
(2006) 09 DEL CK 0235
In the Delhi High Court
Case No : Writ Petition (C) 1174 of 1981

Ishat-E-Islam Trust

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)
Land Acquisition Act, 1894 — Section 10, 4, 48, 6, 9

Citation : (2006) 164 DRJ 91

Hon'ble Judges : Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : S.J. Ahmed and Mobin Akhtar and Laeeque Rub, for the Appellant; Sanjay Poddar, for the LAC, Anil Sapra and Ravi Kataria for the DDA, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.

Background facts

1. On 14.7.1980 a notification was issued u/s 4 of the Land Acquisition Act, 1894 (Act) notifying the petitioner's lands located in Village Okhla, Delhi for acquisition for the planned development of Delhi. Following this a notification dated 29.4.1981, being a declaration u/s 6 of the Act, came to be issued.

2. This writ petition was filed in May 1981 seeking the quashing of the notifications dated 14.7.1980 and 29.4.1981. The Khasra Nos. of the lands of the petitioner as mentioned in the petition, and in particular in the prayer clause, were Khasra Nos. 233, 234, 236, 238, 244, 413/237, 414/237, 425/239 and 426/239 situated in Village Okhla. Significantly, Khasra No. 232, in respect of which both the notifications dated 14.7.1980 and 29.4.1981 were issued, did not find a mention either in the petition or in the prayer clause. The second significant aspect was that out of the Khasra Nos. mentioned in the Section 4

notification, the notification dated 29.4.1981 u/s 6 of the Act only referred to Khasra Nos. 232, 233, 234, 236, 238 and 244. In other words, the acquisition proceedings in respect of Khasra Nos. 413/237, 414/237, 425/239 and 426/239, which were mentioned in the Section 4 notification dated 14.7.1980 were not proceeded with at the Section 6 stage.

3. On 20.5.1981, at the first hearing of the writ petition, Rule DB was issued and the following interim order was passed:

Stay of further proceedings in pursuance to the impugned notification u/s 4 and declaration u/s 6 of the Land Acquisition Act.

Thus, the stay granted by the Court on 20.5.1981 was in respect of Khasra Nos. mentioned by the petitioner in the writ petition and covered by the notification dated 29.4.1981 u/s 6 of the Act. In other words, the stay was of the land acquisition proceedings in respect of the petitioner's lands in Khasra Nos. 233, 234, 236, 238 and 244. At the next date of hearing on 29.7.1981, since no counter affidavit had been filed by the respondents by then, the interim order was made absolute.

4. On 23.6.1989 a fresh notification u/s 4 of the Act was issued in respect of certain lands to an extent of about 3500 hectares for the public purpose of the Channelisation of the River Yamuna. The boundaries of the lands sought to be acquired were specified in the said notification. It was stated therein that the "lands already notified u/s 4 or u/s 6 of the Act" would be excluded from acquisition under the said notification. This was followed by notification dated 22.6.1990 being a declaration u/s 6 of the Act in respect of a large tract of land which included some of the lands in Khasra Nos. 233, 234, 236, 238, 413/237, 414/237, 425/239 and 426/329 belonging to the petitioners. Thereafter, notices under Sections 9 and 10 of the Act were issued followed by an Award No. 17/92-93 by the Land Acquisition Collector (LAC).

5. Twenty years after the previous hearing on 29.7.1981, this writ petition was listed for hearing on 20.8.2001, but was adjourned. Thereafter, on 24.9.2001 an application, CM No 11767/2001, was filed by the petitioner seeking to amend the writ petition to add a challenge to the notification dated 22.6.1990 u/s 6 of the Act as well as the Award No. 17/92-93. The added grounds of challenge were that since the acquisition notification in respect of the petitioner's lands had already been issued, they stood exempted from the present acquisition in terms of the express stipulation in the notification dated 23.6.1989 issued u/s 4 of the Act. A further ground was that the acquisition proceedings were in the teeth of the order dated 20.5.1981 issued by this Court staying further land acquisition proceedings in respect of the petitioner's lands. The petitioner also included in the prayer clause of the writ petition, for the first time, the land in Khasra No. 232. CM No 11767/2001 was disposed of on 5.12.2002 and the petitioner was permitted to file the amended writ petition.

6. On 16.8.2004, the petitioner filed a further CM NO 9725 of 2004 and sought

to add a further prayer in the following terms:

and direct the respondents to withdraw from the acquisition of the land in question and also direct to denotify the land in question u/s 48 of the Land Acquisition Act, 1894 immediately.

By an order dated 7.10.2004 the said CM No 9725 of 2004 was disposed of by this Court and the petitioner was permitted to urge the request for de-notification u/s 48 of the Act at the time of the final hearing.

Submissions of Counsel

7. The submissions of Mr. S.J. Ahmed, learned Counsel for the petitioner were as follows:

(a) The respondents could not have proceeded to acquire the petitioner's lands since there was a stay operating by virtue of the interim order dated 20.5.1981 of this Court.

(b) Secondly, in any event the subsequent notification dated 23.6.1989 and declaration dated 22.6.1990 were bad in law since in respect of some of the lands in question there were Section 4 and Section 6 notifications already issued under the Act. Thus these had to be excluded from acquisition in terms of the stipulation in that behalf in the notification dated 23.6.1989 u/s 4 of the Act.

(c) The petitioner was a minority educational institution and in terms of Article 30(1) of the Constitution, the lands of minority institutions could not be acquired under the Act. Reliance was placed on the decision of the Hon"ble Supreme Court in *The Society of St. Joseph's College Vs. Union of India and Others*,

(d) In any event no public purpose would be served in persisting with these acquisition proceedings after these many years.

(e) Notwithstanding the above submissions, the respondents should be directed to consider the application that may be made to them u/s 48 of the Act requesting de-notification of the lands in question.

8. Mr. Sanjay Poddar, learned Counsel for the LAC, submitted that there was no violation whatsoever of any stay order of this Court. In particular, in respect of the lands in Khasra No. 232 and 244, and those covered by the subsequent notifications, the acquisition proceedings thus far could not be faulted with since no stay order was operating in respect of these lands. The challenge in the writ petition to the notification dated 22.6.1990 and award No. 17/92-93 was made only in 2001 and was therefore barred by laches. In any event the subsequent notifications issued for the public purpose of the channelisation of the River Yamuna had been upheld by this Court in *Baldev Singh Dhillon and Others Vs. Union of India (UOI) and Others*, The petitioner could therefore not question the public purpose for which the acquisition was taking place. As regards the earlier notifications dated 14.7.1980 and 29.4.1981, the petitioner could not validly object to them having agreed, at the time of the purchase of these lands, that

the lands would be used only for agricultural purpose. He pointed out that the petitioner was not a minority educational institution and the decision of the Hon''ble Supreme Court in Society of St. Joseph's College had no application to the instant case.

Issues for determination

9. On the above pleadings and submissions, the following issues arise for determination by this Court:

(a) Are the acquisition proceedings initiated by the notification dated 23.6.1989 and 22.6.1990 u/s 4 and Section 6 of the Act respectively and the Award No. 17/92-93, in violation of the stay order dated 20.5.1981 of this Court?

(b) Are the notification dated 22.6.1990 and the consequent Award No. 17/92-93 bad in law as they seek to acquire certain lands of the petitioner in respect of which notifications u/s 4 and Section 6 of the Act already stood issued?

(c) In any event, are the notifications dated 14.7.1980 and 29.4.1981 liable to be quashed since there is no public purpose that is likely to be served in persisting with the acquisition after these many years?

(d) Is the petitioner entitled to a direction to the respondents to have the lands in question de-notified from acquisition in terms of Section 48 of the Act?

Re: Issue (a)

10. It may be recalled that neither in the writ petition nor in the prayer clause did the petitioner include the land in Khasra No. 232. That change to the prayer clause was made only when the amendment to the writ petition incorporating the said Khasra No. 232 was allowed by this Court on 5.12.2002. It now transpires from the counter affidavit filed by the DDA on 5.2.2005 that the land in Khasra No. 232, in respect of which there was no stay, stood acquired by Award No 94/83-84. Therefore, by issuing the award in respect of the land in the said Khasra No 232, which was neither challenged and in respect of which the proceedings were also not stayed by this Court, no violation of any stay order can be said to have been committed by the respondent. Significantly, the petitioner has also not challenged, even in the amended petition, the Award No. 94/83-84 which has therefore become final. The challenge to the acquisition in respect of the land in Khasra No. 232 on this ground must accordingly fail.

11. At this stage it may also be noted that Khasra No. 244 which was part of the notification issued u/s 4 of the Act on 14.7.1980, and in respect of which a stay was granted by this Court on 20.5.1981, was not included in the notification u/s 6 of the Act that was issued on 14.6.1990. In respect of the land in Khasra No. 244, the counter affidavit filed by the Respondent No. 2/DDA indicates that no final award has yet been made. Therefore, there is no violation of the stay order as regards the land in Khasra No. 244 is concerned. Thus in respect of the lands in Khasra Nos. 232 and 234, is there no illegality attaching to the manner in

which the respondent has proceeded.

12. As regards the lands in the other Khasra Nos., as already noticed, only those Khasra Nos. which were not included in the notification dated 29.4.1981 u/s 6 of the Act, have now been included in the notification dated 22.6.1990. In other words Khasra No. 413/237 and 414/237, 425/239 and 426/239 stand included in the notification dated 22.6.1990. Therefore, in respect of these Khasra Nos again, the petitioner cannot have any grievance as regards any violation of the stay order of this Court, which only pertained to the earlier notifications and not the later ones.

13. The subsequent notification dated 23.6.1989 issued u/s 4 of the Act, followed by the declaration u/s 6 on 22.6.1990 pertained to the lands in Khasra Nos. 233, 234, 236, 238, 413/237, 414/237, 425/239 and 426/239 which were required for the public purpose for the "Channelisation of Yamuna River". This was followed by an Award No. 17/92-93. Since these were not challenged/by the petitioner prior to 24.9.2001, when CM No 11767/2001 was filed seeking to amend the writ petition, there was no legal bar on the respondent proceeding with the aforementioned land acquisition proceedings culminating in the Award No. 17/92-93. This issue is accordingly answered against the petitioner by holding that there has been no violation of any stay order by the respondent.

Re: Issue (b)

14. The issue that arises next for determination concerns the validity of the subsequent notification and Award. As we see it, there are two difficulties in the petitioner's way. The first is the question of laches. The challenge to the subsequent notification dated 22.6.1990 and Award No. 17/92-92 has been made only in 24.9.2001, more than decade later. Apart from pleading complete ignorance of these subsequent proceedings, there is no valid explanation for the delay. Recently, a Division Bench of this Court in a decision dated 24.5.2006 in LPA No. (Santosh Kumar v. Union of India), after referring to the judgments of the Hon'ble Supreme Court in State of Rajasthan and Others Vs. D.R. Laxmi and Others, , Market Committee, Hodal Vs. Krishan Murari and Others, , and The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , held that "the land owners cannot allow the proceedings to go on, accepting by their silence, the validity of the notifications under Sections 4 and 6 of the Act and then turn around to challenge the same after the Collector has made his award or dispossessed the owners on the basis thereof." In view of the settled position in law, the challenge in this writ petition to the subsequent notification dated 22.6.1990 and the Award No. 17/92-93 must fail on the ground of laches.

15. The second difficulty is a practical one. Khasra Nos. 233, 234, 236 and 238 are common to both the notification dated 22.4.1981 and the notification dated 22.6.1990, both of which are declarations u/s 6 of the Act. Although, as already noticed, the stay order dated 20.5.1981 remained operative only in respect of the earlier notifications dated 14.7.1980 and 29.4.1981, the Section 4

notification dated 23.6.1989 exempted the lands already notified u/s 4 and Section 6 of the Act from the purview of the acquisition. The challenge to the legality of the subsequent notification on this ground by petitioner is, therefore, not wholly unfounded. However, in respect of these Khasra Nos. even if the subsequent acquisition proceedings were held to be bad on this ground, it would not really help the petitioner since it would have to in any event succeed in its challenge to the earlier notifications dated 14.7.1980 and 29.4.1981 which still exist. If the said earlier notifications are held to be valid by this Court, it would make no difference if the subsequent proceedings in respect of the lands in these very Khasra Nos. stood vitiated for being contrary to the stipulation in the notification dated 23.6.1989 issued u/s 4 of the Act. Therefore, the principal issue that arises is the validity of the earlier notifications which is taken up immediately hereafter. Issue (b) is answered accordingly.

Re: Issue (c)

16. In support of his submission that the acquisition of the lands in question pursuant to the notifications dated 14.7.1980 and 29.4.1981 was bad in law, the learned Counsel for the petitioner submitted that it was a minority educational institution and that in terms of the judgment of the Constitution Bench of the Hon"ble Supreme Court in *The Society of St. Joseph's College Vs. Union of India and Others*, , the lands of such an institution ought to be kept outside the purview of acquisition proceedings under the Act.

17. In order to examine these submissions, we may first notice the objects of the petitioner Trust which read as under:

1. To publish Islamic literature in as many languages as possible for the benefit of mankind and to establish and maintain a publishing house or houses throughout India for this purpose.
2. To promote and provide for the Islamic and moral education of Muslims in general and their rising generation in particular.
3. To help and give scholarships to such Muslim students who are good students but cannot continue their suitable education.
4. To help and assist such persons who engage themselves in research of Islamic philosophy, culture, law, tradition, history and such allied subjects.
5. To help in establishing libraries and study circles, printing and publishing such books and pamphlets which educate women, minors and adults in Islam and moral education.
6. To help such institutions and individuals who promote Islamic education and Muslim Culture.
7. To help such schools, maktabas, and colleges who are teaching or teach Quran and Islam and such other persons and institutions which serve the cause of Islam in the secular State of India.

8. To arrange and provide printing press or presses for the aforesaid purposes.
9. To provide, manage or administer such wakf and other movable or immovable properties as may be entrusted to the care of the Trust.
10. To organise social services, for social assistance and welfare activities as well as to organise relief work for victims of natural calamities and social unrest.
11. To cooperate with organizations having similar object.

18. In our view, the above objects do not indicate that the petitioner is itself a minority educational institution. What it does reveal is that the petitioner is a Trust that is supportive of educational institutions and their activities. The decision in Society of St. Joseph's College clearly contemplates only the acquisition of lands of minority educational institutions. The said decision therefore cannot help the petitioner here. Secondly, it requires to be noticed that the prayer of Society of St. Joseph's College before the Hon''ble Supreme Court was for a declaration that the Act does not apply to the acquisition of the property of the petitioner, a minority educational institution and further that the notifications under Sections 4 and 6 of the Act be quashed. However, that relief was not granted to the petitioner there. Instead, the Hon''ble Supreme Court, confined the scope of the petition to the question of the special status of minority educational institutions guaranteed under Article 30 of the Constitution of India and its impact on computing the quantum of compensation. This is evident from para 6 of the Society of St. Joseph's College which reads as under:

6. It not is necessary that a statute should be enacted exclusively for the compulsory acquisition of the property of minority educational institutions, but it is necessary that in a law that provides, in general, for the compulsory acquisition of property, there should be enacted, by amendment thereof, a provision that relates specifically to the acquisition of the property of minority educational institutions. That provision must ensure that the amount payable for such acquisition will not in any manner impair the right conferred upon the minorities by Article 30.

Thus, the Hon''ble Supreme Court felt that the law must acknowledge the special status of such institutions and that "necessarily, such law must require the taking into account of factors that do not come into play in the determination of amounts payable in relation to the acquisition of the properties of others and are, therefore, not set out in the general acquisition statutes." The Hon''ble Supreme Court ultimately directed as follows:

9. We think, however, that it is appropriate that Parliament and the State Legislatures should have time up to 31.5.2002 to make such laws, if they so choose, and that pending and uncompleted acquisitions of the properties of minority educational institutions should lapse only if at the end of such time the statutes under which the acquisitions have been commenced have not been duly amended. On the other hand, if they are duly amended, the amounts payable for

such acquisitions shall be determined thereunder.

We, therefore, hold that the decision in Society of St. Joseph's College does not support the plea of the petitioner that the lands of the petitioner should be completely excluded from the purview of land acquisition proceedings. Accordingly, the challenge to the acquisition proceedings on this ground must fail.

19. The learned Counsel for the respondent has also drawn our attention to the fact that the lands in question were purchased by the petitioner through various sale deeds between 1.3.1980 and 31.5.1980, a few months prior to the notification dated 14.7.1980 u/s 4 of the Act. In the sale deeds, copies of some, of which are annexed to the writ petition, the lands are described as agricultural lands. In some of the sale deeds there is an express condition that the buyer use the land for any other purpose. For instance, Clause 4 of the sale deed dated 31.3.1980 reads as under:

4. That the land has not been notified u/s 4 or 6 of the Land Acquisition Act, 1894, either for the planned development of Delhi or for any other purposes and is situated in the Green Belt outside the urbanised limits of 1981. Delhi Land Reforms Act, 1954 is not applicable on the said land. That there is no poultry farm, warehouse on the said land. The said land is agricultural land and is being used only for agricultural purpose. The Vendee will use the said land for agricultural purposes. The said land was also agricultural land before the commencement of the Urban Land Ceiling and Regulations Act, 1976, and entered in the Revenue Records as agricultural land.

20. Having expressly covenanted that the lands will be used only for agricultural purposes, the petitioner cannot resist the acquisition of the lands for the public purpose of the channelisation of the Yamuna river on the ground that it proposes to use the lands for religious or community purpose. On the contrary, it appears that the petitioner has permitted the lands to be used for purposes other than agricultural purpose. In the amended writ petition, the petitioner states as under:

Besides, even though mosque, schools, residential houses, offices existed on the land, in the Award it is stated that no structures exist. It may also be stated that the lands of the petitioner forms part of Abul Fazi Enclave, a colony built before 1993, which is at Sl. No. 1 of the colonies to be regularized, and lastly the Award is undated and was perhaps made after the expiry of two years from 22.6.1990, the date of Notification u/s 6 of the Act and is thus invalid.

21. The above admission by the petitioner leaves us in no doubt that the petitioner has permitted illegal and unauthorized constructions to come up on the lands in question despite the sale deeds clearly specifying that the petitioner would use the land only for agricultural purpose. This by itself should negative the challenge of the petitioner to the acquisition of its lands. A further reason is that in Baldev Singh Dhillon and Others Vs. Union of India (UOI) and Others, this Court has upheld the very same Section 4 notification and the ensuing acquisition proceedings for the public purpose of the channelization of the

Yamuna river. Since the very same notification, that is under challenge here, has been upheld in the said judgment, there is no merit in the objection of the petitioner to the acquisition of the lands in question. Issue (c) is accordingly answered against the petitioner.

Re: Issue (d)

22. As regards the plea of the learned Counsel for the petitioner that a direction should be issued to the respondent to consider and decide the petitioner's application u/s 48 of the Act requesting for de-notification of the lands in question, we only need observe that as and when such an application is made by the petitioner, the respondent will consider the same on merits in accordance with law.

23. Accordingly, we find no merit in the petition and it is dismissed as such. The interim orders stand vacated.