
(2017) 03 SC CK 0153

In the Supreme Court Of India

Case No : Civil Appeal Nos. 1431 of 2008

Meena Devi Jindal Medical Institute and Research Centre

APPELLANT

Vs

Lt. Governor, Delhi

RESPONDENT

Date of Decision : 29-03-2017

Acts Referred:

Land Acquisition Act, 1894 — Section 3(f), Section 4, Section 5A

Citation : 2017 AIR(SCW) 2606 : AIR 2017 SC 2606 : (2017) 6 JT 61 : (2017) 3 RCRCivil 131 : (2017) 3 RecentApexJudgments(RAJ) 161 : (2017) 5 Scale 275 : (2017) 5 SCR 379 : (2017) 13 SCC 458

Hon'ble Judges : Arun Mishra, J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : Parag P. Tripathi, Sr. Adv., Ramesh Singh, A.T. Patra, Ms. Bina Gupta, Advocates, for the Appellants; Ms. Rachana Srivastava, Nitya Madhusoodhnan, Vishnu B. Saharya, Viresh B. Saharya, (M/s Saharya & Co.), Mukesh Kumar Sharma, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

1. The appeal has been preferred by the M/s. Meena Devi Jindal Medical Institute and Research Centre questioning the judgment and order passed by the High Court of Delhi at New Delhi on March 03, 2005 in W.P. (C) No. 1479 of 1982 repelling the challenge to the land acquisition proceedings initiated under Section 4 of the Land Acquisition Act, 1894 (in short "the Act") as per the Notification issued on 19.3.1981. Enquiry under Section 5A of the Act was held. The objections preferred by the appellant were duly considered and rejected. Thereafter declaration under Section 6 of the Act was issued on 21st September, 1981. Appellant/Petitioner filed writ petition before the High Court of Delhi questioning the land acquisition proceedings in the year 1982.

2. The facts unfold that one Smt. Kanso Devi (since deceased) was owner of the property. She had entered into an agreement dated 21.04.1979 with Rank Television Pvt. Ltd. for construction of group housing society. Appellant No.1

herein claims to be registered society under the Societies Registration Act, 1860 and it was formed with the object to establish and maintain hospitals for philanthropic purpose and it entered into a lease agreement with owner Kanso Devi on 3.1.1981. The lease agreement has been concurred by Rank Television Pvt. Ltd., as confirming party. It was tri-partite agreement. Later on 17.2.1981 the appellant No.1 herein entered into an agreement to sell with respect to said property with Kanso Devi. It was confirmed by M/s Rank Television Pvt. Ltd. Power of Attorney has been obtained by the appellant No.1 from Kanso Devi and the appellant had been placed in possession of the property.

3. Kanso Devi purportedly executed a will in favour of the appellant No.1 on 4.4.1982. She ultimately died on 27.11.1989 during the pendency of the writ petition. It is submitted that property had been mutated in the name of the appellant No.1- charitable institution . The acquisition had been questioned in the High Court on the ground that in the Notification issued under Section 4 of the Act, purpose was shown to be planned development of Delhi. Only 10,000 Sq. Yard land comprised in Khasra No. 394 (plot no.20), Alipur Road, Delhi was proposed to be acquired. It was not specified in the Notification for what specific purpose of planned development of Delhi, Notification had been issued. Thus the objection raised by the Appellant No.1 herein, in the course of enquiry, held under Section 5A of the Act, had been illegally rejected. The acquisition for the purpose of School was not mentioned in the Notification issued under Section 4 of the Act as such the Notification was vague and no useful purpose would be served by acquisition of a small plot of land.

4. It was not disputed that in the zonal plan prepared for development of Delhi, the area in question had been shown as reserved for the institutional purposes.

5. The writ application was resisted on behalf of the respondents on the ground that acquisition had been made in accordance with law for the planned development of Delhi. Ultimately it was for the purpose of the school the acquisition had been made and it would be open after acquisition to change the purpose related to the planned development of Delhi as such there was no illegality in the acquisition of the land and no malafide has been attributed.

6. The High Court by the impugned order has dismissed the writ application on various grounds; firstly that acquisition is permissible for planned development of the city. Apart from that, it has been found that in that zonal development plan of Delhi the area in question had been shown for the institutional purposes thus, it was open to acquire the area in accordance therewith for the purpose of planned development of Delhi. The petitioner No.1, at the relevant point of time, was having only agreement to sell in its favour. The enquiry was properly held under Section 5A of the Act. Thus the writ petition has been ultimately dismissed holding that running of educational institution by the Government for the benefit of public at large can hardly be equated to running of the charitable hospital. Thus acquisition cannot be said to be suffering with any illegality. Thus the same has been upheld. Aggrieved thereby the appeal has been preferred.

7. It was submitted by the learned senior counsel appearing on behalf of the appellants that there was no public purpose behind the acquisition. The mention that it was for planned development of Delhi was absolutely vague, mention of public purpose, if any. The enquiry under Section 5A of the Act was not properly conducted. The objection raised by the appellant had been illegally rejected. Reliance has been placed on the decisions with respect to the vagueness on *Munshi Singh & Ors. v. Union of India* [(1973)2 SCC 337] and with respect to the entitlement of tenants to question the acquisition, reliance has been placed on the decision of this court in *Union of India & Ors. v. Krishan Lal Arneja & Ors.* [(2004)8 SCC 453] in which reliance was placed upon the decision in *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P.) Ltd.* [(1996) 11 SCC 501] in which it has been held that it cannot be said that in no case of the land acquisition under the provisions of the Act tenant cannot challenge the proceedings.

8. On the other hand learned counsel on behalf of the respondents has submitted that land as has been acquired in accordance with zonal plan for "planned development of Delhi" for institutional purposes land could be acquired by specifying that it is being acquired for planned development of Delhi. Learned counsel has relied upon the decision of the Constitution Bench of this Court in *Aflatoon & Ors. v. Lt. Governor of Delhi & Ors.* [(1975) 4 SCC 285]. She has also referred to the decision of this Court in *Bhagat Singh v. State of U.P. & Ors.* [(1999) (2) SCC 384] to submit that once the land has been acquired for planned development its purpose can be changed at any point of time for appropriately for planned development of the city.

9. Section 3(f) of the Act defines public purpose for which acquisition can be made under the Act. The definition of public purpose is inclusive of Section 3f(iii) contains the provisions regarding acquisition for planned development of land from public fund in pursuance of any scheme or policy would be for public purpose. Section 3(f) of the Act is extracted hereunder:

"3(f) The expression "public purpose" includes - (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the

State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government, or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies."

10. The scheme contained in the zonal plan for Delhi city indicated the planned development of Delhi and the area was reserved for institutional purposes. The word "Institution" includes educational institute as defined in Oxford Dictionary is to the following effect:

"a large organization founded for a particular purpose, such as a college, bank, etc.- an organization providing residential care for people with special needs. - an official organization with an important role in a country. 2. an established law or custom. -a well established and familiar person or thing; he became a national institution. 3. the action of instituting."

11. It is apparent that there can be acquisition for planned development as per zonal plan prepared under Delhi Development Act, 1957 (in short "the Act") for institutional area, it was not necessary to mention particular purpose, once planned development of Delhi has been specified that to be read with the zonal plan applicable in the area in question. Thus, it Could not be said that the Notification suffered with any legal vice. The constitution Bench of this court in the case of Aflatoon (supra) has considered the question where the Notification was issued under section 4 of the act with respect to planned development of Delhi though no doubt it was with respect to larger area, but area would not make a difference, ultimately this court has upheld similar Notification under Section 4, while discussing the matter, this Court held as under:

"23.The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready. [see the decision in Patna Improvement Trust v. Smt. Lakshmi Devi).

In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Acts. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. We do not think it necessary to go into the question whether the power to acquire the land under Section 15 was delegated by the Central Government to the Chief Commissioner of Delhi. We have already held the appellants and the writ petitioners cannot be allowed to challenge the validity of the notification under section 4 on the ground of laches and acquiescence. The plea that the Chief Commissioner of Delhi had no authority to initiate the proceeding for acquisition by issuing the notification under section 4 of the Act as section 15 of the Delhi Development Act gives that power only to the Central Government relates primarily to the validity of the notification. Even assuming that the Chief Commissioner of Delhi was not authorized by the central Government to issue the notification under Section 4 of the land acquisition Act, since the appellants and the writ petitioners are precluded by their laches and acquiescence from questioning the notification, the contention must, in any event, be negated and we do so."

12. The reliance has been placed by learned counsel appearing on behalf of the appellant on Munshi Singh's case (*supra*) which reads as follows:

"8. As already noticed, in the notifications under section 4 all that was stated was that the land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation i.e. whether the land would be acquired and the development made by the government or whether the owners of properties would be required to develop a particular area in a specified way.

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 under section 4 of the nature of development for which the area was being requisitioned. On behalf of the state it has been pointed out that the appellants had themselves filed a copy of the master plan which was sanctioned on September 4, 1962 and that it was a matter of common knowledge that the master plan was under preparation. The

details relating to the master plan and the plan itself had been published in the local newspapers and the appellants could have easily discovered what the proposed scheme was with regard to the development of the area in which they were interested. In view of the peculiar circumstances of these cases we gave an opportunity to the state to apply for amendment of its return since nothing had been said about these matters therein and to produce additional evidence in support of its allegations. Such a petition was filed and certain documents were sought to be placed on the record. after a careful consideration of the petition for amendment and the evidence sought to be adduced we dismissed the prayer for amendment as well as for production of additional evidence as we were not satisfied that the documents sought to be produced were either relevant or were required to enable this court to pronounce judgment."

13. It is apparent from the aforesaid discussion made in Munshi Singh's case (supra) that there was no master plan/zonal plan in vogue in the area. Thus when there was no plan for the area, in that context, this court has observed that mention in the Notification issued under Section 4 of the act that it was acquisition for the purpose of planned development of the area was vague as such purpose should have been mentioned. In the Munshi Singh's case (supra) the facts were totally different and the decision in Munshi Singh's case (supra) had been taken consideration in the latter decision of Constitution Bench in Aflatoon's case (supra) and the similar submission raised with respect to the vagueness of the Notification issued under Section 4 of the Act was not accepted.

14. This court in Nand Kishore Gupta & Ors. v. State of U.P. & Ors. [(2010) 10 SCC 282] has also considered the concept of public purpose under Section 3(f) of the Act and it has been discussed that a purpose complementary to public purpose is also a public purpose. When the land had been acquired for construction of Yamuna Expressway which itself was of public importance the acquisition of the land for Yamuna Expressway for development of the same for commercial, amusement, industrial, institutional and residential purposes was held to be complementary to the creation of expressway hence amounted to acquisition for public purpose. The planned development of Delhi is by itself a public purpose. The submission raised by the appellant is thus liable to be rejected.

15. In view of the decision on merits, we need not go into the question as to whether the petition was maintainable at the instance of the petitioners on the strength of the lease deed. The fact remains that owner has not chosen at any point of time to question it.

16. The acquisition is for public purpose. In our opinion, there was no vagueness in the Notification. It could not be said that particular property has been plucked out as there is no allegation of any malafide attributed in the matter of acquisition. it was as per zonal plan which is binding upon all concerned and could not be departed to having been issued under the provisions of the Delhi Development Act, 1957.

17. Thus we find no force in the appeal. The same is liable to be and is hereby dismissed. No costs.