

**(2003) 02 DEL CK 0106**

**In the Delhi High Court**

**Case No :** CWP No. 3728 and CM No's. 6448 and 13148 of 2001

Mool Chand and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 06-02-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 10, 4, 48, 6, 9

**Citation :** (2004) 72 DRJ 453

**Hon'ble Judges :** Devinder Gupta, Acting C.J.; B.N. Chaturvedi, J

**Bench :** Division Bench

**Advocate :** Sandeep Sethi and Pramjit S. Bindra, for the Appellant; Sanjay Poddar, for Respondent Nos. 4 and 5 and Geeta Mittal, for the Respondent

## Judgement

Devinder Gupta, A.G.J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has sought quashing the possession proceeding dated 27.3.2001, copy of which has been attached as Annexure P-6 and has also prayed for directions to quash notifications/notices issued under Sections 4, 6, 9 and 10 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act).

2. There are nine petitioners in this case, who claim to be the owners of land comprised in khasra Nos. 985 (4-16); 986 (4-16); 987 (3-12), 978/1 (4-06), 991/2 (1-08); 959 (1-12); 960 (1-18); 961/1 (3-7); 961/2 (1-09); 962/1 (2-08); 973/1 (2-08); 974 (3-15), 976 (1-03); 977/1 (1-12); 984/2 (1-03) and 979/1 (0-01) situate within revenue estate of village Mahipalpur, which land is stated to be built up area.

3. It is alleged by the petitioners that on 23.1.1965, notification u/s 4 of the Act was issued notifying the intention of the Government to acquire land in the revenue estate of village Mahipalpur including the land aforementioned for public purpose at public expense, namely, Planned Development of Delhi. It was

followed by declaration, issued u/s 6 of the Act on 22.12.1966. In addition, notices under Sections 9 and 10 were, issued on 22.6.1983. Feeling aggrieved by the acts of respondents in initiating proceedings to acquire the land and having issued notices under Sections 9(1) and 10 of the Act, writ petitions No. 130 and 1386 of 1983 were filed by the petitioner in which notices were issued to the respondents to show cause why rule nisi be not issued and in the meanwhile status quo was directed to be maintained as regards possession, occupation and construction. It is alleged that on 19.9.1983 interim stay was confirmed but acquisition proceedings were allowed to continue. Awards No. 33/86-87 and 34/86-87 were passed by the Collector Land Acquisition on 17.9.1986 and 16.9.1996 respectively. Writ petitions filed by the petitioners were dismissed on 20.3.1997 relying upon the judgment of Full Bench of this Court in Roshanara Begum Vs. Union of India, , which was approved by Supreme Court in Murari and Others Vs. Union of India (UOI) and Others, .

4. The petitioners have alleged that though number of writ petitions, challenging the notifications issued to acquire land in Mahipalpur were dismissed, steps were not taken by the respondents to take over possession. They allege that on 27.3.2001 possession of only a fraction of land covered by two awards No. 33/86-87 and 34/86-87, including the land belonging to the petitioners, was taken over which was only a symbolic or paper possession and not actual one. The total land covered by these two awards being 251 bigha 16 bids was whereas possession was taken only of 163 bighas. It is alleged that the land being built upon and the petitioners construction standing thereupon the same is covered by the policy guidelines of the Government for denotification of the lands, such lands which are within 50 meters of village abadi be recommended for denotification provided its absence will not materially affect the public purpose for which it is acquired. It is stated that the petitioners have made representation for de-notification requesting the Government to taken action u/s 48 of the Act but the same has not been taken till date. The petitioners filed separate application being C.M. No. 13148/2001 praying that the petitioners case being fully covered by the policy decision of the Government, direction deserves to be issued to denotify the land.

5. The petition is vehemently opposed by the respondents. Respondents 3 and 5 filed their reply on the affidavit of Shri D.K. Gaur, OSD (Litigation) in the Land and Building Department of Government of National Capital Territory of Delhi stating that challenge to acquisition proceedings is not sustainable in view of earlier dismissal of the writ petitions filed by the petitioners and moreover possession of the land having been taken on 27.3.2001, the land absolutely vests in the Government free from all encumbrances. Thereafter, the petitioners have been left with no right, title or interest to challenge the acquisition proceedings. It has also been pointed out that similar writ petitions concerning this village has been dismissed. Reference has been made to Writ Petition No. 999 of 1999 (Dharam Pal v. Union of India and Ors.) stating that the same was dismissed and even LPA No. 89/2000 was dismissed by this Court.

6. Learned counsel for the petitioners placing reliance upon the decision of Supreme Court in Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, urged that since symbolic possession was taken of the land on 27.3.2001, there is no question of the land vesting in the State Government free from all encumbrances. The law requires actual taking over of possession and not symbolic. Since actual possession was not taken over the land has not vested and as such direction u/s 48 of the Act can be issued.

7. We may at this stage refer to the affidavit of Shri M.N. Puri, Director LM-I, Delhi Development Authority stating that possession of the land was taken over by the Collector on 27.3.2001, as per the possession report Annexure-I (attached to the affidavit). On taking over of possession it was later on handed over to the Delhi Development Authority and ultimately it has been handed over to the beneficiary department, namely, CISF on 9.10.2001. Copy of the subsequent proceedings recorded on 9.10.2001 have also been appended as Annexure-II.

8. In Balwant Narayan Bhagde's case (supra), it was held that in proceedings under the Act for acquisition of land all interests of the interested persons are wiped out, Therefore, actual possession of the land becomes necessary for its use for the public purpose for which it is acquired. As such taking of possession under the Act cannot be symbolic in the same sense as is understood in civil law. It cannot be possession merely on paper. What is required under the Act is the taking over of actual possession on the spot. In the eyes of law taking of possession will have the effect of transferring possession from the owner or the occupant of the land to the Government.

9. The question whether it was actual possession or symbolic possession, which was taken over on 27.3.2001 cannot be decided except by making reference to the proceedings for possession, which were recorded on the spot on 27.3.2001. The petitioners in their writ petition have admitted the fact that on 27.3.2001 possession was taken over and some proceedings took place on the spot but such vague allegation made in the writ petition that it was only symbolic possession and not actual possession cannot be taken as a gospel truth in view of the sketchy affidavit filed in support of the writ petition. Only Mool Chand petitioner has verified the facts as alleged in the petition, on his affidavit stating that the facts stated in the writ petition are true to the best of his knowledge and belief. What facts are true to his knowledge and what facts are true to belief are not stated. What is the source of belief is also not so stated in the writ petition. Therefore, we cannot place any reliance upon such a bald allegations made in the writ petition supported on such affidavit that it was only symbolic possession, was taken. The reply of the respondents which is supported on the basis of official record and is accompanying copy of proceedings recorded on 27.3.2001 do suggest taking over of such possession of the land as was capable of on the spot. Particulars of the land, as have been noticed by us in the earlier part of the judgment, on which the petitioners claim ownership is that part of the land of

which actual possession is stated to have been taken over on the spot and delivered to the officials of the Delhi Development Authority. In the subsequent report dated 9.10.2001 it is stated that the possession of the land stands duly transferred to CISF. In view of this material on record and even on the basis of the decision relied upon by the learned counsel for the petitioners, it stands duly established that actual possession of the land was taken over by the Collector, the land stood vested in the State on and from 27.3.2001.

10. In Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., , it was held that when question arises whether it would be possible for the Land Acquisition Collector to take physical possession of vast area of land and deliver the same to the acquiring department, the approach to the question must be pragmatic and realistic but not purely legalistic. The Court observed that no doubt it is true that in Balwant Narayan Bhadge's case Untwalia, J. held that the question is what is the mode of taking possession. The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration be beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land but Bhagwan, J. (as he then was) speaking for two members had held:

"There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, Therefore, be taken as laying down as absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was laying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, Therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present, when this was done by Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuated the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession taken by the authorities as that would eliminate the possibility of any fraudulent or collusive transaction of taking mere paper possession, without the occupant or the owner even coming to know of it."

Thus, in A. Viswam's case, it was held that it is settled law by series of judgment that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchanama by the LAO in the presence of witness signed by him, them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.

In Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , it was held that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto the retention of possession would tantamount only to illegal or unlawful possession.

11. In view of the fact that the land stands fully vested in the Government free from all encumbrances on taking over of possession, there is no scope for interference in this petition. Directions as prayed for cannot be issued to the respondents to exercise powers u/s 48 of the Act when land has absolutely vested in the Government.

12. Even the challenge by the petitioner in the writ petition that built up portions cannot be acquired has no force, in view of the decision of this Court in Shri Bhagwan and Anr. v. Union of India and Ors., 1991 (2) Delhi Lawyers 59 (DB).

13. Resultantly, the writ petition is dismissed with costs quantified at Rs. 10,000/-. The miscellaneous applications are disposed of as infructuous.