

(1980) 09 DEL CK 0043

In the Delhi High Court

Case No : Letters Patent Appeal No. 33 of 1973

Delhi Administration and others

APPELLANT

Vs

Friends Housing Society and others

RESPONDENT

Date of Decision : 19-09-1980

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 313, 313(5), 337, 48
Land Acquisition Act, 1894 — Section 4, 5A, 5A(2), 6, 9

Citation : AIR 1981 Delhi 30

Hon'ble Judges : S.B. Wad, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : D.P. Wadhwa and Mrs. Avinash Ahlavat, for the Appellant; R.S. Narula and D.S. Narula, for the Respondent

Final Decision : Allowed

Judgement

Avadh Behari Rohatgi, J.—This is a letters patent appeal from the order of a learned single Judge dated November 15, 1972. Friends Housing Society, respondent No. 1, is a partnership concern (Society). They acquired certain lands in Delhi for a housing colony. They prepared a layout plan for the purpose in contemplation.

2. On July 19, 1956 the appellant, Union of India, issued a notification u/s 4 of the Land Acquisition Act 1894 (the Act) for acquisition of the lands of the Society. The Society filed objections. After some correspondence the lands were denotified on December 19, 1957.

3. So far so good. A fresh notification u/s 4 of the Act was issued in respect of a large area of land in Delhi including the land in dispute on November 13, 1959. The Society filed objections against the said notification. On July 1, 1960, the Government issued a press note declaring its policy that all lands of which layout plans had been "fully sanctioned" by the appropriate authority before November 13, 1959 would not be acquired. In pursuance of this policy a Gazette notification was issued. This notification set out the names of such 16 colonies lands of which

were excluded from notification, but the proposed colony of the Society was not denotified. Eventually on August 16, 1962. a declaration u/s 6 was issued in respect of the lands of the society. In December 1962 notice u/s 9 of the Act was made,

4. Against these acquisition proceedings the Society brought a writ petition on April 23, 1963 for quashing the acquisition of their land. The learned Judge quashed the proceedings for acquisition of the land. He set aside the declaration u/s 6 of the Act and the proceedings subsequent thereto. From his decision the Union of India appeals to this court.

5. Two points were raised before the learned Judge. One was that the Society did not have any adequate opportunity to prefer meaningful objections against the acquisition of the land u/s 5-A of the Act. Section 5A says that any person interested in any land which has been notified u/s 4 as being needed for a public purpose may within 30 days after the issue of the notification object to the acquisition of the land. The Collector shall then give him an opportunity of being heard. The public purpose mentioned in the preliminary notification u/s 4 of the Act dated November 13, 1959 was the "planned development of Delhi". Now with regard to the planned development of Delhi the Government prepared a draft master plan which was published on July 8, 1960 and thereafter a master plan was prepared which came into force on Sept, 1, 1962. It was said that without the master plan which provides for the planned development of Delhi the Society could not effectively object to the intended acquisition. Nor, it was said, could it avail of the opportunity of being heard which is given by the land acquisition Collector to the objector unless the master plan is in existence disclosing in detail the programme and policy of "planned development". The argument centres round the opportunity to object It is said that the opportunity without the master plan was an empty formality.

8. This ground prevailed with the learned Judge. He applied the Supreme Court decision in *Munshi Singh and Others Vs. Union of India (UOI)*, . He held that in the present case on the date of the notification, that is, November 13, 1959, even the draft master plan had not been published and so the Society had no opportunity to file effective objections and, therefore, on this ground the acquisition proceedings were bad.

7. Now this objection of the Society cannot succeed because the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, has upheld the validity of this very notification dated November 13, 1959 which is the subject of challenge by the Society in these proceedings. The Supreme Court has held that "in the case of an acquisition of a large area of land comprising several blocks belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area, unlike is the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed." (page 2080).

8. Munshi Singh and Others Vs. Union of India (UOI), on which the learned Judge has relied in this case the Supreme Court said:

"We think that the question whether the purpose is specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5-A would depend on the facts and circumstances of each case." (page 2080).

9. Therefore, the public purpose of planned development of Delhi was up-held. The challenge to it on the grounds that the owner whose land was sought to be acquired could not file effective objections against the acquisition u/s 5-A unless he was told about the specific purpose of the acquisition was expressly rejected. Aflatoon and Others Vs. Lt. Governor of Delhi and Others, was followed in Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others, . The Supreme Court in that case upheld not only Section 4 notification which was the same as here, i. e. November 13, 1959, but also upheld declaration u/s % of the Act (which in that case was of October 22, 1960). It was said that Aflatoon's case decides that the notification of November 13, 1959 which was for the acquisition of over 30,000 acres of land in the very nature of things could not specify each particular purpose and therefore the planned development of Delhi was of sufficient particularity. The public purpose of planned development of Delhi was held to be neither bad nor vague. Aflatoon's case, it was further said, also held that the declaration u/s 6 of the Act pursuant to the notification u/s 4 of the Act was valid for acquiring the notified land for the planned development of Delhi.

10. In Pt. Lila Ram Vs. The Union of India and Others, all the three previous cases, namely, Munshi Singh and Others Vs. Union of India (UOI), ; Aflatoon and Others Vs. Lt. Governor of Delhi and Others, and Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others, were noticed and the view was reiterated that acquisition of land for the planned development of Delhi was for a public purpose. After these definitive decisions of the Supreme Court and in particular Aflatoon's case which is a direct authority on the point raised before us it can no longer be held, as was held by the learned Judge, that without the publication of the master plan the Society could not file meaningful objections to the proposed acquisition. The land covered by the notification dated November 13, 1959 u/s 4 covers a huge area of thousands of acres. It is not a small plot which the Government was acquiring. In such cases of large acquisitions it is difficult to insist upon greater precision for specifying the public purpose because it is quite possible that various plots covered by the notification may have to be utilised for different purposes. Aflatoon's case conclusively holds that there was no inhibition in Government's acquiring land for the planned development of Delhi under the Act before the master plan was ready. "Acquisition generally precedes development" as Mathew J. put it in Aflatoon's case.

11. We have therefore no hesitation in rejecting the ground of denial of opportunity to file objections which prevailed with the learned Judge. When the learned Judge decided this case in 1972 he had before him only the decision in Munshi Singh's case to guide him. Aflatoon and Ratni Devi were decided

subsequently. Now that Aflatoon's case has upheld this very notification of November 13, 1959 u/s 4 it is no longer open to challenge by the Society. Nor can the Society question the validity of the declaration made u/s 6 of the Act which was issued pursuant to the notification u/s 4 of the Act. That has also been upheld in Ratni Devi. It was suggested in arguments by counsel for the Society that Ratni Devi goes beyond Aflatoon, though it purports to follow it. Whether Ratni Devi's case explains Aflatoon or is an extension of that case we need not decide. The fact remains that both Section 4 notification and Section 6 declaration are now beyond challenge. In other words Aflatoon and Ratni Devi conclude this point against the Society. So much about the first objection.

12. Now we turn to the second ground of challenge. The Society says that they submitted their layout plan to the authorities and the Municipal Corporation of Delhi which was the final authority to sanction the layout plan should be taken to have sanctioned it by virtue of Section 313 of the Municipal Corporation Act. It will be recalled that on July 1, 1960 the Government of India issued a Gazette notification withdrawing from acquisition u/s 48 of the Act the lands of 16 colonies the layout plans of which had been approved by the Municipal Corporation of Delhi by various resolutions. This was pursuant to the press release enunciating the "general policy" of the Government that all lands of which layout plans had been sanctioned by the appropriate authority before November 13, 1959 would not be acquired. This was done to encourage housing activity in Delhi as the press note stated

13. The case of the Society is that their layout plans had also been sanctioned by the Municipal Corporation and there is no reason why the Government should not denotify their land in accordance with the declared policy of the Government. The learned Judge has dealt with this point in detail. He has traced the history of the layout plan right from August 9, 1956 when the Society made the first application to the Delhi Development Provisional Authority to January 5, 1959. From January 5, 1959 to March 7, 1959 there is no communication from the Municipal Corporation. On this period of silence of 60 days the argument is founded that u/s 313 (5) sanction ought to be deemed to have been accorded to the society.

14. On the material placed by the Society before him regarding the submission of layout plan the learned Judge formed a provisional view that the layout plan will be deemed to have been sanctioned and this could entitle the Society's colony to be excluded in terms of the press release. That he did not express any definite opinion on this matter and did not allow the writ petition on this ground will be apparent from the following sentence: "Whether a writ can be issued merely on the ground that the acquisition contravenes the press note need not be determined in the present case since the writ is likely to succeed on the second point which will now be examined."

15. The staple part of this argument has been repeated before us. We think it unnecessary to recite the entire correspondence which the Society had with the

Municipal Corporation of Delhi on the subject of the sanction of the layout. The correspondence reveals that the ownership of the Society regarding the land in question remained in dispute till the end. Again and again the Municipal Corporation asked the Society to give proof of its title to the land. This they were unable to do. Their case was referred to the kanungo for investigation of title and finally to the Standing Committee of the Municipal Corporation of Delhi. The Municipal Corporation asked the Society to produce a certificate showing that their land was excluded from the notification of November 13, 1959. Though they were insisting throughout that their layout plan should be sanctioned the Standing Committee refused to do so, firstly, on the ground that the Society's title to the land had not been established and secondly that it had not been proved that the land was not included in the notification u/s 4 of the Act. This is where the matter rested on January 3, 1960 when the Standing Committee of the Corporation by their resolution asked the Society to produce a certificate of exemption from acquisition. The upshot is that the layout plans moved backward and forward. But they did not receive the approval of the Corporation. In this state of things we cannot hold that the Corporation had sanctioned the layout plan.

16. The Society says that their layout plans should be deemed to have been sanctioned in law by the force of the statute. They rely in particular on Sec. 313 and indirectly on Sec. 337 of the Delhi Municipal Corporation Act, 1957. It is said that the Society had submitted all the ownership documents and that the Municipal Corporation was not entitled to sit on their papers and if they do so the Corporation Act does not favour any such lethargy or inaction. It is said that if the plans are not sanctioned within 60 days u/s 313 of the Delhi Municipal Corporation Act then on the 1981 expiry of this period they are entitled to contend that the plans will be deemed to have been sanctioned by reason of inaction and inertia. We do not agree. There is no question of a deeming sanction. A bare look of the Gazette Notification dated July 1, 1960, shows that what the Government intended in their press note was that those colonies the layout plans of which had been approved by the Municipal Corporation of Delhi by passing resolutions in positive terms will be withdrawn from acquisition u/s 48 of the Act. All the 16 colonies named in the Gazette Notification are colonies which had got their layout plans approved by express resolutions in positive terms. It is the admitted case that there is no express resolution of the Corporation in favour of the Society. They rely on a deeming fiction under the Municipal Act. But in our opinion, the Government's policy was not to exclude lands such as the Society's from acquisition.

17. As has been held by a Division Bench of this court in *Municipal Corporation of Delhi v. Shrimati Kamla Bhandari*, ILR (1970) Del 66, the notification contemplates "a positive overt act of sanction and in our view a layout plan which could have been "considered as passed" would not be covered." On the construction of the proviso to S. 313 (5) of the Municipal Corporation Act we are unable to hold that by reason of the inaction of the Standing Committee for a

period of 60 days it necessarily follows that the layout plans will be deemed to have been sanctioned. All that it says is that the bar to the dealing or utilisation of the land is removed. To succeed it is necessary for the Society to show that the Corporation had passed a resolution of the nature of "a positive overt act of sanction" approving their layout plan in explicit terms. In our opinion, the Standing Committee of the Corporation did not approve the layout and therefore the Society cannot justifiably claim that its lands ought to have been withdrawn from the notification dated November 13, 1959.

18. Counsel for the Society contended that on the second point the learned Judge has found in their favour and as the Corporation has not appealed from his judgment and the Union of India does not question the finding made in society's favour they are entitled to succeed on this ground also. We cannot accept this line of reasoning. The learned Judge allowed the writ petition on the first point, namely, that the public purpose was vague and therefore Section 6 notification was bad as the Society could not make any purposeful objections u/s 5-A of the Act. On the second point regarding approval of the layout plan his conclusion was tentative. It was in the nature of an obiter dicta. It was not the ground of decision. Nor did the learned Judge found himself on it. He was not prepared to give a definite opinion and to decide the question of sanction in favour of the Society. After narrating the various events that had happened and the correspondence that had passed between the Society and the Corporation, he took the view that it was unnecessary to pursue this matter of sanction because, in his opinion, the Society was entitled to succeed on the ground of the invalidity of declaration u/s 6.

19. An appellant need not contest before an appellate court a ground on which the case is not decided. He appeals only from the grounds on which the court below bases its decision. If in the course of his judgment a Judge expresses some opinion but does not make it the foundation of his decision it cannot be said that the appellant is bound to appeal even from those points which were left in a state of inconclusiveness.

20. Counsel for the Society submitted that sanction ought to be taken as granted when the citizen has done all that he was required to do. He referred us to two unreported decisions of this court. One was by S. S. Chadha J. in C. W. Nos. 219 to 221 of 1979 decided on September 21", 1979 and the other was by B. N. Kirpal J. in C. W. 1009 of 1979 decided on July 22, 1980. These cases, in our opinion, are of no assistance to the Society. We are dealing here with a Municipal statute which posits a procedure of sanction by passing a resolution in black and white approving the layout. It contemplates formal sanction embodied in a resolution. It is in this sense that the press note says that the layout must be "fully sanctioned" before the Government will withdraw a colony's land from acquisition. That is the distinct meaning and plainly the intention of the press note.

21. We were referred to two Supreme Court decisions in Col. A. S. Sangwan v.

Union of India, (1980) 2 Serv LR 1 " and Sir Fazalbhoy Currimbhoy and Others Vs. Official Trustee of Maharashtra and Others, in support of the submission that we should read the press note in a broad way so as to effectuate its purpose and not by a rigid literalism. We do not agree. In our opinion, the Government policy was to withdraw from acquisition lands of only those colonies which had got their layout plans approved and where specific resolutions of affirmative approval had been passed in each individual case. The Municipal Act prescribes a procedure of sanction. The press note contemplates that if the layout of a colony has been sanctioned, not by default but by affirmative action, the Government will release such land from acquisition. No such resolution was passed in the case of the Society and therefore they cannot say that the taker of the land ought to have denotified their colony.

22. Lastly, it was said that the Society was not given any notice of hearing u/s 5-A (2) of the Act and therefore the proceedings were bad. We required the Government to produce the original record of the land acquisition Collector in court which showed that the Society's representative was present at the date of hearing before the Collector. After seeing the original record counsel for the Society gave up this objection before us.

23. For these reasons we allow the appeal, set aside the judgment dated November 15, 1972 and dismiss the writ petition. We however make no order as to costs.