

(1976) 08 DEL CK 0017
In the Delhi High Court
Case No : Civil Writ No. 888 of 1970

Mohd. Younus and Others

APPELLANT

Vs

Lt. Governor, Delhi and Others

RESPONDENT

Date of Decision : 31-08-1976

Acts Referred:

Citation : AIR 1977 Delhi 105

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : M. Dayal, for the Appellant; R.N. Dixit, for the Respondent

Judgement

1. This Writ Petition was instituted by the petitioners in respect of acquisition proceedings taken under the Land Acquisition Act, 1894, in relation to land measuring 4 Bighas, 12 bids was which is situated in village Chandawali. The land is apparently a part of Khasra No. 634/8. The full particulars are to be found in the notifications relating to the acquisition. The notification u/s 4 relating to the acquisition was dated 13th November, 1959, published in the Delhi Gazette Extraordinary of that date. The notification in fact covered 34,070 acres of land situated in Delhi and around Delhi. The notification u/s 6 of the Land Acquisition Act, 1894, was dated 25th February, 1965. A copy of the notification is Annexure "F". The land is described in that notification as 5154/634-min. One of the points taken in this Writ Petition was that the number is not correctly given in the notification u/s 6 but, in arguments this matter has not been pressed, because apparently, in the meantime an award has been given giving compensation to the petitioners in respect of this very land.

2. In fact a number of points were taken in the petition to challenge the acquisition, but due to a change in circumstances and an alteration in the law due to the amendment of the Land Acquisition Act, at this stage the petitioners only rely on additional grounds which have been urged with the leave of the Court by a subsequent application. The additional grounds are set out in C. M. No. 811-W of 1973. It is stated therein that the petitioners filed objections u/s

5A of the Land Acquisition Act, 1894, on 10th December, 1959, which were within the time allowed by Section 5A. It is then stated that a notice of hearing dated 11th September, 1961, which fixed 12th September, 1961, as the date of hearing was served only on petitioner No. 2. It is stated that Mohd. Younus appeared before the Land Acquisition Collector to object to the proposed acquisition on the ground that there was no plan and the notification u/s 4 was most vague. It was claimed that no notice was served on any petitioner except Petitioner No. 2. A copy of the notice is filed as Annexure A-3 to these grounds.

3. It is claimed in the new grounds that there was no Master Plan or draft Master Plan at the time the petitioners were called upon to file objections. And furthermore, several of the petitioners were out of town in September, 1961, and had no knowledge that the Proceedings were fixed for hearing. It is, Therefore, claimed that the Collector had not heard the objections of the petitioner. In one of the grounds taken in these additional grounds, it is claimed that the appropriate Government issued the declaration u/s 6 without having before it the objections of the Petitioners or the recommendations of the Collector. It was claimed that the Collector was bound to make an enquiry and a recommendation without which the acquisition proceedings would be liable to be quashed.

4. A reply was filed to these additional grounds. The reply is in the form of an affidavit of Shri Krishna Pratap, Deputy - Secretary (Land & Building), Delhi Administration. In paragraph No. 4 thereof, it is stated that there was only one set of objections by petitioners Nos. 1 to 7 and also Shri Mohd. Idris. It seems from the record that some of the present petitioners are the legal heirs of the said Mohd. Idris. It is further stated that a common notice was addressed to Smt Bismillaian, etc., on 4th September, 1961, asking them to appear before the Land Acquisition Collector on 12th September, 1961, and the same was received by Shri Sultan Mohd. Ahmed for Bismillajan, etc. It is further claimed that the service on one of the male members of the family is a valid service in the eyes of law. Also, reference is made to an application filed on 12th September, 1961, which was given on behalf of the several petitioners. It is, Therefore, submitted that the hearing was given to all of them as provided by the statute. As regards the absence of a plan, it was claimed that the same was available with the Collector of Delhi. Some quotations are given from the Times of India of October, u/s 6 stating that the 1959, along with the affidavit showing that there had been description in the newspapers about the Master Plan concerning the Planned Development of Delhi.

5. As regards the other objection of the petitioners that the appropriate Government had issued the declaration u/s 6 without getting a report from the Collector or without the Collector making an enquiry concerning the objections, the following passage occurs in the affidavit:

"The notice was duly served and subsequent hearing was properly given." The declaration u/s 6, I submit in instant case was issued after the appropriate Government was fully satisfied on a consideration of the report of the Collector

made by him under sub-section (2) of Section 5-A of the Land Acquisition Act."

Thus, the case of the Government was that the notice was properly served, hearing was also given and there was a report by the Collector which was considered by the appropriate Government before the notification was issued u/s 6.

6. The petitioners then filed a further affidavit described as the rejoinder affidavit of Shri Mohd. Younus. It was claimed that there was no enquiry by the Collector in pursuance of the objections u/s 5A and no report was made to the appropriate Government with respect to the acquisition - of the land. It was also denied that the appropriate Government was satisfied before the issue of the declaration u/s 6. It was further claimed that the record of the proceeding held by the Collector was not put before the appropriate Government before the declaration was issued.

7. The provisions of the Land Acquisition Act, 1894, in relation to the acquisition of land are not complicated. The first stage in the Proceedings is the issue of a notification u/s 4 stating that the land was likely to be needed for public purposes. The next stage is the notification of a declaration u/s 6 stating that the land was required for a public purpose. A declaration made u/s 6 is conclusive evidence concerning the fact that the land was needed for a public purpose. The remedy available to a person objecting to the proposed acquisition is to file objections u/s 5A which may be done within 30 days after the issue of the notification u/s 4, These objections are to be heard by the Collector, who is to give the objector an opportunity of being heard either in person or by a Pleader; after this hearing, a report is to be made to the appropriate Government containing a recommendation on the objections together with the record of the proceedings. The decision on these objections is taken by the appropriate Government; the decision is final.

8. In the present case, the notification u/s 4 was issued in November, 1959. The objections u/s 5A were filed within 30 days and were, Therefore, within time; they were then to be heard by the Collector, who had to make a recommendation on the same and submit the record to the appropriate Government. There seems to have been a notice issued to the petitioners, but the validity of the same has been challenged on the ground that it was addressed only to one of the petitioners. In the reply, it is claimed that the notice was issued on 4th September, 1961, and not on 11th September, 1961, as claimed. And furthermore, the notice was addressed to all the petitioners. As I see it, this point does not present any complication, because there is only one set of objections which is Annexure A to the additional grounds. The same is by eight persons, who are seven of the petitioners and Mohd. Idris, the predecessor-in-interest of the other petitioners. If one set of objections is filed by several persons, I think it is sufficient if any one of them is served. If they wanted separate notices to be issued to all of them, they should have filed separate objections. I have gone through the objections and find that they relate to the

land in question and also, the only objection seems to be that the site was purchased by the petitioners about 15 years earlier for the purpose of the residential needs of the family. It was claimed that the petitioners had spent a large amount of money for the site with a view to meeting expanding needs of the family. Clearly, the objections are by members of one family because, all the petitioners are the widow and sons and daughters of Sh. Abdul Razzak, The claim in the objections also shows that it is made in unison. I, Therefore, hold that there is nothing wrong with the service of notice relating to the hearing. If the notice was served only on 11th September, 1961, as claimed by the petitioners as per annexure A-3, the petitioners would not have had time to put in proper appearance on 12th September, 1961. But, it is claimed in the affidavit in reply that in fact the service was on 4th September, 1961. I have, Therefore, no material before me to show that proper hearing was not given at the time the objections were heard. In fact, this is not even the case of the petitioners who rely more on the absence of the notice on the petitioners than on the failure to give hearing. At any rate, I have not been told of any facts which could have been brought to the notice of the Collector which might have any material effect on the scope of the enquiry. The conclusion, Therefore, is that the petitioners did get an opportunity of being heard and were heard.

9. The next question is whether the report and record of the Collector were sent to the appropriate Government, It is claimed in the rejoinder affidavit by the petitioners that this report and record were not with the appropriate Government and, Therefore, the declaration under S. 6 is invalid. There is a denial of the allegation in the affidavit filed by the respondents to the effect that the report was made and was considered by the appropriate Government. This dispute of facts cannot be gone into these proceedings. When the position of the respondents is that there was a report which was considered by the appropriate Government, I think, this is conclusive in this petition.

10. The learned counsel for the petitioners has referred to the judgment of Rangarajan J. reported in Shori Lal Jain Vs. Lt. Governor, Delhi and Others, in which the record had been sent for from the Authority in a similar case and it was then found that the Lt. Governor had never dealt with the matter. The reason for that record having been summoned is clear from a passage appearing in the judgment at page 71. It was there said:-

"In the affidavit of return filed it was only mentioned that the allegation in paragraph 35 of the petition concerning the absence of report u/s 5A was not admitted; it was further stated that "satisfaction" for issuing the said notification was arrived at after due consideration and that no objection u/s 5A of the Act was received from any quarter.....In view of the above allegation and the manner in which it had been traversed, I directed the concerned land acquisition file to be produced."

I have quoted a small extract from the judgment to show that the reason for summoning the file was the pleading of the respondent not admitting a-certain

allegation in the absence of specific denial, the Court thought that it was Justified to summon the land acquisition file. On summoning the file, the Court discovered another defect in the whole proceedings, namely, that the file was never placed before the Lt Governor. In the absence of the consideration of the matter by the Lt. Governor, the Court struck down the notification u/s 6.

11. The learned counsel for the petitioners cannot rely on this judgment as being of any greater effect than to hold that if the Lt. Governor did not deal with the file at all, then the declaration cannot be justified. A similar view was taken by the Supreme Court in *Ghaio Mall and Sons Vs. The State of Delhi and Others*, wherein the following passage occurs at page 1437:-

"There is nothing on the record to show that the concurrence with the order of the Chief Minister was obtained from the Chief Commissioner. The inexorable force of the aforesaid fact, now appearing on the record, inevitably led the learned Solicitor General to concede that, on the records as they are, it is not possible for him to say that the Chief Commissioner had actually made the order, but he contends that, in view of the letter of the Under Secretary, Finance, dated December 14, 1954, the fact that the Chief Commissioner had made the order could not be questioned in any Court."

Later on in the judgment, the Supreme Court rejected this contention and held that the order had not in fact been made by the Chief Commissioner. The position in these two cases was one which resulted from some defect in the proceedings which had led to the original file being before the Court. In the present, case, the original file is not before the Court and we are left only with the affidavit denying the allegations of the petitioners concerning the failure of the Government to make an enquiry or make a report, or the appropriate Government failing to consider the report and record, etc. In view of the affidavit of the Government, it is not possible to hold that the appropriate Government did not deal with the matter.

12. The appropriate Government in this case seems to be the Lt. Governor, who is acting as the Central Government for the purposes of passing orders under the Land Acquisition Act. As rightly held by Rangarajan J. in the aforementioned judgment, the order has to be by the Central Government, which in this case is the Lt. Governor of Delhi. It is quite possible that in a given case the Lt. Governor may fail to act in accordance with law, or, the notification may be issued without the file being placed before the Central Government. In such a case a dispute of fact would arise which could be investigated by the ordinary civil courts. In a decision of the Supreme Court reported as *Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others*, it was said:-

"Satisfaction of the Government after consideration of the report, if any, made u/s 5A is undoubtedly a condition precedent to a valid declaration, for, there can be no valid acquisition under the Act unless the Government is satisfied that the

land to be acquired is needed for a public purpose or for a Company, But there is nothing in sub-section (1) which requires that such satisfaction need be stated in the declaration."

"Apart from the clear language of Section 6, it would seem that it is immaterial whether such satisfaction is stated or not in the notification. For, even if it is so stated a person interested in the land can always challenge as a matter of fact that the Government was not actually satisfied. In such a case the Government would have to satisfy the Court by leading evidence that it was satisfied as required by Section 6. In the present case no such evidence was led because the fact that the Government was satisfied was never challenged in the pleadings and no issue on that question was sought to be raised. Even when the 1st respondent Society sought to amend its plaint it did so only to say that the notification did not establish such satisfaction."

It is clear from the above passage, that there can be a case in which the existence of the satisfaction by the Government can be judicially adjudicated upon by the Court. The judgment of the Supreme Court was given in an appeal arising out of a suit in which certain acquisition proceedings under the Land Acquisition Act, 1894, had been challenged by way of a suit. If the present proceedings had been a suit, and, the acquisition was challenged on the ground that the satisfaction of the appropriate Government had been improperly recorded or, that the procedure had not been properly followed, the Government would certainly have had to lead evidence in the manner set out in the Supreme Court judgment. However, the present case is not a suit, but a Writ Petition under Article 226 of the Constitution of India. The procedure to be followed in the present case is quite different from that of a suit.

13. In order to succeed, the petitioner must bring his case within the scope of the writs of certiorari, mandamus and quo warranto, etc. The proceedings under the Land Acquisition Act, in so far as the declaration of public purpose is concerned, are a purely executive act. However, the hearing of the objections by the Collector are quasi-judicial in nature. Up to the stage of showing that the petitioners were not properly heard, the Court could issue a writ in the nature of certiorari, to compel the Land Acquisition Collector to give the petitioner a hearing. As far as the issue of the declaration by the appropriate Government, in this case the Lt. Governor, is concerned, no writ of certiorari can issue. This is purely an executive act to which only mandamus would apply. For the purpose of satisfying mandamus, it has to be shown that the appropriate Government acted in breach of some statutory provisions. No such breach of any statutory provision. There is no lack of jurisdiction and, Therefore, I do not see how the action taken by the appropriate Govt. in issuing the declaration u/s 6 can be challenged in these proceedings. In this view of the matter, neither the writ of certiorari in respect of the proceedings before the Collector nor the writ of mandamus in respect of the action taken by the Lt. Governor acting as the appropriate Government under the Land Acquisition Act, and particularly Section

6 thereof, is available to the petitioners.

14. Accordingly, the Writ Petition has to fail and is dismissed with costs.

15. Petition dismissed