
(1971) 10 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Appeal No. 195D of 1964

Muni Lal Bajaj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-10-1971

Acts Referred:

Citation : (1972) 1 ILR Delhi 850 : (1971) ILR Delhi 850

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : S.N. Chopra, S.S. Chadha, R.L. Roshan and R.M. Mehta, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The petitioner, on 27-11-1957, purchased a plot of land measuring about 3000 sq. yards in Khasra No. 222, Mauza Bahapur, Mathura Road, and by yet another sale deed dated 12-12-1958 he purchased the adjoining plot of land measuring about 800 sq. yards from the same vendors. Both these plots have been together marked by the letters A Bcd in the plan filed with the Writ Petition. These two plots are only about 82 feet wide at point A to B on the South and are about 115 feet in width at the apex. i.e. at point C to D. On the west of the plots, there is Railway land and Railway line.

(2) With the permission of the Delhi Development Authority, the petitioner built a boundary wall around the said two plots in 1957-58. Soon thereafter he built a ware house godown by putting up a hall 30 ft. X 60" ft. and some verandahs etc.

(3) Since the Municipal Corporation of Delhi objected to the said constructions the petitioner filed Civil Suit No. 231 of 1960 in the court of Sub Judge 1st Class, Delhi for a declaration that the constructions were lawfully made and were not liable to be demolished or even objected to by the Corporation. The Suit was decreed in favor of the petitioner on 28-3-1961 and the appeal filed on 27-5-61 by the Corporation against the Suit decree was also dismissed in 1962.

(4) In 1959, the petitioner let out one of the warehouses belonging to him at the site in question the Coca Cola Corporation (Private) Ltd. at Rs. 700.00 p.m. He also entered into a registered agreement with the same vendors for purchase of another plot of land nearby, indicated by letters E F G H J in the plan attached to the petition. He took possession of the plot and built a compound wall around it except on the side marked J to K, where the compound wall of Messrs. Roop Chand Jewellers already existed, and at the place marked N to M, where the existing compound wall of the cement factory demarcates the land in question.

(5) Two out of the four warehouses built by the petitioner are with tenants who are stated to pay Rs. 2,875.00 p.m. as rent to the petitioner. The remaining two warehouses are being used by the petitioner himself. He is carrying on the business of manufacture of steel pipes and uses the said two godowns as his warehouses.

(6) In the intervening plots in the same area are the warehouses of the Cement Factory and the Indian Iron & Steel Company. In the draft Master Plan prepared under the Delhi Development Act, these plots were not shown for utilisation for any public purpose. The petitioner filed objections to the said Plan on the ground that the site should be allowed to be used for small industries and that if the same could not be done it should be declared as a godown area. This suggestion was agreed to and in the Master Plan which was ultimately passed under the Delhi Development Act on 1-9-1962 this area was referred to (on page 15) as follows :

"Some area along Mathura Road has been earmarked for small warehouses".

(7) On 10-11-1960, the Delhi Administration issued a notification u/s 4 of the Land Acquisition Act stating that this property (referred to in Block "U" in Annexure II to the notification) was required for a public purpose, namely, "The Planned Development of Delhi". On 8-12-1960 the petitioner submitted objections u/s 5A of the Land Acquisition Act, copy of which is Annexure Ex. P.3 to the petition.

(8) While pointing out that the public purpose, namely, the Planned Development of Delhi was vague, indefinite and uncertain, the petitioner referred specifically to the above facts and features and stressed the fact that he was himself manufacturing M.S. pipes and pipe fittings in addition to sheet welded pipes and that private small factories and warehouses were already existing there.

(9) When the petitioner was summoned by the Land Acquisition Collector on 1-9-1961, he submitted a supplementary representation, copy of which is Annexure Ex.P.4 to the petition. It was stated therein that the cost of the constructions put up by the petitioner was more than Rs. 50,000.00 and that the buildings had been regularised by the civil court. He had requested the Collector to inspect the site personally before proceeding further in the matter.

(10) It is alleged that the Land Acquisition Collector inspected the site and

reported about the factory and warehouses already existing there. It is seen from the concerned files that the Land Acquisition Collector not only visited the site and noticed the above features but reported as follows:

""""Decision may kindly be taken after the inspection of site as a small factory has already been built there".

Subsequently a notification u/s 6 of the Act was made on 13-2-1964 stating that it appeared to the Chief Commissioner of Delhi that the said land, amongst others, was required to be taken by Government at public expense for public purpose, namely, the Planned Development of Delhi.

(11) Among other grounds, the petitioner has alleged that the enquiries made by him revealed that the representations which he had made to the Collector as well as the Chief Commissioner subsequent to the said notification u/s 6, would not be replied to and that the respondents did not intend to utilise the property in question for any purpose other than that for which it was already being utilised and there was no question of any further development etc. It has been specifically stayed that the Government's intention was to acquire free-hold rights of the petitioner and other plot holders in the area and give back the land in question to the same parties or to other private parties on lease-hold basis which by no stretch of imagination could be stated as public purpose within the meaning of the Land Acquisition Act, and that the impugned proceedings taken for the purpose were a mere colourable exercise of powers vested under the Land Acquisition Act.

(12) What was seriously stressed at the time of hearing of the petition by Shri S. N. Chopra, learned counsel for the petitioner, was that the Collector had not made any recommendation himself concerning the impugned acquisition and Therefore there had been no compliance with the mandatory provision of section 5A of the Land Acquisition Act. It is sufficient to notice the stand taken by the Government in this regard alone. In paragraph 21(x) of the affidavit-return filed by Shri A. v. Venkatasubbah, Secretary, (Local Self Government), Delhi Administration, it has been stated as follows:

"It is wrong that the report of the Land Acquisition Collector made under sub-section (2) of section 5-A of the Land Acquisition Act was not considered. I submit that the matter was thoroughly gone into and due consideration was given to the objections, preferred against the acquisition and it was thereafter that the declaration u/s 6 of the Act was issued. It is wrong that all the relevant data was not taken into consideration".

(13) Shri R. M. Mehta, learned counsel for the respondents, has also given me typed extracts from the concerned file. But it does not appear from the said file that there was any subsequent inspection of the site as suggested by the Land Acquisition Collector.

(14) The further question, which has been argued by Shri S. N. Chopra, was that

the Land Acquisition Collector did not make his own recommendation one way or the other and that his leaving it to the Government to decide after making a local inspection of the site was not sufficient compliance with section 5-A. of the Land Acquisition Act. The very expression employed by him-that decision may be made by the Government after inspecting the site since a small factory was already there-shows that he had not made any recommendation himself. Section 5-A reads as follows :

"5A. (1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final. (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act".

Section 5-A squarely places the duty on the Collector to give an opportunity of hearing to the petitioner/objector and make "his own recommendation after hearing the person affected by the proposed acquisition. The Supreme Court observed as follows in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, .

"By section 5-A of the Land Acquisition Act power to hear objections has to be exercised by the Collector as defined by section 2(c) of the Act. The power to hear objections is under the statute, not the power of the appropriate Government, but of the Collector".

(15) *Shri R. M. Mehta* relied on the decision of *Hardayal Hardy, J.* (as his lordship then was) and *M. R. A. Ansari, J.* in *L.P.A. No. II of 1960-Hanuman Prasad Gupta and others v. Lieutenant Governor and others*, decided on 6-11-1970(2). After discussing the legal position the Division Bench held in that case that the Collector had applied his mind to the objections and came to the view that the objections were purely legal and Therefore left the legal objections to be decided by the Government. The finding in that case was that there was no lack of application of mind by the Collector or abdication of his functions. In the present case the Collector has not stated anything himself concerning the objections except to refer to the physical features of the property inclusive of the existence of a small factory in the property sought to be acquired. On the crucial aspect, whether the property had to be acquired or not, the Collector did not say

anything and Therefore it is a case of not merely want of application of mind to this crucial question but abdication of the functions, laid on him by the statute, in favor of the Government. As the Division Bench pointed out, even if the Collector had made his recommendation it would not be binding on the Government since the Government may either choose to accept or not to accept the recommendations. But the requirement of the statute clearly is that when a person's property is proposed to be acquired the Collector must not only give an opportunity of hearing to that person whose property is proposed to be acquired but also make a recommendation one way or the other. This is a duty which would not be discharged by his merely leaving it to the Government to decide the matter without his recommendation, one way or the other. Such a recommendation, if it is in favor of the person who is affected, may go a long way in persuading the Government not to acquire the property. He cannot deny that person of such a benefit merely because even if he made the recommendation the Government was at liberty not to accept that recommendation. The learned Single Judge against whose decision the above L.P.A. was filed considered that the above-said requirement of the Collector having to make a recommendation was not mandatory. This view was not approved by the Division Bench which heard the Letters Patent Appeal. The Division Bench observed that the failure of the Collector to send a report or to send a report without his recommendation on the objections would be "a sheer exercise in futility" and would reduce the enquiry into a farce. Then they discussed the view of the learned Single Judge as well as other decisions as follows :

"Learned Judge"s reference to the words "after considering the report, if any, made u/s 5-A, sub-section (2)" in subjection (1) of Section 6 also does not appear to us to be helpful to the argument that has found favor with him. According to the learned Judge, Section 6(1) contemplates a case in which no report of the Collector may be available to the Government at all and even then the Government can take a decision to acquire the land in a particular case. In our opinion, the use of the words "if any" in sub-section (1) of Section 6, does not warrant the conclusion that the report need not be made at all or if made, need not contain what the section says it should. The words "if any" have been used in Section 6(1) only with reference to a case which comes within the exception contained in Section 17 of the Act. It is only when action is taken u/s 17(4) of the Act that it is not necessary to follow the procedure in Section 5-A and a notification u/s 6 can be issued without a report from the Collector u/s 5-A. The usual procedure on the other hand, is that a notification u/s 6 can be issued only after the procedure u/s 5-A has been followed. For the view we are taking, we find support from the decision of the Supreme Court in Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, , it is said that compliance with the provisions of Section 5-A is necessary before a notification can be issued u/s 6 and that the words "if any" in the clause "after considering the report, if any, made u/s 5A" have been used only to cover the case of an

exception u/s 17. On behalf of the respondents, our attention was invited to an unreported decision of a Division Bench of the Supreme Court (K. S. Hegde and A. N. Ray, JJ.) in Civil Appeal No. 1637 of 1966 : Chandar Rama Patil and others v. The State of Maharashtra and others decided on 19th (4) August 1969 where it was said : "Section 6 of the Act does not indicate that a report is imperative. The words used are "report, if any" and the implication is that there need not be a report in all cases". The above observations do not appear to us to be contrary to what was said in Nandeshwar Prasad's case as the learned Judges do not say that a declaration u/s 6 of the Act can be made in all cases without there being a report by the Collector. We are Therefore unable to agree with the learned Judge that while the holding of inquiry and the hearing of objections is obligatory on the Collector and that a part of section 5-A of the Act is mandatory in character the provision regarding submission of a report or at any rate, a report containing the Collector's recommendations on the objections, is not and that the requirement of section 5-A will be satisfied even if there are no such recommendation."

(16) The Collector having failed to comply with the duty statutorily laid on him in the matter of making the said recommendation, the impugned notification u/s 6 in so far as the petitioner's land is concerned is quashed. The Writ Petition is accordingly accepted with costs. Counsel's fee Rs. 150.00.