
(2007) 03 DEL CK 0282
In the Delhi High Court
Case No : Writ Petition (C) 5825 of 2002

Jagdish Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 22A
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2007) 03 DEL CK 0282

Hon'ble Judges : Vikramajit Sen, J; J.P. Singh, J

Bench : Division Bench

Advocate : Vijay Choudhary, for the Appellant; Sanjay Poddar for LAC and Ajay Verma, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—In this petition under Article 226 of the Constitution of India, it is prayed as under:

A direction in the nature of Certiorari be issued for quashing Notification No. F.9 (20) 78-LandB(I) dated 30.6.1988 issued u/s 4 of the Land Acquisition Act and further to quash Notification No. F.9/44/ 2002/LandB/LA/6840 dated 8.7.2002 issued u/s 6 of the said Act and further to quash the notices issued u/s 9 of the said Act with respect to the land comprised in Khasra No. 1151/3 min. (new) 1665 (old) situated within the Lal Dora of village Mehrauli, New Delhi and to pass such other order that is deemed fit and proper in the facts and circumstances of the case.

2. We have heard Mr. Vijay Choudhary, learned Counsel for the petitioner and Mr. Sanjay Poddar, learned Counsel for the LAC as also Mr. Ajay Verma, learned Counsel for the DDA.

3. Perusal of the file reveals that on 7.10.2002 the matter came up for hearing

for the first time and it appears that at the outset it was prayed that same notification/declaration were in question in the then pending CWP No. 4694/2002 and other petitions. Accordingly Rule was issued and the present Petition was directed to be heard along with the said CWP No. 4694/2002 which was the lead Petition in a batch of Petitions and status quo was granted in regard to the possession. It is not clear from the order sheets as to how this order was violated and how this Petition was got separated from CWP No. 4694/2002 and the batch of petitions raising same questions. We may say that after getting a status quo order by having the petition tagged with a pending matter, it should not have been segregated.

4. We may mention here that the said CWP No. 4694/2002 titled Suleiman and Ors. v. UOI and Ors. and the batch of Petitions were dismissed with costs vide judgment dated 25.8.2005. Same questions are being raised again by the learned Counsel for the petitioner. In the said judgment titled Suleiman and Ors. v. UOI and Ors. the following two questions were formulated:

(i) Can a fresh declaration u/s 6 of the Land Acquisition Act 1894 be issued by the competent authority after an earlier declaration made under the said provision is either found or declared to be legally invalid?

(ii) If a second declaration u/s 6 of the Act is not legally barred, can the period during which a competent Court has stayed further action or proceedings in pursuance of the preliminary notification be excluded while computing the period referred to in the first proviso to Section 6 ?

5. After thoroughly examining all the facts and circumstances and relying upon several Supreme Court judgments the said questions were decided in favor of the respondents and against the petitioners. We have gone through the said judgment and fully agree with the reasoning given therein. The said judgment covers the present petition.

6. Learned Counsel for the petitioner has however tried to re- agitate that no public purpose existed for acquisition of the land and that the area required for Anjuman Sair-e-Gul Faroshan was 4000 sq. yds. but the Notification was issued for acquiring 72 bighas of land.

7. Anjuman Sair-e-Gul Faroshan organizes "PHOOL WALON KI SAIR" which is an annual festival lasting about a week. The basic purpose of the said function-cum-festival is to bring about peace, harmony, brotherhood and amity among the people of different sects and religions and, in our opinion, is a move keeping in view the lauded principle of Unity in Diversity which is enshrined in the Constitution of India.

8. Keeping in view the population of Delhi and bordering areas a large number of people collect to celebrate the event and such festivals with passage of time attain National and even International importance. These events which are secular in nature should be encouraged in the larger interest of the citizens of

India. The festival may be lasting only about a week but to manage such an affair a large area has to be preserved throughout the year otherwise it becomes difficult to prevent encroachments and all types of trespassers. No residential house can be permitted in such areas. We may take note of lands kept vacant for Ram Leela Grounds, Grounds in front of Red Fort or in front of Temples, Mosques, Churches, Gurudwaras and Memorials. These lands are kept clear, leaving historical structures that fall in that area, so that the functions could be held peacefully and stampedes could be averted. Needless to say and repeat that a public purpose means a purpose of general interest as opposed to particular interest of an individual. When tested on that established touch stone, in our view, the contentions of the learned Counsel for the petitioner has no force.

9. Regarding the public purpose and the extent of land we can refer to the judgment titled *Pratibha Nema and Others Vs. State of M.P. and Others*, . The Hon"ble Supreme Court of India observed as under:

7. The concept of public purpose (sans inclusive definition) was succinctly set out by Batchelor, J. in a vintage decision of the Bombay High court. In *Hamabai Framjee Petit v. Secy of State for India* the Privy Council quoted with approval the following passage from the judgment of Batchelor, J.:

General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase "public purpose" in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

40. ...It is primarily within the domain of the State Government to decide how much extent of land has to be acquired keeping in view the present and future needs....

10. Learned Counsel for the petitioner then emphasized that vide an order/ resolution dated 19.7.2005 Development Area No. 174 has to be de-notified by the DDA, Therefore it implies that the land is no more required for the projected purpose. As against this learned Counsel for the DDA has submitted that the said plea is misconceived firstly because the resolution is not notified and secondly because once an area is declared to be a Development area, no development can be carried out without permission of the DDA because the DDA then controls the area but the resolution by the DDA has no bearing on the land acquisition process. The result of the said resolution will be that the DDA will not be responsible for supervision of building activities and enforcement of Municipal Bye laws which shall be undertaken by the MCD. Our attention has been drawn to the counter affidavit filed on behalf of the DDA where this contention has been explained as under:

The de-notification of these areas would not mean that they will remain unattended. The MCD will immediately take over control of the building activities

as per the building bye-laws, and provision of Municipal Corporation Act will apply to them. Further as stated earlier, the DDA can acquire and undertake development even in the areas which are de-notified u/s 22(A) of the DD Act. It would be worthwhile that DDA should concentrate on protection of its own land and on planned development of that rather than controlling the building activities in these areas?

e) It is submitted that the said decision has still not become final and is ineffective inasmuch as it has not been notified in the Gazette. Accordingly, there is no right vested on any person much less Petitioner based on the said Resolution. Moreover, there is no pleading w.r.t. the allegation relating to the Resolution.

11. More so, the survey report shows that the structure referred to by the petitioner comprises only a boundary wall and a "kotha" which is lying vacant. As is common knowledge such make shift structures are raised to retain possession. This situation gives lie to the contention of the petitioner that he is residing in the said property.

12. Considering all the facts and circumstances we find that the matter is covered by the judgment in CWP No. 4694/2002 titled Suleiman and Ors. v. UOI and Ors. decided on 25.8.2005 by the Division Bench of this Court. We, Therefore, find no merit in this petition and dismiss the same with Rs. 10,000/- (Rupees Ten Thousand) as costs.

13. Copy of the judgment in CWP No. 4694/2002 titled Suleiman and Ors. v. UOI and Ors. be placed on this file.