relevant to the present controversy of the amending Act was that it gave power to the Government to issue successive notifications u/s 6 of the Act in pursuance of one omnibus notification u/s 4 comprising different parcels of land. The effect of the amending Act was not that a notification u/s 4 qua a particular piece of land survives for ever even after the issue of section 6 declaration. The purpose of a declaration u/s 4(1) is over as soon as it is followed by a valid declaration u/s 6 of the Act for a particular land.

(27) The reason given in the counter-affidavit filed on behalf of the respondents for issuing the fresh notification dated 23rd November, 1965, u/s 6 of the Act is that the land in dispute interferes with the development of the neighbouring areas. Whether this is right or wrong it is no ground for issuing the second section 6 declaration dated 23rd November, 1965, without being preceded by a fresh notification u/s 4(1) of the Act. It was also stated that it was not necessary to issue fresh section 4 notification. This view of the authorities appears to have been formed before the decision of the Supreme Court in the case of Vishnu Prasad Sharma (supra).

(28) In view of the aforesaid discussion it must be held that the impugned declaration, dated 23rd November, 1965, issued by the respondents u/s 6 of the Act is void as it was not preceded by a fresh section 4 declaration. We, Therefore, accept this appeal. The judgment of the learned Single Judge is set aside and a writ of certiorari is issued quashing the notification, dated 23rd November, 1965, published in the Gazette, dated December 2, 1965, qua the land in dispute.

(29) The parties will, however, bear their own costs.