
(1976) 10 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Appeal No. 694 of 1971

Brijbhushan (Deceased)

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 08-10-1976

Acts Referred:

Citation : (1977) ILR Delhi 356

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : D.N. Nijhawan, A.B. Saharia and K.S. Soni, for the Appellant;

Judgement

H.L. Anand, J.

(1) This petition under Articles 226 of the Constitution of India by a land-owner challenges the proceedings for the acquisition of the aforesaid land and seeks to quash the Notifications made under Sections 4, 6 and 17 of the Land Acquisition Act, 1894, hereinafter referred to as "the Act" and the notices under Sections 9 and 10 of the Act.

(2) The facts and circumstances leading to the petition may be briefly stated. In May, 1960 the then Chief Commissioner of Delhi issued a Notification u/s 4 of the Act to the effect that land in the village of Kilokri was likely to be required for a public purpose, namely, the construction of a Fire Station pursuant to the request made by the Municipal Corporation of Delhi u/s 199 of the Delhi Municipal Corporation Act, 1957, hereinafter to be referred to as "the Corporation Act". By the same Notification the provision of sub-section (1) of Section 17 of the Act was invoked and it was declared that by virtue of the provisions of sub-section (4) of the said Section the provision of Section 5-A shall not be applicable. This was followed by a Notification u/s 6 of the Act to the effect that the land in dispute belonging to the petitioner was required for the aforesaid public purpose. Notices were also issued under Sections 9 and 10 of the Act to the petitioner and the other land owners. The petitioner and certain other land owners, who were

similarly affected, filed a petition in this Court challenging the validity of the Notifications under Sections 4 and 6 on various grounds but eventually at the hearing of the petitions the attack was confined to the ground that any acquisition for the purpose of the Corporation could be procured only if the Corporation was satisfied that a negotiated sale of the land in question was not possible. The petitions were heard by a Division Bench of this Court and were dismissed by an order of the Division Bench made on November 26, 1969 in C.W. 857 of 1960. The Division Bench repelled the contention and held, following a decision on a similar question by the Gujarat High Court, that there was nothing in the aforesaid provision of the Corporation Act which rendered it necessary that the Corporation must make an attempt for a negotiated purchase of the property and could move the appropriate Government for acquisition only if it was unable to purchase the land in that manner. This judgment has since become final as it was not challenged by the petitioner. It appears that meanwhile the public purpose for which the land was sought to be acquired had already been satisfied by the acquisition of another piece of land and by the construction on the piece of land of the Fire Station, for which the present land was sought to be acquired. On account of this change while the Notifications under Sections 4 and 6, as indeed, u/s 12(1), were left in tact notices under Sections 9 and 10 issued pursuant thereto were withdrawn and fresh notices dated November 16, 1971 were issued u/s 9 and 10 purporting to continue the acquisition proceedings for a public purpose different than the one envisaged by the two notifications. The notices envisaged the acquisition of the land for the construction of staff quarters for Delhi Administration. By the present petition the petitioner assails the two notifications and the fresh notices under Sections 9 and 10 of the Act. Respondent No. 1 to the petition is the Delhi Administration while respondents 2, 5 and 4 are the Lt. Governor of Delhi, the Municipal Corporation of Delhi and the Land Acquisition Collector, Delhi, respectively. Union of India is respondent No. 3. The petition is opposed on behalf of the respondents.

(3) Before considering the various contentions raised on behalf of the petitioner it would be proper to deal with a preliminary objection raised on behalf of the respondents. It is urged that the petitioner, having unsuccessfully challenged the notifications under Sections 4 and 6 of the Act in the earlier proceedings, would not be entitled to assail the aforesaid notifications in the present proceedings on account of the principles of *res judicata* even though the grounds that the petitioner canvassed in the earlier petition had related only to the limited question if the acquisition could be resorted to until the Corporation had failed to acquire property by mutually negotiated sale as envisaged by Section 199 of the Corporation Act. On behalf of the petitioner an attempt was made to get over the legal bar on the ground that the notifications were being assailed by the present petition on wholly different grounds which were neither raised nor decided in the earlier proceedings. It is difficult to accept this contention of the petitioner. Explanation 4 to Section 11 of the CPC would be a complete reply to such a contention. The petitioner is, Therefore, not entitled to assail the validity of the

two notifications in the present proceedings. It was, however, not disputed on behalf of the respondents that the petitioner was nevertheless entitled to assail the fresh notices under Sections 9 and 10 of the Act because these notices were issued subsequent to the decision in the earlier proceedings. The only question that, Therefore, survives for consideration is as to the validity of notices under Sections 9 and 10 of the Act. These notices were sought to be voided on the ground that these could not be said to be pursuant to the two notifications and were wholly inconsistent with them in that the notifications were based on the requirement of the land for the purpose of construction of a Fire Brigade while according to the notices the land in dispute was required for the purpose of construction of quarters for the staff of the Delhi Administration. It was further urged that the two notifications had authorised the acquisition of land for a specified public purpose, namely, the construction of a Fire Brigade by the Municipal Corporation of Delhi and that the purpose having been admittedly achieved long before the impugned notices were issued the effect of the two notifications had been exhausted and no further proceedings pursuant to them could be legitimately taken. It was further contended that the requirement of the land for the alleged purpose of constructing staff quarters for the staff of the Delhi Administration was an entirely new purpose and effect could not be given to it unless fresh notification under Sections 4 and 6 were issued in relation to the new purpose and the competent authority has had opportunity to apply its mind to the question whether land was required for that purpose and as to the propriety of initiating acquisition proceedings. A further contention was also raised on behalf of the petitioner that the notices under Sections 9 and 10 had not been served on the petitioner.

(4) On the other hand, it was urged on behalf of the Administration that once a Notification u/s 6 of the Act had been issued that a certain area was required for a particular public purpose there was no requirement that the land intended to be acquired must be used for that purpose. It was urged that once the land had been validly acquired for a public purpose it was open to the authorities to utilise it for any other public purpose without fresh Notification under Sections 4 or 6 of the Act. A contention was also raised that with the Notifications u/s 6 the process of acquisition was really complete and notices under Sections 9 and 10 were merely intended to give affect to the acquisition. The plea of want of service of the notice was not seriously contested but it was urged that want of service of notices would not invalidate the acquisition proceedings.

(5) The question that, Therefore, requires consideration is whether the acquisition proceedings are competent where the public purpose for which land is declared to be needed by a Notification u/s 6 of the Act has either been frustrated or already achieved. Can it be said that in such an eventuality the Notifications could be said to have exhausted themselves and if the same land was needed for another public purpose fresh Notifications under Sections 4 and 6 of the Act would be necessary before any valid proceedings for acquisition could be taken.

(6) Part II of the Act, which contains Sections 4 to 17, deals with acquisition. Section 4 of the Act empowers the appropriate Government to notify the fact if it appears to the appropriate Government that land in any locality is likely to be needed for any public purpose sub-section (2) of this section empowers the authorities, on such a notification being issued, to take various steps which are in the nature of preliminary investigation. The Notification is, Therefore, intended to enable the Government to make a preliminary investigation as to the suitability of the land for the purpose for which acquisition is sought to be made and to give a notice to the public in the area generally so as to enable them to represent their point of view to the Government. Section 5-A provides for hearing of objections to the proposed acquisition and contains an essential safeguard for the land owners. Section 6, which has been appropriately entitled "Declaration of intended acquisition", provides for a declaration, after the preliminary investigation is over, and the objections, if any, have been considered. This declaration may be made by the appropriate Government if it is satisfied that a particular area is needed for a public purpose and once such a declaration is made it is conclusive evidence that the land was needed for a public purpose. Sub-section (3) of section 6 provides that on such a Notification being issued "the appropriate Government may acquire the land in manner hereinafter appearing". Section 7 empowers the appropriate Government to direct the Collector "to take order for the acquisition of the land", in respect of which a declaration has been made u/s 6. Section 8 provides for the marking out and measuring of the land and preparation of the plan in respect of it. Section 9 provides for notice to persons interested stating "that the Government intends to take possession of the land" and inviting claims to compensation. Section 10 empowers the Collector to require any person to furnish particulars with regard to the title and interest in the land. Sections 11 to 15 deal with measurement, value and claims and award by the Collector. Section 16 deals with taking over possession of the land and provide that after the award has been made u/s 11 the Collector "may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances". Section 17 provides for cases of urgency. Sub-section (1) of this Section empowers the appropriate Government to direct the Collector to take possession of any waste or arable land on the expiration of 15 days from the publication of the notice u/s 9, even though no award u/s 11 has been made. It further provides that in such a case on possession having been taken "the land shall thereupon vest absolutely in the Government free from all encumbrances". Sub-section (4) of this section empowers the appropriate Government to dispense with the provisions of Section 5-A of the Act and, on such a declaration being made u/s 6, compliance with Section 5-A becomes unnecessary.

(7) It is obvious that while a Notification u/s 4 is intended to be a preliminary step with a view to determine if any land in an area should or should not be acquired, a declaration u/s 6 is more specific and reflects the satisfaction of the appropriate Government that any particular land is needed for a specified

purpose even though land need not be particularised in the earlier Notification. No valid Notification u/s 4 could, Therefore, be issued unless a particular public purpose was in view although a broad area is indicated in which land was likely to be required. At the stage of a Notification u/s 6, however, the satisfaction has to be not only in relation to a specified public purpose but also with reference to a particular piece of land. It is equally plain that neither a Notification u/s 4 nor a Notification u/s 6 can be said, individually or collectively, to complete the process of acquisition. While Section 4 represents an expression of the likelihood of land being needed in a particular area for a public purpose, a notification u/s 6 merely represents a satisfaction that a particular piece of land "is needed" for a specified public purpose. The Notification under the latter merely contains a declaration of intended acquisition. The scheme of Part II, Therefore, leaves no manner of doubt that the process of acquisition which starts with the initial step u/s 4 of the Act is completed only after possession has been taken when the land vests absolutely in the Government. Ordinarily, this would happen when possession of land is taken u/s 16 of the Act after an award has been made. However, where the provisions of Section 17(1) have been invoked it may also happen earlier when possession is taken on the expiration of 15 days from the publication of a notice mentioned in Section 9, provided possession is taken of the land which is waste or arable.

(8) It appears to me that where land has already been acquired pursuant to a particular public purpose it may perhaps be open to the Government to put the land to use for a different public purpose for the acquisition is complete. The vesting and corresponding divesting has already taken place, land having completely vested in the Government, Government would be free to utilise it for any public purpose. In such a situation where the public purpose, initially in view before the acquisition was complete, is either frustrated or satisfied no exception could be taken to the utilisation of the land by the Government for a different purpose nor would such a change necessitate a fresh Notification u/s 6 of the Act. The position would, however, be different where the process of acquisition is in progress and before it is completed, either u/s 16 or on a notice u/s 9, the purpose initially in view has been frustrated or satisfied. In such cases no further proceedings in acquisition can legitimately be taken because the notifications would have exhausted themselves since they were intended to subserve a particular purpose. In such a case if it is necessary to continue the acquisition proceedings and to take them to their culmination with reference to a different public purpose it would be necessary to comply with the requirement of Section 6 of the Act because without such a notification it could not be said that the appropriate Government was satisfied that the same piece of land was needed for a different public purpose. This is so because the appropriate Government does not come into the picture at the stage of Section 9 notice. Section 9 notice is merely intended as an instrument to carry out the satisfaction of the appropriate Gov which is declared in a Notification u/s 6. Where a public purpose declared u/s 6 ceases to exist there is no question of the public purpose being

carried out by the Collector u/s 9 or, for that matter, by the Collector under the provisions of the Act which follow. A notice u/s 9, Therefore, by the Collector expressing the intention of the Government to take possession of the land for a public purpose, other than a public purpose which was envisaged by a Notification u/s 6, does not have the authority of the appropriate Government. The only way in which the appropriate Government can sanctify such an acquisition is by a proper application of mind and the resultant satisfaction that a particular piece of land was needed for a particular public purpose, for which the only machinery provided is the provision in Section 6 of the Act. It is significant to notice in this context that when a Notification u/s 6 was issued in this case the provisions of Section 17 were invoked by the appropriate Government so as to dispense with the provisions of Section 5-A of the Act probably because the public purpose then in view was the construction of a Fire Station, which apparently lent urgency to the proposed acquisition. If the appropriate Government was then dealing with a proposal to acquire land for construction of quarters for-the staff of Delhi Administration one would not know if the appropriate Government would have attached the same urgency to such a requirement. The need for a Fire Station and provision for staff quarters are clearly distinguishable. The need for the latter need not necessarily be as dire as that of the former. While it may be possible to accept that the essential safeguard provided u/s 5-A may be dispensed with because of the need to have a Fire Station the same consideration may not apply where the requirement is merely to provide an amenity to the staff, however, desirable a provision for such an amenity may be. It may also be pointed out that where the public purpose for which the acquisition is intended consists of a provision of a Fire Station the attitude of the land owners may perhaps be different then if the public purpose was the construction of staff quarters. The land owners, Therefore, who may perhaps have no objection to the proposed acquisition because it was intended to subserve not only a larger public purpose but also a purpose in which the people in the vicinity were also personally interested may perhaps have a different attitude if they were told that the land was proposed to be utilised for a different public purpose. To hold, Therefore, that Notifications u/s 4 and 6 for a given purpose could ensure for the benefit of a totally different public purpose because the earlier purpose had either been frustrated or had been achieved may result in a fraud on the statute.

(9) In the present case the provisions of Section 17(1) and (4) were invoked with the result that the provision of Section 5-A was dispensed with and possession could be taken after notice u/s 9 of the Act was issued. It follows, Therefore, that until notice u/s 9 was issued the process of acquisition was not complete and there would be no vesting of land in the Government.

(10) For all these reasons I am of the view that when the purpose of setting up of a Fire Station was achieved before a notice u/s 9 was issued the Notifications under Sections 4 and 6 of the Act exhausted themselves and the proceedings for the acquisition of the land could not be pursued for a different purpose without

fresh notifications under Sections 4 and 6 of the Act specifying such a purpose.

(11) In the result the petition succeeds in part. The impugned notices under Sections 9 and 10 of the Act are quashed. The petitioner would also have his costs. Counsel's fee is assessed at Rs. 450.

(12) The authorities would, however, be at liberty to take appropriate steps for the acquisition of the land in dispute for the construction of quarters of the Delhi Administration or for any other public purpose in accordance with law.