

(2008) 08 DEL CK 0216
In the Delhi High Court
Case No : Writ Petition (C) 5569 of 2007

Lohia Developers (India) P. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 300A
Land Acquisition Act, 1894 — Section 10, 17, 17(1), 17(4), 4

Citation : (2008) 08 DEL CK 0216

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : V.P. Singh and Ritu Singh Maan, for the Appellant; Monia Garg, for R-1, Arun Birbal, for R-2, 4 and 5 and Guarav Sarin and Supriya Juneja for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—The Petitioner has filed present writ petition under Article 226 and 227 of the Constitution of India for quashing of acquisition Notification dated 22nd November, 2006 as well as the Declaration dated 12th June, 2007 issued under Sections 4 and 6 respectively of the Land Acquisition Act, 1894. The Petitioner has further sought to restrain the Respondents from taking any action against the land situated in Khasra No. 80/2 admeasuring 3 bighas (3024 sq. yds.) situated in Village Khichripur, Tehsil and District, Delhi, hereinafter referred to as the Petitioner's land.

2. Briefly stated the material facts of this case are that on 28th September, 1987 a prior notification had been issued u/s 4 of Land Acquisition Act acquiring the Petitioner's land. In the said Notification issued by the Lt. Governor of Delhi, Sub-sections (1) and (4) of Section 17 were also invoked and it was further directed that Section 5A of the Land Acquisition Act would not apply. However, a Division Bench of this Court by its judgment and order dated 10th March, 1989 in a Civil Writ No. 3356/1987 quashed the said Section 4 Notification on the ground that it

did not give any reason for invoking Section 17 and the Petitioner's right to file objections u/s 5A could not be interfered with in such a casual and cavalier manner.

3. Subsequently as a group housing society was illegally trying to encroach upon the Petitioner's land, the predecessor-in-interest of the Petitioner filed a suit before Civil Judge being Suit No. M-15/1990. The Civil Judge by its judgment and order dated 7th November, 1994 decreed the suit and restrained Mansingh Co-operative Housing Society from raising any construction on the Petitioner's land.

4. On 3rd December, 1996 the initial owner of the said land sold it to M/s. Electomack (India), a proprietorship firm owned by Dr. Vidya Sagar. In a suit filed on 16th September, 2005 by Dr. Vidya Sagar, the trial court granted a permanent injunction restraining DDA and Surangini Cooperative Group Housing Society from obstructing Petitioner's passage/rasta as it was the only approach for reaching the Petitioner's land. In the said suit it was admitted that the Petitioner's land was surrounded by land acquired by DDA and said passage/rasta belonged to DDA.

5. On 8th November, 2005 the present Petitioner purchased the said land vide a registered sale deed from M/s. Electomack (India) for a total consideration of Rs. 2,11,68,000/- (Rupees Two Crores Eleven Lakhs Sixty Eight Thousand only).

6. On 22nd November, 2006 the Government once again issued a notification u/s 4 of the Land Acquisition Act for acquiring the said land. The purpose for acquisition as mentioned in the Section 4 Notification was, 'for the Planned Development of Delhi'. Thereafter on 18th December, 2006 the Petitioner filed detailed objections to acquisition u/s 5A of the Land Acquisition Act.

7. However, on 12th June, 2007 a Declaration u/s 6 of the Land Acquisition Act was issued. Immediately on receiving notices of Section 9 and 10 of the Land Acquisition Act, the Petitioner filed the present writ petition. On 1st August, 2007, this Court was pleased to grant a status quo order in respect of the nature, title and possession of the Petitioner's Land.

8. Mr. V.P. Singh, learned Senior Advocate for the Petitioner contended that a citizen is entitled to know precisely why he is being deprived of his property. According to him, for this reason particularisation of public purpose is a must for a small acquisition. He further contends that the purpose for acquisition mentioned in the impugned Section 4 Notification was extremely vague as it conveyed nothing to the expropriated owner and consequently the Petitioner could not file any meaningful objections. He submitted that the compendious expression 'Planned Development of Delhi' is meaningless when used with reference to a single owner, owning a small piece of land. According to Mr. Singh such a public purpose can only be used with reference to acquisition of large track of land, as in such a case, it would be practically difficult to specify the particulars of public purpose for each and every small portion of land that was being sought to be acquired. Consequently, Mr. Singh contended that unspecified

public purpose in the impugned Section 4 Notification prevented the Petitioner from filing meaningful objections to the acquisition notification as the Petitioner was not able to show to the statutory authority that the said land was not suitable for the purpose it was being sought to be acquired for. In this connection Mr. V.P. Singh, learned Senior Counsel for Petitioner sought to primarily rely upon *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, . Relevant portion of the said judgment is reproduced hereinbelow:

In the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed.

9. Mr. Singh also relied upon the following judgments:

- a) *Munshi Singh and Others Vs. Union of India (UOI)*,
- b) *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*,
- c) *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, and
- d) *Golcha Theatres v. Lt. Governor of Delhi* reported in 1983 RLR 179.

10. Mr. Gaurav Sarin appearing for DDA submitted that there was no vagueness in the acquisition notification as the purpose of acquisition is apparent from the Master Plan of Delhi and Zonal Development Plan, inasmuch as the usage of Petitioner's land in the said plans have been specified for residential group housing scheme. He also placed on record a Zonal Development Plan of the relevant area to show that the Petitioner's land is a part of plot No. 26 designated for residential group housing scheme. Mr. Sarin referred to the judgment of the Apex Court in *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, to submit that vagueness in acquisition notification is a question of fact to be decided in each case on its own merits and not to be treated as a question of law. In the said judgment, the apex court has observed , "In *Aflatoon*, it was stated that whether the public purpose stated in a particular notification is vague or not is a question of fact to be decided in each case and cannot be treated as a question of law. It was also emphasised that where large extents are sought to be acquired for development or similar purposes, it would not be possible to specify how each owner's bit would be utilised and for what purpose. We are of the respectful opinion that the decision in *Munshi Singh* should be read subject to the explanation and the holding in *Aflatoon* which is a decision of a Constitution Bench."

11. Mr. Sarin further submitted that not only was the usage and purpose of acquisition apparent from the Master Plan and Zonal Plan but the same was also within the knowledge of the Petitioner as would be apparent from the two civil suits filed by the predecessor-in-interest of the Petitioner.

12. Mr. Sarin also contended that though the impugned acquisition notifications relate to a small portion of land, but they were actually sixth in a series of acquisition notifications issued with regard to Village Khichripur. He stated that in all earlier acquisition notifications the purpose of acquisition was planned development of Delhi. He also pointed out that one of the earlier acquisition notifications pertained to even a smaller portion of land than what is owned by the Petitioner.

13. Mr. Sarin handed over a copy of the site plan to show that the Petitioner's land sought to be acquired by the impugned notifications is surrounded on all sides by land acquired by DDA for development of a residential group housing scheme. He contended that if a small parcel of land inside the residential group housing scheme is today left out from the development, it would lead to arbitrariness in the development process and would be contrary to the stated public purpose.

14. Lastly Mr. Sarin submitted that the Petitioner was a mere speculator who had purchased the said land with the knowledge that it was likely to be acquired in accordance with the Master Plan and Zonal Development Plan. He further stated that the sale consideration mentioned in the Petitioner's sale deed was a highly inflated amount, just to get a higher compensation subsequently.

15. Mr. Arun Birbal, appearing for Government of NCT of Delhi, submitted that the Petitioner's primary argument that particularisation of public purpose was a must for small acquisition, does not apply to acquisitions post-preparation of Master Plan and Zonal Plan. Mr. Birbal referred at length to the judgments of the Apex Court in *Munshi Singh* and *Aflatoon* (referred to hereinabove) to contend that the Apex Court in these two cases was at pains to repeatedly point out that it was dealing with a situation where neither a Master Plan nor a Zonal Plan was in existence on the date of issuance of the acquisition notifications. In fact, in *Munshi Singh*'s case the Supreme Court itself stated that if on the date of acquisition a Master Plan had been available for inspection by the persons interested in filing the objections, then the position would have been entirely different. The relevant portion of *Munshi Singh*'s case is reproduced hereinbelow for ready reference:

...If the Master Plan which came to be sanctioned on September 4, 1962 had been available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved the position may have been different. In that situation the appellants could not claim that they were unable to file objections owing to the lack of any indication in the notification u/s 4 of the nature of development for which the area was being requisitioned...

16. Mr. Birbal also referred to the judgments of the Apex Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, *S. Gurdial Singh and others Vs. Ludhiana Improvement Trust*, and *Ajay Krishan Shinghal etc. v. Union of India*

and Ors. (referred to hereinabove) to contend that acquisition notification issued u/s 4 of the Land Acquisition Act cannot be quashed on the ground of vagueness.

17. In the alternative, Mr. Birbal submitted that the acquisition notifications, in any event, can be struck down only if a two-fold test is fulfilled namely that firstly the public purpose in Sections 4 and 6 notifications should be vague and secondly said vagueness should also cause prejudice and injustice to the Petitioners specially in filing their objections u/s 5A of the Land Acquisition Act. In this context, Mr. Birbal laid great emphasis on the judgment of the Apex Court in *Pratibha Nema and Others Vs. State of M.P. and Others*, and *P. Narayanappa and Another Vs. State of Karnataka and Others*,

18. Mr. Birbal also dealt at length with the judgment of a learned Single Judge of this Court in *Golcha Theatre (Supra)*. He firstly submitted that one of the primary factors that influenced the learned Single Judge to quash the acquisition notification was that the purpose of notification as disclosed to the Court in the said case, was contrary to the Zonal Development Plan that was approved subsequent to the acquisition notification. He referred to the observations of learned Single Judge in para 15 to contend that the acquisition notification had been declared invalid as it failed on the touchstone of the Zonal Development Plan. He, however, also submitted that observations of the learned Single Judge that a public purpose has to be particularised for a small acquisition is contrary to the dicta of the Supreme Court.

19. Mr. Arun Birbal reemphasised the argument raised by Mr. Sarin that the impugned acquisition notification was merely a follow up of the earlier five acquisition notifications under which large track of land had been acquired. He submitted that the present acquisition proceedings have to be viewed from the prospective that the impugned notifications were a part of an overall decision of the government to acquire large track of land in Village Khichripur to develop a residential group housing scheme. In this regard, he referred to and relied upon observations of the Apex Court in *Mandir Shree Sitaramji alias Shree Sitaram Bhandar Vs. Land Acquisition Collector and Others*, Mr. Birbal also referred at length to the objections filed by the Petitioner u/s 5A to contend that the Petitioner was throughout aware of the fact that the Master Plan of Delhi and Zonal Development Plan provided for residential group housing scheme on the Petitioner's land.

20. In rejoinder, Mr. V.P. Singh submitted that observations in *Munshi Singh's* case would not apply to the present case inasmuch as the Apex Court in *Munshi Singh's* case was dealing with the acquisition of a large track of land. Mr. Singh also tried to distinguish the judgment of the Apex Court in *Babu Barkya Thakur* by pointing out that acquisition in the said case was for a company. He reemphasised the observations of the Apex Court in the case of *Aflatoon* referred to hereinabove. Lastly, Mr. Singh submitted that no group housing scheme can come up on the Petitioner's land as it does not fulfill the minimum criteria required for developing a group housing scheme.

21. On a perusal of the aforesaid arguments, case law cited and the Land Acquisition Act, we are of the view that the State can acquire land only if the same is needed either for a public purpose or for a company. If the acquisition is for public purpose and the urgency power u/s 17 has not been invoked, then any person interested in the notified land can file objections to the proposed acquisition u/s 5A. The Apex Court in catena of cases has held that Section 5A confers a valuable as well as important right. In fact in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, the Supreme Court has held that having regard to the provisions contained in Article 300A of the Constitution, Section 5A is akin to a fundamental right. Consequently, a citizen is entitled to know why he is being deprived of his property. But in our view, an objector derives knowledge of the purpose of acquisition not only from the impugned notifications but also from the Master Plan and Zonal Development Plan, as in any event the validity of the acquisition notifications have to be tested on the touchstone of the Master Plan and Zonal Development Plan. This is more so, when the acquisition notifications refers to the public purpose as, 'Planned Development of Delhi' and it is the Master Plan and Zonal Development Plan which lay out in detail the planned development of Delhi. It is pertinent to mention that the Master Plan and Zonal Development Plan are in public domain and easily accessible to the public at large.

22. Undoubtedly, as held in Aflatoon public purpose cannot be specified and particularised in the case of acquisition of a large area of land. In the case of small acquisition, a citizen is certainly entitled to know why he is being deprived of his property so as to enable him to file objections u/s 5A. But while deciding whether acquisition notification is vague or not, the totality of facts and circumstances have to be seen and in this context not only the acquisition notifications have to be considered but also other documents like the Master Plan and Zonal Development Plan will have to be taken into account. In our view, Golcha Theatre cannot be taken to mean that public purpose must be specified and particularised in the acquisition notification itself. This is because, as stated hereinabove, the validity of the acquisition notification has to be decided on the touchstone of the master plan and zonal development plan.

23. We reiterate that acquisition notifications issued u/s 4 of the Land Acquisition Act can be quashed on the ground of vagueness. We are fortified in this view by a three Judges Bench's judgment of the Supreme Court in State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., . The said judgement has been passed after considering the judgement of Aflatoon, Munshi Singh and Babu Barkya Thakur referred to hereinabove.

24. However, we are in agreement with Mr. Birbal's submission that acquisition notifications can be quashed on the ground of vagueness only if they fulfill a two-fold test i.e. firstly the public purpose mentioned under Sections 4 & 6 notification should be vague and secondly the said vagueness should prohibit the Petitioners from filing meaningful objections u/s 5A of Land Acquisition Act.

Consequently, in our view acquisition notifications can only be quashed on the ground of vagueness if they cause real as well as substantive prejudice and injustice to the Petitioner.

25. We are also of the view that the issue whether the public purpose stated in a particular notification is vague or not is a question of fact to be decided on the merits of each case and cannot be treated as a question of law. In the present case, we find that the particularisation of public purpose is apparent from the reading of the impugned notifications along with Master Plan of Delhi and Zonal Development Plan, inasmuch as the usage of the Petitioner's land in the said plans have been specified for residential group housing scheme. A reading of the entire objections filed by the Petitioner u/s 5A of the Land Acquisition Act leaves no doubt that it was also within the Petitioner's knowledge that the usage of the land specified in the Zonal Development Plan was for residential purpose. Consequently, in the present case the Petitioner cannot urge that the compendious expression "Planned Development of Delhi", prevented the Petitioner from filing any meaningful objections to the proposed acquisition.

26. But in our view, Mr. Birbal's submission that particularisation of public purpose does not apply to acquisition post-preparation of Master Plan and Zonal Development Plan is not correct. There can be cases where master plan and zonal development plan may not specify in any detail usage of a portion of land for any particular purpose.

27. As far as Mr. Singh's submission that acquired land cannot be used for residential group housing scheme is concerned, we are of the view that the said averment is missing both in writ petition as well as in the rejoinder. This is despite the fact that the Respondents in their counter-affidavit had specifically taken the plea that the Petitioner's land is required for residential group housing scheme. Therefore, we are unable to reach the conclusion that the acquired land cannot be used for residential group housing scheme.

28. Consequently, the present petition being devoid of merits is dismissed but with no order as to costs and the interim order passed by this Court is vacated.