

(1969) 12 DEL CK 0012

In the Delhi High Court

Case No : Letter Patent Appeal No's. 44 and 45 of 1969

Krishan Kumar Chopra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-12-1969

Acts Referred:

Citation : (1970) ILR Delhi 45

Hon'ble Judges : V.D. Misra, J; Narain Andley, J

Bench : Division Bench

Advocate : S.N. Chopra, R.L. Roshan, B.B. Kishore and J.P. Gupta, for the Appellant;

Judgement

V.D. Misra, J.

(1) These Letters Patent Appeals are directed against the judgment of Tatachari J., dismissing two writ petitions, filed by the appellant and Shrimati Maya Devi Chopra. This judgment will govern both the appeals.

(2) Fact giving rise to the writ petitions may be briefly noted : Land comprising khasra No. 207 measuring two bighas and seven biswas, khasra No. 569/297 measuring four bighas ten bids was and khasra No. 570/297 measuring one bigha twelve biswas, situated in Kharera, District Delhi, was evacuee property. The Central Government issued a notification u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954. It was duly auctioned by the Managing Officer on 4-7-1960 and 22-2-1961. Krishna Kumar Chopra and Shrimati Maya Devi Chopra, who were displaced persons, succeeded in buying the land. Krishan Kumar Chopra bought the land comprising khasra Nos. 207 and 569/297 while Maya Devi Chopra bought land comprising khasra No. 570/297. They applied for the adjustment of the sale-price against the compensation payable to them and their associates against the verified claims. Both of them were put in possession of the land on 12-4-1961 pending finalisation of the necessary sale-certificates.

(3) The Chief Commissioner, Delhi, had, on 13-11-1959, issued a Notification No. F. 15 (III)59-LSG, u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") in respect of land measuring 34,070 acres in and around Delhi, marked and described in Annexures to the Notification, since it was required by the Government at public expense for a public purpose, namely, planned development of Delhi. This Notification had specifically excluded evacuee lands. The result was that the land in question, though situated within the aforesaid extent of 34,070 acres, was outside the scope of this Notification. The Managing Officer, at the time of issuing the notice of auction in respect of this land (Annexure A-I) stated therein that the same was out of the purview of the aforesaid Notification dated 13/11/1959.

(4) After taking possession of the Land, the appellants aver that they had developed it for the purpose of building houses and had submitted a lay-out plan to the Municipal Corporation of Delhi on 29/6/1961. Pending the necessary sanction, they allege to have built boundary walls on this land.

(5) On 1/7/1961, the Chief Commissioner of Delhi, published Notification No. 15 (84)/57-LSG (i) and Notification No. F. 15 (84)/57-LSG (ii) dated 1/7/1961 under sections 4 and 6 of the Act respectively, in respect of land, including the land in dispute. These are annexure "B" and "C" respectively. Annexure "B" stated that the land was likely to be required to be taken at the public expense for a public purpose, namely, for the planned development of Delhi. It further stated :

(6) The Chief Commissioner being of opinion that provision of sub-section (1) of section 17 of the said Act are applicable to this land, is further pleased under subsection (4) of the said section to direct that the provision of section 5-A shall not apply."

(7) Annexure "C" was the declaration made under the provisions of section 6 of the Act declaring that the land in question was required for a public purpose, namely, for the planned development of Delhi. It also directed the Collector, Delhi, under provisions of section 7 of the Act, to take order for the possession of the said land. Another Notification No. F. 15 (8-A)/57LSG (iii) (Annexure "D") dated 1/7/1961, u/s 17(1) of the Act directing the land Acquisition Collector, Delhi, to take possession of the land in question on the expiration of 15 days from the publication of the notice under sub-section (1) of section 9 of the Act, was also published on 24/7/1961. Notice u/s 9(1) (Annexure "E") dated 24/7/1961 was also issued to the appellants by the Land Acquisition Collector calling upon them to state the nature of their interest in the land and the amount and particulars of their claim to compensation for the same and their objections, if any.

(8) On 10/8/1961, the appellants filed two writ petitions Nos. 333-D and 335-D of 1961 praying that the aforesaid Notifications be quashed.

(9) The respondents filed a counter-affidavit of Shri K. L. Rathee, Housing Commissioner and Secretary (LSG), Delhi Administration, in opposition to the

writ petitions, on 11/4/1964. Krishan Kumar Chopra appellant, filed a rejoinder affidavit on 8/9/1964. Shri K. L. Rathee, Housing Commissioner, was permitted to file a counter-affidavit dated 19/4/1965. The respondents were permitted to file a supplementary counter affidavit of Shri D. P. Bahuguna, Deputy Secretary, Land and Building Department, Delhi Administration, Delhi, dated 29/1/1969 and the appellant Krishan Kumar was also allowed to file another affidavit dated 31/1/1969.

(10) The first contention of the learned counsel for the appellant is that the requisite declaration to be made u/s 6(1) of the Act that the land is required for a public purpose has to follow the publication of notice u/s 4(1) of the Act and in this case while the declaration u/s 6(1) has been made on the same date on which the Notification u/s 4(1) of the Act was made, i.e. 17/1/1961. The publication of the Notification u/s 4(1) was made subsequently on 27/7/1961 and, Therefore, the declaration u/s 6(1) is illegal and invalid. He further contends that the direction given u/s 17(4) of the Act dispensing with section 5-A of the Act could only be made after the publication of the Notification u/s 4(1) of the Act. The learned counsel for the respondents has raised an objection that the above contention of the appellants was neither raised in the petition nor was it argued before the learned single Judge and so the appellants are debarred from raising the same. Reliance has been placed on *Synthetics and Chemicals Ltd. v. Rani Asrey Lal and others*(1) where their Lordships declined to allow a ground which was neither taken up in the writ petition nor was argued before the learned single Judge and was sought to be agitated for the first time in special appeal. We find that this contention was neither raised in the petition nor was it put forward before the learned single Judge. We, Therefore, decline to entertain this contention.

(11) The second contention raised by the appellants is that there was no urgency as contemplated u/s 17(1). According to the learned counsel, the appropriate Government must find that there is an urgency and only then they get the jurisdiction to act under the provision of Section 17. The urgency contemplated by this Section has to be of such a nature that it brooks no delay and it may be necessary to take immediate possession of the lands acquired. This in itself will depend on the object for which the land is being acquired. Section 5-A gives thirty days' time to the persons interested in the land sought to be acquired, for raising objections after it has been notified u/s 4(1). Section 9(2) of the Act provides for a minimum period of 15 days, after the date of the publication of the notice, to be given to the persons interested in the land calling upon them to appear before the Collector and state their respective interests etc. According to the learned counsel for the appellants, the respondents have placed no material on record to show that there was such urgency that these valuable rights had to be curtailed.

(12) The learned counsel for the respondents urged that the matter is not open to judicial review. He relied on *Keshappa Shivappa v. Chief Secretary to the*

Government of Mysore and others(2)

(13) N. A. Natesa Asari v. State of Madras(3) and Raja Anand Brunt Shah v. The State of Uttar Pradesh and others(4) in support of the contentions. The first two authorities lay down that whenever the Government is satisfied that there is urgency as contemplated by section 17(1) they are entitled to pass orders u/s 17(4) suspending the application of section 5A and that the existence or non-existence of urgency is a matter solely for the determination of the Government and it is not subject to judicial review. In Rajanand case, it was observed as under:

"BUT even though the power of the State Government has been formulated under S. 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra virus in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala-fied".

(14) In view of the above observations of the Supreme Court it cannot be held that the matter is not justiciable.

(15) In sub-paragraphs (h) and (i) of paragraph 8 of the petition, questions challenging the existence of urgency have been raised by alleging that there was no compelling necessity for acquiring the land and that the directions issued u/s 17(4) of the Act dispensing with section 5A were arbitrary. The respondents put in the affidavit of Shri K. L. Rathee, Housing Commissioner and Secretary (LSG), Delhi wherein, after describing the development of Delhi and the consequent housing shortage resulting in speculation of land and exorbitant rise in rents, it was stated that it was deemed necessary to freeze the land so that the people could purchase the same for their bona-fide needs. However, this affidavit did not in any manner show the urgency which existed at the time of issuing the relevant Notifications. During the proceedings before the learned Single Judge, the respondents were given another opportunity and they filed the affidavit of Shri D.P. Bahuguna, Deputy Secretary, Land and Building Department, Delhi Administration dated 29/1/1969. This only showed that long after the issue of the relevant Notifications, Safdarjang Residential Scheme had been prepared and that the land in question was needed for a Community Centre, Local Shopping Centre and Telephone Exchange and for the purpose of constructing roads. Admittedly, this was not the situation at the time the Notifications were issued. What we are concerned with is the urgency at the time the Notifications were issued, and not the subsequent need or urgency in respect of the land in question. The urgency at the time of the issue of the Notification should be such that the object of the acquisition will be defeated if the provisions of Section 5A are not suspended. It is not denied that in 1959 when the previous notification was issued for acquiring the land for the purpose of planned development of Delhi no such step of dispensing with the provisions of section 5A was taken. The learned counsel for the respondents has urged that since the appellants were in a hurry to construct buildings on the land in question in respect of which the lay-

out plans had been submitted to the Municipal Corporation of Delhi, it was "urgent" to take possession of the land so that new complications, after buildings are constructed may not arise. He has also urged that though the period for raising objections u/s 5A is of 30 days but in practice it may take even years before the objections are decided and so there was urgency. We find no force in either of these contentions. The moment a Notification u/s 4(1) is issued persons may buy, sell or erect buildings on the notified land at their own risk. The alleged hurry of the appellants to construct buildings on the land in dispute, in our opinion, does not make out a case of urgency as required u/s 17(1) of the Act. The other contention, if accepted, would mean that every time the Government wants to acquire land it may do away with section 5A because it may turn out to be a lengthy procedure.

(16) We also find that the draft Notifications was put up for consideration on 3/6/1959. It was given a final shape and issued on 1st July, 1961 and published on 27th July, 1961. The time taken from the date of putting up the draft notification to its approval and publication shows by itself that there was no urgency as has now been sought to be shown by the respondents. The learned Single Judge in our opinion, was wrong in holding that there was an urgency for the acquisition of the land in question.

(17) The next contention of the learned counsel for the appellants. is that the land in question is neither waste nor arable but is land meant for building situate within the Municipal limits and so the provisions of section 17 will not apply. The parties produced the "khasra girdawaris" to show the nature of the land. According to Exhibit Rd the land in question consisted of mumkin kabristan" and vacant land which had become "banjar". This is the situation described in the years 1959-60. Previous to that, according to the last Jamabandi (the year is not shown) the land consisted of "ghair mumkin kabristan", "rosli" (fed by rain water) and "chahi" (fed by well). Both the parties have tried to establish the nature of the land with the help of "khasra girdawaris". The appellants put in Exhibit Pa, certified copy of "khasra girdawari" relating to the period up to 30/4/1963. This shows that on the portion of that land which was described as "khali" walls had come into existence. It may here be mentioned that these documents do not throw any light on the nature of the land at the date of the Notifications i.e. 1/7/1961. The appellants had bought this land in auction in April, 1961 and the relevant khasra girdawaris are either before that date or after the date of the Notifications. The learned counsel for the appellants referred to .Raja Anand"s case where it was observed as under:

"IN the context of S. 17(1) of the Act the expression must be construed to mean "lands which are mainly used for ploughing and for raising crops" and, Therefore, the land acquired in this case is not arable land. Similarly, the expression "waste land" also will not apply to "forest land". According to the Oxford Dictionary the expression "waste" is defined as follows : "Waste-(from Latin, vastus-waste, desert, unoccupied); Uncultivated, incapable of cultivation or habitation;

producing little or no vegetation; barren, desert." The expression "waste land" as contrasted to "arable land" would, Therefore, mean "land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon."

(18) The respondents had all along been describing the land in question as waste and arable and the two expressions are in fact contradictory of one another. Either land is arable or it is waste but it can never be both. In *Islmarlal Girdhari Lal Joshi etc. v. State of Gujarat* and another (5) it was observed :

"IT is thus clear that by arable land is meant not only capable of cultivation but also actually cultivated. It is not arable not because it is cultivated but because it is something else such as waste, pasture, ancient meadow etc. Indeed, the fact that the land is actually cultivated demonstrates its nature as arable-land."

(19) The learned counsel for the appellants has drawn our attention to an unreported judgment of the State of Uttar Pradesh and another v. *Kunwar Ram Pratap Narain Singh and others*(6) decided on August 11, 1969 where it was held :

"THE land in dispute is situated within the limits of the municipality of Padrauna in the District of Deoria. Its area is about 800 sq. yds. There is a well in it and the case of the Respondent 1s that there was a boundary wall existing on June 11, 1962. It is also alleged that there was a number of shops on the disputed land on June 11, 1962. It is contended on behalf of the appellant that the shops were constructed sometime after June 11, 1962. Several affidavits were filed on behalf of the appellant in support of his allegation. There is however, documentary evidence on behalf of the respondent that an application was made to the Municipal Board for sanctioning the new construction. The application was made in December, 1961. Affidavits of certain labourers were also filed that they were engaged in the construction of shops. At any rate, there appears to have existed a compound wall and a well in the disputed land on June 11, 1962. We are, Therefore, unable to accept the argument of the appellant that the land was waste land on June 11, 1962, when the Notification under s. 17(4) of the Act was issued. In *Raja Anand Brahama Shah v. State of Uttar Pradesh* (1) it was pointed out by this Court that the expression "arable land" must be construed to mean "lands which are mainly used for ploughing and for raising crops" and the expression "waste land" would mean "land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon."

(20) The learned Single Judge, while accepting the affidavits of the appellants that they had constructed a boundary wall on the land in question and that it was demarcated for each residential plot and road had been constructed, observed that it was not shown as to when these were in fact constructed and also held that it could not be said that these were done before 1/7/1961, the date on which the Notifications were issued. It was not disputed that on 20/6/1961 the appellants had submitted the lay out plans to the Delhi Municipal Corporation for

its sanction and the plans showed that the land in question was to be used for residential plots and- was to be divided into various building plots with suitable provision for roads and drains etc. It was also not disputed that the land in question is adjacent to Hauz Khas which is a fully developed residential colony. It is also not disputed that the land in question lies within the Municipal limits. In re Navnitlal Ranchodlal v. State of Bombay and another(7) it was held :

"AN arable land is a land which is fit for tillage and the expression is usually to mean lands which are ploughed for raising ordinary annual crops such as rice, jowar, etc. The land which is a building site within the Municipal limits and situated in the developed part of the City cannot be regard an arable land. The expression "waste land" would apply to lands which are desolate, deserted and uninhabited and uncultivated as a result of natural barrenness or rendered unfit for cultivation by reason of natural ravages etc. The expression "waste land" as contrasted with "arable land" would mean land which is unfit for cultivation by being marshy, stony, full of pits, ditches etc. and so far as lands in the Urban area are concerned, the expression "waste land" may possibly be used with reference to pieces of land which are desolate, abandoned and not fit ordinarily for any use as building sites etc. building site which is quite suitable to be built upon cannot be regarded as a waste land simply because it is not put to any present use. It is its unfitness for use and not the mere fact that it is not put to any present use that must determine whether the land is waste or not."

(21) The land in question was auctioned to the appellants admittedly for rehabilitating them and the conduct of the appellants in submitting the lay-out plans to the Delhi Municipal Corporation, shows that the land was fit to be used for the purpose of buildings. Even now the respondents wish to use it for purposes of buildings. Exhibits Ra and Rb produced by the respondents does not show that there was an application of mind by the respondents as regards the nature of the land in question. Annexure Ra is the forwarding letter from the Land Acquisition Collector to the Deputy Housing Commissioner, Delhi, along with the draft Notification and in this letter it is said :

"THIS area is waste and arable and Notifications under sections 4, 6 and 17 of the Land Acquisition Act, 1894, can be issued simultaneously."

(22) The khasra girdwari, as already stated, does not show the nature of the land. No other material has been placed on record to show that the concerned authority had applied their mind before coming to these conclusions.

(23) The learned counsel for the appellants has also contended that the land in question measuring 8 bighas is comparatively a small piece of land which shows that this land could not have been meant for agriculture. In view of the circumstances mentioned above, we are of the opinion that the land in question cannot be described as waste or arable.

(24) The next contention raised by the learned counsel for the appellants is that there was no public purpose for issuing the Notification u/s 4. According to him

"planned development of Delhi" is not a public purpose in as much as there must be a plan in existence for the development of Delhi before it can be said that the Government wants to acquire land for "planned development." The learned counsel for the respondents contended that a declaration made u/s 6(3) of the Act makes it conclusive and bars the court from questioning declared purpose. He has referred to *Shrimati Somawanti and others v. State of Punjab*(8). In this case it was held "that declaration u/s 6 that a particular land is needed for a public purpose or for Company is not to be made by the .Government arbitrarily but on the basis of the material placed before it by the Collector..... Sub-section (3) of Section 6 of the Act goes further and says that such declaration shall be conclusive evidence that the land is needed for a public purpose or for Company" and the conclusiveness or the finality attached to the declaration of Government is not only as regards the fact that the land is needed but also as regards the question that the purpose for which the land is acquired is in fact a public purpose. However, it was held that this is subject to an exception and it was observed :

"THOUGH we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act and, Therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of S. 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable such as S. 6(3) notwithstanding."

(25) In view of the decision of the Supreme Court, the contention of the learned counsel for respondent that a declaration under S. 6(3) bars the court from questioning the declared purpose cannot be accepted. In *Somawanti's* case the Supreme Court had given the meaning of the expression "public purpose" and it was observed:

"THE inclusive definition of "public purpose" in S. 2(f). Land Acquisition Act not being compendious is not useful in ascertaining the ambit of that expression". Broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community as opposed to the particular interest of individuals, is directly and vitally concerned."

(26) It was also observed that public purpose is bound to vary with the times and the prevailing conditions in a given locality and, Therefore, it would not be a practical proposition even to attempt a comprehensive definition of it.

(27) Reliance was placed on *Hamabai Framjee Petit v. Secretary of State for India*(9) where it was held that prima-facie the Government are good Judges though not absolute Judges of the question whether the purpose in the case is one in which the general interest of the community is concerned. It was thus contended that the "planned development" of Delhi because of the conditions prevailing in 1960, was in the general interest of the community and it was necessary for the Government to acquire land for that purpose. Reliance has also been placed on an unreported decision of a Division Bench of the Punjab High Court, Circuit Bench of Delhi, in *Pandit Leela Ram and others v. Union of India*(10) decided on 8th May, 1964, where it was held that the planned development of Delhi was a public purpose within the meaning of the Act. We are in respectful agreement with that decision on this aspect.

(28) In *re : State of Bihar v. Sir Kameshwar Singh*, it was observed that whatever further the general interest of the community as opposed to the particular interest of the individual must be regarded as a public purpose, and that the phrase "public purpose" has to be construed according to the spirit of the times. The proper approach is to take the scheme as a whole and then examine whether the entire scheme of acquisition is for a public purpose.

(29) We are, Therefore, of the opinion that it cannot be said that the "planned development" of Delhi was not a public purpose in view of the rapidly increasing population of Delhi and the consequent haphazard development leading to various social and moral problems.

(30) The last contention of the learned counsel for the appellants is that the Delhi Development Act No. Lxi of 1957 provides for land acquisition. Section 15 of this Act empowers the Central Government to acquire land for purposes of development or for any other purpose under this Act and after taking its possession transfer the same to the Delhi Development Authority. He further contends that Delhi Development Act is a special Act will over-ride the Land Acquisition Act which is a general Act. He also contends that for the purpose of planned development of Delhi acquisition could only be had under this Act and not under the Land Acquisition Act, 1894 This not having been done, the acquisition of the appellants land is illegal and void. In this connection, reliance is placed on *Damji Valji Shah and another v. Life Insurance Corporation of India*(12) where it was held that the provisions of Life Insurance Act over-ride the general Act.

(31) A similar question had been raised before a Full Bench of this High Court in *Municipal Corporation of Delhi and others v. Har Narain and others*(13), decided on 30th May, 1969, with respect to the provisions of Prevention of Food Adulteration Act, 1954 and the Fruit Products Order, 1955. In this case, a sample of Ketchup was taken which was found to be below the standard prescribed under the Prevention of Food Adulteration Act. Since there was some difference between the Prevention of Food Adulteration Act and the Fruit Products Order, the argument was put forward that the Fruit Products Order being a later law and

being a special one will over-ride the provisions of the general Act. So, the prosecution could be only under the Fruit Products Order which carried lighter punishment and not under the Prevention of Food Adulteration Act which carried heavier punishment. This contention was repelled by holding :

"THE answer to this must depend on whether the two statutes can exist side by side. If the argument of the learned counsel were correct and they cannot exist side by side then the doctrine of repeal will come in, or one Act may have to be struck down as discriminatory which point forms subject matter of the discussion raised by the other contentions of the learned counsel. For the purpose of this argument, it is enough to say that if both the Acts can exist, the prosecution under each Act must be governed by that Act."

(32) It was also observed :

"IT is a sound rule that if two statutes by any fair course of reason are capable of being reconciled that must be done and both statutes allowed to stand. The legislature is presumed to have passed laws with deliberation and full knowledge of the existing ones on the subject."

(33) Applying these tests, we find that the provisions of Land Acquisition Act and those of the Delhi Development Act can co-exist and there is nothing to show that the Delhi Development Act over-rides in any manner the provisions of the Land Acquisition Act. It is true that in the Delhi Development Act, authority for acquisition has been given to the Central Government but under the General Clauses Act, the Central Government means the President. The Union territories are also being administered by the "President acting, to such an extent, as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify" (Article 239(1) of the constitution). There is also no difference in respect to the compensation to be paid for the land acquired under the two Acts.

(34) In these circumstances, we hold that the land of the appellants could be validly acquired under the Land Acquisition Act.

(35) The result, Therefore, is that we accept this appeal, set-aside the order of the learned Single Judge and quash the impugned Notifications as being illegal and invalid. The appellants will be entitled to their costs. The counsel fee is fixed at Rs. 350.00. one set in both the appeals.