
(1969) 08 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 46D of 1964

Dhanna Singh

APPELLANT

Vs

Chief Commissioner, Delhi Administration and Others

RESPONDENT

Date of Decision : 06-08-1969

Acts Referred:

Citation : (1969) ILR Delhi 799

Hon'ble Judges : P.S. Safer, J;H.R. Khanna, J

Bench : Division Bench

Advocate : D.K. Kapur, Nand Kishore, J.M. Lal, D. Chaudhary, Keshav Dayal and Swarup Singh, for the Appellant;

Judgement

H.R. Khanna, J.

(1) This judgment would dispose of six writ petitions Nos. 46-D to 51-D of 1964. Arguments have been addressed before us in Civil Writ No. 46-D of 1964 and it is the common case of the learned counsel for the parties that the material facts in all the writ petitions are the same. We would, consequently, give the facts as stated in Civil Writ No. 46-D of 1964.

(2) Dhanna Singh petitioner in this petition has prayed for the issuance of a writ to quash notifications dated September 3, 1967 u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act), dated February 20, 1963 u/s 6 of the Act and the award dated January 15, 1964 of the Land Acquisition Collector respondent No. 2 in the petition. The petitioner claims that he is the owner of a plot of land measuring 320 square yards situated in village Himayunpur. It is stated that after purchasing that plot on August 26, 1957 the petitioner built a residential house and three shops on that plot. A notification dated September 3, 1957 u/s 4 of the Act relating to 3,000 acres of land including the land in dispute was issued and was published in the Delhi Gazette on September 12, 1957. The relevant part of the notification reads as under:-

"WHERE as it appears to the Chief Commissioner, Delhi, that the land is likely to

be required to be taken at the public expense for a public purpose, namely, for the execution of the Interim General Plan for the greater Delhi, it is hereby notified that the land described in the Schedule below is likely to be required for the above purpose.

(3) The notification is made under the provision of Section, the Land Acquisition Act, 1894 to all whom it may concern.

(4) In exercise of the power conferred by the said Section if Chief Commissioner of Delhi is pleased to authorise for the time being engaged in the undertaking with their servants and workmen to enter upon any survey any land in the locality and do all other acts required or permitted by that Section.

(5) Any person interested who has any objection to the acquisition of the said land may, within 30 days from the publication of this notification, file his objection in writing before the Assistant Secretary, D.D.P.A., Regal Building. New Delhi, who has been appointed to perform the function of the Collector under the said Act.

(6) On February 20, 1963 notification u/s 6 of the Act was issued for the acquisition of land including that of the petitioner. The material part of the notification reads as under:-

"WHERE as it appears to the Chief Commissioner Delhi that land is required to be taken by the Government at the public expense for a public purpose, namely, for the execution of the Interim General Plan for the greater Delhi it is hereby declared that the land described in the specification below is required for the above purpose.

(7) This declaration is made under the provisions of Section 6 of the Land Acquisition Act, 1894 to all whom it may concern and under the provisions of Section 7 of the said Act . The Collector of Delhi is hereby directed to take order for the acquisition of the said land.

(8) A plan of the land may be inspected at the office of the Collector of Delhi."

(9) The petitioner has assailed the validity of the impugned notifications inter alias on the ground that on the date the notification u/s 6 of the Act was issued the interim general plan was non-existent.

(10) The respondents named in the petition are Chief Commissioner Delhi Administration respondent No. 1, the Land Acquisition Collector respondent No. 2 and the Delhi Development Authority respondent No. 3, and they have all resisted the petition. Affidavits of Shri Balbir Singh Saigal, Engineering Member, Delhi Development Authority, and Shri A. V. Venkatasubban. secretary (Local Self Government), Delhi Administration, have been filed in opposition to the petition.

(11) We have heard Mr. Dalip Kapur on behalf of the petitioner and Mr. Dipak Choudhari and Mr. Keshav Dayal on behalf of the respondents, and are of the view that the notification issued u/s 6 of the Act and the consequent award made

by the Collector on January 15, 1964 are liable to be quashed. So far as the notification u/s 4 of the Act is concerned, no argument, follow that the interim general plan was not in force after September 1, 1962 and was from that date superseded by the master Plan. In the notification u/s 6 of the Act the public purpose for the acquisition of the land is mentioned to be "the execution of the interim general plan for the greater Delhi." As the interim general plan had ceased to exist and was no longer in force on February 20, 1963, there could be obviously question of the execution of that plan on that date. It is, in the circumstances, not clear as to how a notification u/s 6 could be issued on that date for acquiring land for the purpose of the execution of the interim general plan. According to sub-section (2) of Section of the Act every declaration made under the above Section shall state inter alias the purpose for which the land is needed. Since the purpose specified in the declaration u/s 6 of the Act was non-existent, the above declaration cannot be held to be valid and in conformity with Jaw. The requirement about the mention of the public purpose in the notification u/s 6 necessarily contemplates that the purpose should be real, true and in existence and not fictitious, imaginary or non-existent. In the case of Smt. Somawanti and others v. The State of Punjab and others, (1) their lordships observed:-

"NOW whether in particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is public purpose, leaving aside for a "moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final".

(13) As the purpose mentioned in the declaration u/s 6 for the acquisition of the land has been found to be non-existent, there is no escape from the conclusion that there has been a colourable exercise of the power in the issuing of declaration u/s 6 of the Act in the present case.

(14) On behalf of the respondents reference has been made to a decision of this Court in the case of Uttar Pradesh Samaj Co-operative House Building Society Ltd., v. Union of India and others, (2) wherein it was held that the planned development of Delhi was a public purpose. In our opinion, there can be no dispute so far as the above proposition is concerned, but the point with which we are concerned is materially different. All that we have to see is whether a

notification u/s 6 of the Act can be valid if the public purpose specified in the notification has ceased to exist. So far as that question is concerned, we have no doubt that the non-existence of the public purpose mentioned in the notification would introduce a fatal infirmity in the notification.

(15) It may be mentioned that the language of the notification u/s 4 of the Act issued in the present case is different from that of the notification issued on November 13, 1959 which was the subject matter in the case of Uttar Pradesh Samaj Co-operative Building Society Ltd. (2). In that case the public purpose mentioned was "the planned development of Delhi," while in the present case it is "the execution of the interim general plan." Reference to "Interim General Plan for Greater Delhi," published by the Ministry of Health in 1956, shows that some 3,000 acres of land were needed of residential development for two or three years before the preparation of the master plan. Had the authorities concerned taken steps to acquire the land in dispute by issuing a notification u/s 6 of the Act within two or three years of the preparation of the interim general plan and not deferred the matter till February, 1963, they would not have encountered the difficulty with which they are confronted in the present case. As things, however, are, they allowed a period of five and a half years to elapse after the issue of notification u/s 4 of the Act and the result there of was that the public purpose for which the land was sought to be acquired ceased to exist by the date notification u/s 6 was issued. The authorities concerned seem then to have been influenced by the consideration that there could be no variance between the public purpose mentioned in the two notifications under Sections 4 and 6 and that they had to adhere to the purpose mentioned in the earlier notification.

(16) Reference on behalf of the respondents has also been made to the case of Shyam Swarup Saksena v. State of Uttar Pradesh and others. In that case the public purpose was mentioned in the notification u/s 6 of the Act to be "Construction of Government buildings by the Public Works Department." The public purpose stated in the notification u/s 6 of the Act was "The extension of Mahanagar Housing Scheme by Municipal Board, Lucknow." It was held that though the public purposes within the two notifications were not identical, they were analogous to each other and the modification introduced in the notification u/s 6 had not the effect of vitiating the entire proceedings. No assistance, in our opinion, can be derived from the above authority by the respondents because the purpose for which the land was being acquired in the cited case was not held to be non-existent. Argument has also been advanced on behalf of the respondents that the object of the interim general plan as well as of the master plan was the planned development of Delhi. This may be so, but this fact would not materially affect the case because, as stated earlier, the public purpose mentioned in the impugned notification is not the planned development of Delhi but the execution of the interim general plan. As the interim general plan has ceased to be operative, the acquisition of land for the execution of that plan cannot be upheld.

(17) We, Therefore, accept the petitions and quash the impugned notification u/s 6 of the Act as well as the award made by the Collector on January 15, 1964. In the circumstances of the case, we make no order as to costs.

P.S. Safeer, J.

(18) I agree.