
(2001) 08 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Peition No. 1580 of 1988 with C.W.P. No"s. 1578, 1579, 1581, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1788, 1789, 2024, 1504, 1594, 1648, 1675, 1691, 1738, 1739, 17

Mukesh Hans etc. etc.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 5A

Citation : (2001) 94 DLT 860 : (2001) 60 DRJ 376

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Ravinder Sethi, M/s Deepak Khosla, S.D. Sharma, S.K. Tyagi, N.S. Vashisht, Arvind Minocha, Himanshu Upadhyaya, L.P. Dhir, Ms. Jugnu Bagga and Ms. Mona Johns, for the Appellant; Ms. Geeta Luthra, for UOI and L and amp; B Deptt., Deepak Bhattacharya, Ms. Seema Sharma, Arjun Pant and R.P. Gupta for DDA, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, J.—A Notification bearing No.F.9(20)/78-L& B(i) dated 30th June, 1988 was issued on behalf of the Lieutenant Governor. Delhi Stating therein that 72 bighas of land in Village Mehrauli were likely to be required for the planned development of Delhi. The Notification, issued under the provisions of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), accordingly notified the land in question as being likely to be required for the above purpose. The Lt. Governor was of opinion that the provisions of Section 17(1) of the Act are also applicable to this land and was further pleased to direct, under the provisions of Section 17(4) of the Act, that the provisions of Section 5A thereof shall not apply. In other words, the land owners were denied their right to object to the proposed acquisition of their land.

2. The Notification is Annexure P-1 to Civil Writ Petition No.1580 of 1988 and this reads as follows:-

"DELHI ADMINISTRATION : DELHI

(LAND & BUILDING DEPARTMENT)

N O T I F I C A T I O N

Dated: 30.6.1988

No.F.9(20(/78-L& B(i) Whereas it appears to the Lt. Governor, Delhi, that the land is likely to be required to be taken by Govt. at the public expense for a public purpose, namely for "Planned Development of Delhi", it is herein notified that the land in the locality described below is likely to be required for the above purpose.

This notification is made under the provisions of Section 4 of the Land Acquisition Act, to all whom it may concern.

In the exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi, is pleased to authorise the Officer for the time being engaged in the undertaking with their servants and workmen to enter upon the survey any land of the locality and do all other acts required or permitted by that section.

The Lt. Governor, being of the opinion that provisions of sub Section (1) of Section 17 of the said Act are applicable to this land, is further pleased under Sub Section 4 of the said Section to direct that the provisions of Section 5A shall not apply.

SPECIFICATION

Name of Total Khasra Area Village Area Nos. (big.bis) (big.bis) Mehrauli 72-00 1151/3 min. 72-00 (New) (Old No. 1665)

The site plan of the land may be seen in the office of the Land Acquisition Collector in Room No.347. Tis Hazari Building:Delhi.

By Order

sd/-

Mrs. Neeru Singh

Joint Sec(L& B)"

3. Apart from the Petitioner in Civil Writ Petition No.1580 of 1988, several other persons have also challenged the validity of this Notification. The entire group of cases (40 in number) were heard together to 30th and 31st July, 2001 and 1st, 6th, 9th and 14th August, 2001 when judgment was reserved.

4. When learned counsel for the Petitioners initially addressed arguments, it was sought to be contended that there was really no urgency in acquiring the land

and, Therefore, the provisions of Section 17(1) of the Act could not have been invoked. Halfway through, this challenge was not seriously pressed and learned counsel for the Petitioners confined their challenge to the question whether or not the provisions of Section 5A of the Act could have been dispensed with by the Lt. Governor.

5. During the course of hearing, learned counsel for the Respondents were requested to produce the original file so that it could be determined from the record whether there was any application of mind by the Lt. Governor about dispensing with an enquiry u/s 5A of the Act. This was because it became abundantly clear from a plethora of decisions cited by learned counsel for the Petitioners that the acquiring authority has to apply its mind not only to the question whether there is any urgency in acquiring the land and, Therefore, invoking Section 17(1) of the Act; but, the acquiring authority has to independently apply its mind to the question whether the enquiry u/s 5A of the Act requires to be dispensed with and, Therefore, Section 17(4) of the Act should be invoked.

6. It has been held by the Supreme Court in *Dora Phalauli Vs. State of Punjab and Others*, of the Report as follows:-

"It is to be clearly understood that under sub-section (4), the appropriate Government may direct that the provisions of Section 5A shall not apply where in the opinion of the State Government, the provisions of sub-section (1) or sub-section (2) are applicable, otherwise not. For making the provisions of sub-section (1) applicable, two things must be satisfied, firstly that the land in respect of which the urgency provision is being allied is waste or arable and secondly, that there is an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection u/s 5A should not be made available to him."

It has been further held in the same paragraph:-

"It is to be remembered that the right of a person having any interest in the property to file an objection u/s 5A of the Act should not be interfered with in such a casual or cavalier manner as has been done in this case."

7. In *State of Punjab and Another Vs. Gurdial Singh and Others*, , the Supreme Court did not think it necessary to refer to case law on the subject and held as follows in paragraph 16 of the Report:-

"The fourth point about the use of emergency power is well taken. Without referring to supportive case-law, it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition

authorities should not, having regard to Articles 14 (and 19), burke an enquiry u/s 17 of the Act."

8. Finally, in *Om Prakash and Another Vs. State of U.P. and Others*, , the Supreme Court dealt with this question and held in paragraph 13 as follows:-

"Thus, this enabling provisions was available to the appropriate Government functioning in the State of Uttar Pradesh, if it was satisfied that the situation was so urgent that Section 5A, inquiry was to be dispensed with in connection with acquisitions of any type of lands for the planned development of any area. However, still one basic requirement remained for being satisfied before such power could be exercised, namely, the there should be case of urgency. Even if the acquisition was for the planned development of any area and there was no material before the appropriate Government for dispensing with inquiry u/s 5A on the touchstone of any urgency as found by the appropriate Government, the provisions of Section 17, sub-section (4) as amended by the Amending Act VIII of 1974 could not have been invoked."

9. Finally, in paragraph 25 of the Report, it was held:-

"In the light of the aforesaid discussion, Therefore, the conclusion becomes inevitable that the action of dispensing with inquiry u/s 5A of the Act in the present cases was not based on any real and genuine subjective satisfaction depending upon any relevant data available to the State authorities at the time when they issued the impugned notification u/s 4(1) of the Act and dispensed with Section 5A inquiry by resorting to Section 17, sub-section (4) thereof."

10. These and other decisions of the Supreme Court were very recently considered by the Division a Bench of this Court in *Deepak Bhardwaj & Others v. Union of India & Others*. C.W. No.4361 of 1998 decided on 14th July, 2001. After a review of the entire case law, the Division Bench concluded as follows:-

"Section 5A provides the only opportunity under the Act to the persons whose lands are sought to be compulsorily acquired to object to the proposed acquisition of land. This is the only safeguard available under the Act fort the affected parties. Doing away with this only safeguard is a very serious matter and cannot be treated as a matter of mere routine. It is a basic principle of law that a man should not be condemned unheard. It is in consonance with this basic principle of law that Section 5A opportunity lis not denied to affected parties. If the acquiring authority is to dispense with the observance of this basic principle of law i.e. which as already said is the only safeguard contained in the Act for the person whose land is sought to be compulsorily acquired, the matter cannot be allowed to be treated lightly or in a casual manner. A strong case for invocation of Section 17 and dispensing with Section 5A has to be made out."

11. There is, Therefore, no manner of doubt that if the Respondents want to turbo charge the process of acquisition by resorting to Section 17(4) of the Act, there was to be an application of mind with regard to dispensing with the enquiry

u/s 5A of the Act. It is for this reason that a perusal of the official file become necessary.

12. Before dealing with the official file, it may be worthwhile to mention that learned counsel for the Petitioners had sought to rely upon *Major S.K. Gupta v. The Union of India & Others*, (1977) 1 Delhi 659 to contend that there was no urgency in acquiring the land in question. This decision was relied upon in the context of the argument u/s 17(1) of the Act which, as noted earlier, was subsequently given up by learned counsel for the Petitioners. Consequently, this decision need not be adverted to in any great detail.

13. There is on extremely significant fact that was brought out by learned counsel for the Petitioners. This is that in respect of 40 bighas of land in the same khasra, the Respondents had issued a notification No.F.9(35)/72-L&B dated 24th July, 1973 u/s 4 of the Act. This was followed by a notification No.F.9(21)/76-L&B(LAP) dated 11th May, 1976 u/s 6 of the Act.

14. Both the above notifications were challenged in this court in a writ petition bearing No.1195 of 1987 (*Mansoor Ahmad Khan v. Union of India & Others*). Notice was issued in this case and when the matter came up for hearing on 20th January, 1988, a Division Bench of this Court passed the following order:-

"It is submitted on behalf of respondents 1 and 2 the no Award has been made covering the land in dispute. Since no Award has been mae, the proceedings for acquisition automatically lapses. The petition which was filed for quashing the acquisition proceedings has, Therefore, become infructuous and is dismissed as such."

The above order clearly shows that there was, in any case, absolutely no urgency for acquiring at least 40 bighas of the land in question if not the entire land in question. However, it is not necessary to go into this, a this contention was also not pressed before us in view of the principal contention.

15. Be that as it may, the relevant nothings from the official file clearly bring out the fact that there was no application of mind by the Lt. Governor to the question whether or not an enquiry under the provisions of Section 5A of the Act ought to be dispensed with. Indeed, the nothings show that there is not even a mention of the provisions of Section 5A and 17(4) of the Act. these nothings are reproduced below:

"25. May kindly see the letter dated 9.6.1988 from L.A.C.(M.W.), Delhi forwarding the draft notification u/s 4, 6 and 17(i) of the L.A. At in respect of land comprising of Kh.No.1151/3 min. (New) and 1665 (Old) of Village Mehrauli measuring 72 bighas. As regards the requisite certificates to be furnished by the D.D.A., it has been mentioned that the Direction (L.M.), DDA is being requested to forward the same to this office and copy has been endorsed to them for necessary action.

26. If approved, we may request Director (L.M.), DDA to furnish the requisite

certificates to this office urgently. Draft letter is added for approval please.

sd/-

(on 15.6.1988)

27. May kindly see the PUC letter dated 9.6.1988 from the L.A.C.(M.W.), Delhi forwarding the draft notifications u/s 4, 6 and 17 of the L.A. Act in respect of land comprising of Kh. No.1151/3 min. (New) and 1665 (Old) of village Mehrauli measuring 72 bighas. The Director (L.M.), D.D.A. vide their letter dated 12.4.1988 has mentioned about the unauthorised occupation and requirement of the land for Phool-Wallon-Ki-Sair. It has been mentioned that the land near around Phool-Wallon-Ki-Sair be acquired by issuing notification u/s 4, 6 and 17(i) of L.A.Act and the area will be developed as per provisions of Master Plan/Zonal Development Plan. The Director (L.M.), DDA vide letter dt. 21.4.1988 has intimated that the total area as per the sketch plan already submitted is 15.00 acres. It has also been mentioned that 80% cost of acquisition will be remitted as and when required.

28. If approved, the approval of the Hon'ble Lt. Governor, Delhi to issue the notification u/s 4, 6 and 17(i) of the L.A. Act for the land measuring 72 bighas of Village Mehrauli may kindly be obtained.

Submitted please

sd/-

(on 17.6.1988)

29. The Director (Lands), DDA vide letter dated 12.4.88 has send a proposal to notify the land near around Phool-Wallon-Ki-Sair in Mehrauli u/s 4, 6 & 17(1) of L.A.Act. This land is required by them for development as per the provisions of the Master Plan/Zonal Development Plan. The total area as per the sketch plan has been given as 15.00 acres vide their [30.] letter dated 21.4.88. The D.D.A. has requested to issue the notification by invoking provisions u/s 17(1) of the L.A.Act as there is problem of unauthorised occupation of the land.

31. The LAC(MW) has forwarded the draft-notification of the above land measuring 72 bigha comprising of the kh.No.1151/3(min.)(New) and 1665 (Old) of village Mehrauli which is placed in the file. The 80% of the compensation will be remitted by the D.D.A. to the revolving fund.

32. In view of the urgency involved, we may notify the land measuring 72 bighas of village Mehrauli bas per the draft-notification u/s 4, 6 and 17(1) of the L.A.Act.

33. It is requested that the Lt.Governor, Delhi may kindly accord his approval to notify the land measuring 72 bighas of village Mehrauli u/s 7, 6 and 17(1) of Land Acquisition Act as per the draft placed in the file.

Sd/- 20.6.88

(B.R.DEWAN)

ASST. HOUSING COMMISSIONER(LA)

Jt.Secretary(L&B)

34. The land measuring 72 bighas (Khasra No.1151/3 (min) (New) and 1665 (Old) is to be acquired to be developed as per the Master Plan for Delhi. This land is adjoining the area where the annual Phool Wallon Ki Sair function takes place and it is necessary to keep it free from encroachments.

35. Approval of the Hon"ble LG may kindly be obtained for notifying the above mentioned land u/s 4, 6 and 17(1) of the LA Act.

sd/- 20/6

Secy (L&B)

sd/- 21/6

L.G.

36. I have through the records and requirements of the Delhi Development Authority as also the draft notifications. I am fully satisfied that the land in question is urgently required for a valid purpose viz Planned Development of Delhi. I order hat in view of the urgency of the scheme, notifications under 4, 6 and 17(1) of the Land Acquisition Act, 1894 be issued immediately.

Sd/-

(H.L.KAPUR)

Lt.G., Delhi

23rd June, 1988"

16. From these nothings, it is not possible to hold that the Lt. Governor independently applied his mind to the question of dispensing with an enquiry under the provisions of Section 5A of the Act. This is because if the Lt. Governor had applied his mind to this question, he would have surely adverted to it however briefly. There is nothing to suggest from the note of the Lt. Governor that he was even aware that the relevant draft notification dispensed with an enquiry u/s 5A of the Act. On the contrary, the application of mind by the Lt. Governor was limited to the issuance of a notification u/s 17(1) of the Act, which he apparently seems to believe results in the automatic issuance of a notification u/s 6 of the Act. This is not so, inasmuch as prior to the issuance of a notification u/s 6 of the Act, either an enquiry should be held u/s 5A of the Act, or it should be consciously dispensed with. Neither of these two postulates are reflected or in discernible from the note of the Lt. Governor.

17. Learned counsel for the Respondents contended that the file containing the draft notifications were placed before the Lt. Governor, and hat the relevant draft

notification did recite that an enquiry u/s 5A of the Act was dispensed with. This is, no doubt, factually correct. However, this does not meet the requirement of law which mandates a positive application of mind by the acquiring authority that he is satisfied that an enquiry under the provisions of Section 5A of the Act ought to be dispensed with. An inference based on a collateral fact is not a valid substitute for a legal necessity.

18. According to learned counsel for the Respondents the Lt.Governor has, at best, committed an irregularity in not applying his mind to the question of dispensing with an enquiry u/s 5A of the Act. This argument is based on the forensic foible of the acquiring authority and is merely stated to be rejected. We are concerned with the rights of a citizen to hold and retain his property. The matter is of considerable importance so far as citizen is concerned and, as stated by the Supreme Court in *Dora Phalauli*, the rights of a citizen in this regard cannot be sought to be curtailed in such a casual or cavalier manner. We, Therefore, reject this contention.

19. The necessary result of our discussion is that we hold (on the basis of the record before us) that the Lt.Governor did not apply his mind to the issue of dispensing with an enquiry under the provisions of Section 5A of the Act. The Lt.Governor was also not advised that a part of this land measuring 40 bighas had earlier been sought to be acquired and that acquisition had lapsed by efflux of time.

Consequently, the impugned Notification No.F.9(20)/78-L&B(i) dated 30th June, 1988 is required to be quashed to the extent that it denies to the Petitioners their right to file objections under the provisions of Section 5A of the Act. It is so ordered. All subsequent proceedings will, quite naturally, stand quashed. The Petitioners are granted thirty days time, in accordance with law, for filing their objections to the proposed acquisition. The period of thirty days will begin to count from the date on which they obtain a certified copy of this decision. The Petitioners will be entitled to raise all contentions objecting to the acquisition of their land.

20. It may be mentioned, en passant, that a Full Bench of this Court in *Major S.K.Gupta* had taken note of the fact that in that case even though the writ petition had remained pending for about three years, no application for vacating the interim order restraining dispossession of the Petitioner therein had been moved by the Respondent. It was stated that if the requirement of the land had been urgent, the Respondents would have made some attempt to secure possession of the land and that their inertia proves that there was no pressing need or any urgency in acquiring the land (paragraph 51 of the Report).

21. Insofar as the present cases are concerned, the position is worse. This batch of cases has remained pending from 1988 onwards. Even though thirteen years have gone by, the Respondents have not taken any steps whatsoever either to have the interim orders of dispossession vacated or even to apply for early

hearing of the writ petitions. Their inertia is inexplicable. On the other hand, if the Respondents had, in the first instance, accepted the legal position expounded by the Supreme Court, the entire acquisition proceedings would have come to an end by now. The Respondents, for some reason, steadfastly refused to recognise the law laid down by the Supreme Court and thereby contributed to the delay in the acquisition. While this may or may not have any impact on the urgency exhibited in the acquisition of the land in question, it certainly does indicate that the requirement of the Respondents was not so urgent as to completely dispense with an enquiry under the provisions of Section 5A of the Act.

22. For all these reasons, all the writ petitions are allowed. The Petitioners will be entitled to costs of Rs.1,000/- in each writ petition.