
(2009) 03 RAJ CK 0049
In the Rajasthan High Court

Dhanna and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 21, 226, 300A
Land Acquisition Act, 1894 — Section 11A, 17, 4, 6

Citation : (2009) 03 RAJ CK 0049

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—This case is a paradigm example of the clash between private interest and public interest. Wanting to tenaciously hold onto their property, the petitioners have challenged the acquisition proceedings which were initiated by the State for the construction of a 200 ft. wide road connecting the Jaipur Airport to the Jawahar Circle at Jaipur.

2. Brief facts of the case are that the petitioners claim to be khatedars of Khasra Nos. 299 and 309 in village Chenpura, and of Khasra Nos. 699, 684/1382, 502 and 504 in village Sawai Gaitor. These Khasras are situated near Jawahar Circle, Jaipur. They further claim that they are in cultivatory possession of the said land. According to the petitioners, on 6-12-2002 the officers of the Jaipur Development Authority (‘the JDA’ for short) entered into the petitioners’ land, demolished part of the boundary wall and started levelling the land. Therefore, the petitioners filed a writ petition before this Court, registered as SB Civil Writ Petition No. 1807/2003, wherein they challenged the illegal trespass by the respondents upon their land. The petitioners further claim that their land was never acquired as no notification u/s 4(1) of the Land Acquisition Act (‘the Act’ for short) was ever published. In fact, the procedure under the Act was never followed. According to them, they came to know about the alleged acquisition proceeding from the reply filed by the JDA in the aforementioned writ petition.

The petitioners further state that suddenly on 30-9-2004, they were served with a notice under Sections 6 and 17 of the Act, in respect of Khasra Nos. 699, 684/1383, 504 and 503. According to the petitioners, Khasra No. 684/1383 does not belong to them. Thus, the mention of Khasra No. 684/1383 in the notice is meaningless. According to the petitioners, the acquisition is being made for constructing a 200 ft. wide road connecting the Jaipur Airport to the Jawahar Circle. However, in order to give benefit to certain influential persons, in order to avoid the use of land, which already belongs to JDA, the road has been given a certain turn and is being constructed over the land belonging to the petitioners. Therefore, according to the petitioners, the entire acquisition proceeding is in violation of provisions of the Act. Lastly the acquisition proceedings have been carried out in a malafide manner with an ulterior motive to benefit influential persons. Hence, this petition before this Court.

3. Mr. N.K.Maloo, the learned Counsel for the petitioners, has raised a plethora of contentions before this Court:

firstly, around the land of petitioners, sufficient land which belongs to JDA already exists. Moreover, sufficient land, which belongs to New Pink City Grah Nirman Sahakari Samiti, also exists. In fact, certain officers of JDA have constructed their houses in the land belonging to the Samiti. In case, the road needs to be constructed, it can be constructed either through the land which belongs to JDA, or through the land which belongs to the Samiti. But in order to favour its officers, and in order to give benefit to the members of the Samiti, the JDA has purposefully and intentionally turned the road and has taken the road through the land belonging to the petitioners.

Secondly, according to the map prepared by the JDA while all other roads joining the Jawahar Circle have been constructed as straight roads, the road under dispute has intentionally been turned so as to pass through the land of the petitioners.

Thirdly, two different notifications were issued u/s 4 of the Act. The notification dated 29-9-2003 dealt with Khasra Nos. 699, 504, 505 and 684/1382; the notification dated 7-10-2004 dealt with Khasra Nos. 299 and 309. However, the petitioners were unaware of these notifications.

Fourthly, although a notification u/s 6 of the Act with regard to notification dated 29-9-2003, dealing with Khasra Nos. 699, 504, 504 and 684/1382 was published, no notification u/s 6 of the Act with regard to notification dated 7-10-2004 has been published so far. Therefore, the acquisition proceedings qua Khasra Nos. 299 and 309 have lapsed.

Fifthly, the notification u/s 6 read with 17(4) of the Act was published on 25-8-2004. But, before the emergent powers, granted u/s 17(4), could be invoked some cogent reasons have to be stated for invoking the emergent powers. However, in the notification dated 25-8-2004 no such reason has been spelt out. Therefore, the emergent powers have been invoked in an arbitrary

manner. Hence, the notification dated 25-8-2004 is unsustainable.

Sixthly, so far no notification under Sections 6 read with 17(4) of the Act, has been issued with regard to the notification dated 7-10- 2004. Therefore, the entire acquisition proceeding qua Khasra Nos. 299 and 309 stands lapsed.

Lastly, although no notification with regard to Khasra Nos. 684/1382 has been issued, yet the same is being acquired by the JDA. Therefore, the trespass by the JDA in Khasra No. 684/1382 is absolutely unfair, unjust and unreasonable. Thus, the entire acquisition proceeding is in violation of constitutional mandate contained in Articles 14, 21 and 300A of the Constitution of India.

4. On the other hand, Mr. A.K.Gupta, the learned Counsel for the respondents, has raised the following contentions:

Firstly, according to science of engineering the road joining a circle has to join the circle at 90 degree angle. In case the road does not join the circle at 90 degree angle, it increases the possibility of vehicular accident thereby causing traffic hazard. In case the road in dispute were to be constructed as a straight road, the road would join Jawahar Circle at an acute angle and not at 90 degree angle. Therefore, in order to ensure that road in question joins the Jawahar Circle at 90 degree, the road had to be bent. Therefore, the bending of the road is a dire necessity. Hence, the road has been bent neither to benefit the influential people, nor the JDA, neither to harass the petitioners, nor to illegally acquire their land. Thus, the decision to bend the road at a particular point is neither motivated, nor mala fide. The intention is to construct the road in accordance with the principles of Engineering. He has further contended that the design, the lay-out, the planning and the construction of a road require expert opinion of engineers. The Court cannot sit as an appellate court over the decisions of the experts. Moreover, the engineers should be given sufficient flexibility, "play at the joints", to design and to construct the best road possible keeping in mind the needs of the construction.

Secondly, immediately after the notification dated 7-10-2004 was issued qua Khasra Nos. 299 and 309, vide order dated 8-10- 2004 this Court directed the respondents to maintain status quo over the entire land in question. Because of the status quo order passed by this Court, no notification under Sections 6 read with 17(4) of the Act could be issued qua notification dated 7-10-2004. Moreover, no award could be passed qua the notification dated 29-9-2003 and the notification dated 7-10-2004. However, keeping in view the explanation contained in Section 11A of the Act, the acquisition proceedings do not lapse merely because an award has not been passed within two years from the date of declaration. Thus, the acquisition proceedings have not lapsed.

Thirdly, that a notification was initially issued with regard to Khasra No. 684/1383. However, subsequently a corrigendum was issued on 16-5-2005 correcting the Khasra number as Khasra No. 684/1382, instead of Khasra No. 684/1383. This notification was published u/s 4 of the Act. Thus even Khasra No.

684/1382 is under acquisition. But due to the stay order by this Court, no further proceedings have been continued qua Khasra No. 684/1382.

Fourthly, Jaipur is emerging not only as a tourist destination, but is also emerging as a vibrant and economically prosperous city. It is the hub of jewellery making, handicraft, textile industries. It is also trying to emerge as a center for IT industry in the country. Due to its close proximity to New Delhi, it is also seen as a destination where international flights can be diverted when they are unable to land in New Delhi. For all these reasons the National Airport of Jaipur is being converted into an International one. In order to connect the International Airport to the Jawahar Circle, the road in question is to be constructed. Hence, the entire construction is for a public purpose. It is, in fact, for the benefit of the travelers, who would come to Jaipur; it is for the benefit of the Jaipur people. In a conflict between the private interest of an individual and the public interest of the people, the former must give way to the latter.

Lastly, keeping in view the public purpose, keeping in mind that the International Airport has to be connected to the city, as expeditiously as possible, keeping in mind the obstacles being created in the construction of road, keeping in view the delay being caused to the construction of road, vide letter dated 28-7-2004 the JDA had written to the Government for invoking its powers u/s 17(4) of the Act. The Government was satisfied that the road has to be constructed as soon as possible so as to bestow the benefit of an international airport to the public at large. It is in this view of the matter that the emergent power u/s 17(4) of the Act was invoked. Moreover, Section 17(2) itself permits the Government to invoke the power of eminent domain and to invoke emergent power for construction of a road. Hence, notification u/s 17 of the Act is legally valid.

5. Heard the learned Counsel for the parties and perused the material available on record.

6. Land Acquisition proceedings invariably bring out the conflict between private interest of the owners of the land and the public interest of people at large for whose benefit the land is being acquired. In such a tussle, the courts are required to balance the conflicting interest. In the present case, admittedly the petitioners are khatedars of Khasra No. 299 and 309 in village Chenpura, and of Khasra Nos. 699, 684/1382, 502 and 504 in village Sawai Gaitor. It is not in dispute that petitioners' land lies near Jawahar Circle, one of the biggest circle of Jaipur City. It is also not in dispute that Jaipur, the capital of the State, is rapidly growing. Throughout the world, Jaipur is known as "the Pink City", a city established in early 18th century. The old city with its numerous palaces and gardens, medieval architecture--an amalgamation of Hindu and Islamic architecture- and its city planning has always attracted attention of national and international tourists. Forming part of the golden triangle, including cities of Delhi and Agra, Jaipur has been a favourable destination for tourists both national and international. It is also emerging as a modern city, as a hub of business activities, as a dynamic city for IT companies and for medical facilities. Being the

capital of one of the most peaceful States of Union, it is attracting not only business investments, but also attracting migrants from other parts of the country. Since it is close to New Delhi, at times, and specially in winter, the flights from Delhi are diverted to Jaipur. Considering the rapid growth of the City, as far back as 1998, the JDA had envisaged the transformation of the Jaipur Airport and the development of the area around the Airport into an International Airport. Since the Master-Plan 2011 did not demarcate the land use of the area around the Airport, the Master-Plan was changed in 1998 and it was clearly indicated that a 200 ft. wide road would be constructed from the Airport to the Jawahar Circle in order to facilitate smooth flow of traffic. It is imperative to note that in 1998 while the Airport used to be slightly outside Jaipur City in the village Sanganer, the Jawahar Circle was the beginning of urbanised Jaipur City. Of course, presently Jaipur has grown beyond the Sanganer village. But nonetheless, in 1998, the Airport was slightly outside Jaipur city, whereas Jawahar Circle was at the end of Jaipur city. Thus, clearly, the construction of road from the Airport to the Jawahar Circle is in public interest and for public purpose.

7. Recently in the case of Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others, the Hon'ble Apex Court dealt with land acquisition proceedings initiated by State of Andhra Pradesh for the construction of Information Technology Park outside the city of Hyderabad. The Apex Court observed as under:

In deciding whether acquisition is for "public purpose" or not, prima facie, the Government is the best judge. Normally, in such matters, a writ court will not interfere by substituting its judgment for the judgment of the Government. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised malafide or for collateral purposes or the purported action is dehors the Act, irrational or otherwise unreasonable or the so-called purpose is "no public purpose" at all and fraud on statute is apparent, a writ court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution cannot substitute its own judgment for the judgment of the Government as to what constitutes 'public purpose'.

8. Vide notification dated 29-9-2003 the State Government had clearly declared that certain land needs to be acquired for the purpose of construction of 200 ft. wide road connecting Jawahar Circle to the airport. Thus the public purpose was declared in the notification itself. Moreover, though the petitioners have pleaded malafide, they have failed to prove it. Further, it is not their case that the acquisition is for collateral purpose or is dehors the Act. Hence, "the public purpose" for which the land is being acquired cannot be questioned.

9. The construction of a road is the domain of experts. Such experts, obviously, need to be given a free hand while planning and constructing the road. Since

judiciary does not have the technical know-how, it is not for the judiciary to enter into an unknown territory of construction of a road. In catena of cases, the Apex Court has observed that the High Court cannot sit as an appellate court over opinion of experts" committee. Moreover, experts must be given certain discretion, certain flexibility, certain "play at the joints" while implementing an infrastructure scheme. Therefore, it is not for this Court to sit over the decision of the engineers, who have decided to bend, to turn the road at a particular junction.

10. A perusal of the map clearly shows that all the roads joining Jawahar Circle do so at 90 degree angle. In case the road in question is to be constructed as a straight road, it would not join the Jawahar Circle at 90 degree. In fact, it would join the Jawahar Circle at an acute angle. According to expert's opinion a road cannot join a circle at an acute angle. For, in case the road were to join the Circle at an acute angle, it would lead to traffic hazard and would also contribute to vehicular accidents at the circle. Keeping this criteria in mind, the experts felt that they had no option but to bend the road in question at a particular juncture. Therefore, learned Counsel for the petitioners, is not justified in claiming that the road has been bent in order to give benefit to influential persons whose land would have been eaten away by road in case the road were to be constructed as a straight road. Obviously, road has been bent out of necessity and not out of choice. Hence, the first contention raised by the learned Counsel for the petitioners that the road has been bent with a malafide intention, or under ulterior motive is unsustainable.

11. Considering the need for expeditious completion of road, on 28- 7-2004 the JDA wrote a letter to the Dy. Secretary, Urban Development Department pointing out the urgent need to complete the work of 200 ft. wide road connecting the Airport to the Jawahar Circle. On the basis of the letter and being convinced of the public purpose, for which the land was being required, on 25-8-2004, the Government issued the notification under Sections 6 read with 17(4) of the Act.

12. In the case of First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, while dealing with the powers u/s 17 of the Act the Apex Court observed as under:

The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. Therefore, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17 (1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision taken by the appropriate authority was malafide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned.

The Apex Court further observed thus:

The conclusion of the Government that there was urgency, even though not conclusive is entitled to great weight. A mere allegation that power was exercised malafide would not be enough and in support of such allegation specific materials should be placed before the court. The burden of establishing malafide is very heavy on the person who alleges it.

13. According to the Apex Court, the satisfaction of the existence about emergent situation is a subjective one. Therefore, such subjective satisfaction should not be interfered with lightly, unless and until there is an allegation of malafide, arbitrariness, illegality or perversity and unreasonableness. However, in the present case none of these grounds have been established by the petitioners. Thus, it is not for this Court to interfere with a decision to invoke emergent powers u/s 17(4) of the Act.

14. Moreover, a bare perusal of the record submitted before this Court clearly reveals that the Government was alive to the need for expeditious construction of the road for the benefit of the people of Jaipur. Thus, it has validly exercised its discretion for invoking the emergent powers u/s 17(4) of the Act. Moreover, even Section 17(2) of the Act permits the State to invoke its emergent powers u/s 17 of the Act for the construction of a road. Therefore, the notification dated 25-8-2004 has been passed validly.

15. The learned Counsel for the petitioners is also not justified in claiming that the acquisition proceedings have lapsed on the ground that awards with regard to the notification dated 29-9-2003 and the notification dated 7-10-2004 have not been passed within the stipulated period of two years. Since, there is a stay order operating against the respondents, since this Court has directed that status quo should be maintained, obviously the respondents cannot pass an award during pendency of the writ petition. According to explanation contained in Section 11A of the Act, the period during which interim order is operative has to be excluded from the period prescribed for passing of the Award.

16. Similarly, if no notification u/s 6 read with 17(4) of the Act with regard to the notification dated 7-10-2004 has been issued, it is only because of the interim order. Therefore, obviously, the lapse of time would not adversely affect the acquisition proceedings.

17. The contention with regard to Khasra No. 684/1382 is equally baseless. According to petitioners, a notification with regard to Khasra Nos. 699 and 684/1383 was published. However, according to JDA once the mistake was realised that Khasra No. 684/1383 has been shown, a corrigendum was issued showing the Khasra number as Khasra No. 684/1382. The said corrigendum was issued on 16-5- 2005. Thus, Khasra No. 684/1382 is also under acquisition.

18. Hence, for the reasons stated above, this writ petition is devoid of merit. It is, hereby, dismissed. There shall be no orders as to costs.