

(1970) 12 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 433D of 1961

Munshi Lal and Others

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 10-12-1970

Acts Referred:

Citation : (1971) ILR Delhi 113

Hon'ble Judges : Prakash Narain, J

Bench : Single Bench

Advocate : S.N. Chopra and D.K. Kapur, for the Appellant;

Judgement

Prakash Narain, J.

(1) The petitioners (in this case) under the name and style of Friends Corporation purchased a plot of land measuring 14050 square yards in Khasra No. 408 with a bungalow built thereon collectively known as premises No. 21 Rajpur Road, Delhi. The petitioners state that they had acquired this land to make independent residential houses for themselves, A lay out plan was submitted by the petitioners to the Municipal Corporation of Delhi for permission to divide the property into 14 plots so as to provide each of the petitioners with independent space for constructing residential cottages for themselves. This lay out plan is stated to have been sanctioned by the Municipal Corporation of Delhi on 6-6-1961. The petitioners thereon proposed to submit building plans for their individual properties but before they could do so a notification dated 26-5-1960 was published in the Delhi Gazette u/s 4 of the Land Acquisition Act, 1894 proposing to acquire the land. There is some controversy as to the khasra numbers boundaries in area of the properties so notified for proposed acquisition. Anyhow, the petitioners claim they preferred objections u/s 5A. of the Land Acquisition Act to the proposed acquisition. The petitioners claim that they did not get full opportunity to substantiate their objections u/s 5A of the Land Acquisition Act and a notification u/s 6 of the Land Acquisition Act, 1894 in respect of the property was issued on 8-8-1961. It is contended that even in this

notification u/s 6 there was error in delineating the property and describing the same correctly. Aggrieved, by this acquisition the petitioners filed a petition u/s 226 of the Constitution of India challenging the acquisition on various grounds. In the meantime, however, it is admitted, the petitioners continued their efforts at other levels to get their property released. It is contended by the petitioners that their effort was successful and the property was actually released, but the Delhi Administration is acting mala fide in withholding the cancellation of the notifications u/s 4 and 6 of the Land Acquisition Act. In order to bring home this subsequent development the petitioners moved C.M. 521-D of 1966 setting out that on their representations seeking release of the property the then Chief Commissioner of Delhi, Shri Dharam Vira, I.C.S. appointed a Sub-Committee consisting of four persons, namely, Sarv-shri Shiv Charan Gupta, M.P. K. L. Rathi, the then Housing Commissioner, Delhi Administration, the then Vice Chairman of Delhi Development Authority and K. Kishore, then Chief Secretary, Delhi Administration to consider the representations made by the petitioners and report if the property could be released from acquisition. It is alleged that the Committee under the Chairmanship of Shri Shiv Charan Gupta examined the matter and came to the conclusion that the land in question should be released from acquisition and was not needed for any public purpose. On a consideration of the report of the sub-committee, it was alleged, Shri Dharam Vira, the then Chief Commissioner of Delhi, examined the entire matter himself and ordered the release of the property from acquisition. It was also alleged that the order passed by the Chief Commissioner was communicated to the petitioners by him orally. In this view of the matter it was urged that the changed circumstances may be kept in view and the respondents be directed to issue formal orders or notification denoting the property and releasing it from acquisition.

(2) The respondents had contested the writ petition on merits and disputed the contentions made by the petitioners in C.M. 521-D of 1966. Thereupon the petitioners moved C.M. 1409-J of 1968 praying that the additional facts pleaded by them earlier about release of the property may be allowed to be brought on record and the file pertaining to the property in dispute be summoned and placed before the court so that the contention about the release of the property could be verified. Notice of this application was given to the respondents who opposed the prayer and even claimed privilege in respect of the file. This claim of privilege was negated by me by my order dated 25/09/1970 and I directed that the respondents place on record the orders passed by Shri Dharam Vira, I.C.S. the then Chief Commissioner of Delhi in November, 1964 and the orders stated to have been passed by some competent authority on 20-7-1965. These were duly placed on record and file No. F.15(107)/60-L.S.G.II(Part II) now forms part of this record.

(3) A perusal of this file shows that the contention of the petitioners about the constitution of a Committee to consider their representation regarding the release of 21-Rajpur Road, Delhi from the purview of acquisition are correct. - A meeting of this Committee was held and its minutes are on record. Thereafter there are

various notes of officers and other persons dealing with this representation at various levels until we come to the order of the Chief Commissioner which the petitioners claim was passed on 17-11-1964. It is not necessary to set out that order in detail but the purport of the order is quite clear and that is the property stood released from acquisition. The compliance of this order was then merely a procedural matter. It seems that on 20-7-1965 Mr. V, Vishwanathan the then Chief Commissioner of Delhi considered revision of the orders passed by Shri Vira and expressed a view that the acquisition proceeding should not be dropped, but also stated that since the matter was pending in the High Court the result of the decision of the High Court may be awaited. How this order came to be passed is neither clear from the file nor has been made clear by the respondents in their affidavits. The question, therefore, that now arises for decision in this case, is, what is the effect of the order of Shri Dharam Vira passed on 17-11-1964 and whether something more was required to be done under the law to make that order operative.

(4) The scheme of the Land Acquisition Act is that whenever the appropriate Government wishes to acquire land it publishes a notification u/s 4 of the Land Acquisition Act, 1894 to the effect that a particular land in a particular locality is needed or is likely to be needed for a public purpose. The effect of this notification is that on its publication it becomes lawful for any officer authorised by the Government to enter upon and survey such land and do all acts necessary to ascertain whether the land can be adopted for the purpose for which it is intended to be acquired. The owner of the land has a right to file objections u/s 5A of the Act and show either that the land is not suitable for the public purpose or that for other cogent reasons it should not be acquired. After carrying out its survey etc. and hearing the objections u/s 5A the Government then issues a declaration of intended acquisition under section 6 of the Land Acquisition Act and this declaration is issued by means of a notification published in the Gazette. This notification publishing the declaration has to state all the particulars of the land intended to be acquired in accordance with the provisions of the statute. The Government then directs some officer, usually known as the Land Acquisition Collector, to make an order for the acquisition of such land. On receiving directions the Collector causes the land so notified under section 6 of the Act to be marked out and a plan to be made of the same. He also issues notices to persons interested u/s 9 of the Land Acquisition Act to come and prefer their claims for compensation. After holding an enquiry as to the compensation claimed the Collector then makes an award u/s 11 of the Land Acquisition Act. After making such award the officer or the Land Acquisition Collector is required to file the said award in the Collector's office. The Collector then gives notice of the award to the persons interested u/s 12(2) of the Act. It is only after the award has been made that the Government can proceed to take possession of the land and on taking possession the acquisition is complete and the land thereupon vests absolutely in the Government free from all encumbrances. Thus it is only when possession is taken that the acquisition is complete. Section 45 of the Land

Acquisition Act provides that except in cases provided in section 36 of the Act the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. On such withdrawal the Collector is required to determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or any proceedings of acquisition and shall pay such amount to the person interested together with all costs etc. There is no provision under which the Government can withdraw from the acquisition after it has taken possession of the land. In the present case there is no dispute that possession had not been taken before the passing of the order dated 17-11-1964. It is also not in dispute that the provisions of section 36 are not attracted in the present case.

(5) The scheme of the Act, as enumerated above, leaves no manner of doubt that till the time of the taking of the possession the Government is free to withdraw from the acquisition at any stage whether it be the stage of the publication of the notification u/s 4 or the publication of the notification u/s 6 or even when the award is made it is contended on behalf of the petitioners that in the present case the Government has withdrawn from the acquisition prior to its taking possession of the land or offering compensation by the award made by the Land Acquisition Collector and it be declared that this is so. On the other hand the Government's contention is that it has not withdrawn from the acquisition and unless an order is published releasing the land the acquisition proceedings can be continued culminating in the making of the award, filing of the same with the Collector and taking possession of the property. The first point to be examined in the case, as it now stands, is whether the petitioners had any right to claim release of their property after the publication of the notification u/s 6 of the Act and if so in what manner, could that right be exercised. The respondents' case on this aspect is that once a notification u/s 6 of the Act has been published an owner of land or a person interested in land cannot agitate for release of the property from acquisition in as much as that right is available under the statute only u/s 5A of the Act. I am not impressed by this contention. Section 5A of the Act gives a statutory right to oppose a declaration of intended acquisition. The notification published u/s 6 is merely a declaration of intention to acquire and does not amount to acquisition itself. This aspect is quite clear on a reading of section 11 and 12 of the Act. There is no statutory bar to a person representing against being deprived of his property. Indeed to hold property is a fundamental right guaranteed by the Constitution of India and no statutory or other limitation can be placed against a person such legitimate means as may be available to him to secure his property rights. Section 48 of the Land Acquisition Act in terms provides that the Government may withdraw from the acquisition at any stage prior to it taking possession of the land. This, therefore, envisages that a person interested or an owner may move the Government by representation to release the property from the process of acquisition at any stage prior to possession being taken by the Government and in any case there can be no bar against it. This is exactly what happened in the present case and it is claimed that

the Government did withdraw from the acquisition within the ambit of section 48 of the Act. A full Bench of the Allahabad High Court in Bahori Lal Vs. Land Acquisition Officer and Others, observed as under:-

"AFTER the making of the declaration u/s 6 of the Act, persons interested may not have any right to raise such objections as are open u/s 5-A but it is wrong to say that they are left only with the right to receive compensation. u/s 48(1) except in the case provided for in section 36. the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken. So, even after a declaration u/s 6 has been made, a person interested may raise objections or make representations in consequence of which the Government may ultimately withdraw from the acquisition of the land u/s 48(1). For raising such objections or making such representations no statutory provision is needed under the circumstances stated in Section 49 of the Act, right of objection has been given against partial acquisition. This right can be exercised both after the notification u/s 4(1) and the declaration under section 6(1) of the Act

I am in respectful agreement with the observation of their Lordship of the Allahabad High Court. No interest is created in the land notified for acquisition u/s 6 of the Land acquisition Act and so the contention that once a notification u/s 6 has been published a party cannot claim release of his land cannot be accepted.

(6) The next question that must be decided is whether the Government's withdrawal from acquisition has to be published by means of notification or communicated in any particular form. Section 48 by itself does not set out that a notification is necessary to be published. Indeed sections 4 and 6 of the Act in terms provide for notification to be published while section 9 and 12 of the Act provide for notice being sent. Nothing has been pointed out to me either in the statute or in the rules which require a notification to be published or a notice to be issued on the Government deciding to withdraw from the acquisition u/s 48 of the Act. In fact section 48 is an enabling section and the mechanics of sending intimation after the exercise of that right may differ from case to case and circumstance to circumstance. An order will necessarily have to be passed by the Government withdrawing from the acquisition but whether that order requires to be published by a notification or it requires to be communicated in writing is a point which is not dealt with by the statute or the rules. Mr. Devinder K. Kapur, the learned counsel for the respondents urged that unless such an order is communicated it cannot be effective and would amount to no order. He referred to a decision of the Supreme Court in State of Punjab Vs. Amar Singh Harika, and quoted from the speech of Gajendragadkar, C. J. that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. That was a case in which the services of a Government employee were alleged to have been terminated and it was held that the order of termination of services cannot take effect till it is communicated. In my opinion, the ratio of that decision is not attracted to the facts of the

present case at all. As already noticed by me earlier no right in the property is created in favor of the Government till it takes possession, and if it chooses to withdraw from the acquisition prior to taking possession the owner's rights are not affected one way or the other for he was never deprived of his ownership. Mr. Devindra K. Kapur urged that till the order is communicated the Government was at liberty to change its mind and so a notification was necessary. For this purpose he relied on a Bench decision of the Madras High Court in Khan Bahadur Chowkaran Keloth Mammad Koy v. Province of Madras Air 1964 Mad 450. In my view that decision is not relevant at all inasmuch as it was based on consideration of the rules framed by the Madras Government under the Land Acquisition Act. Rule 5 of that Government's Rules provides for a notification to be issued regarding the decision taken by the Government u/s 48 of the Land Acquisition Act. In that view of the matter it was held that prior to the publication of the notification the Government could change its mind and continue with the acquisition. As already observed by me earlier no rules have been brought to my notice which require publication of the decision of the Government u/s 48 in Delhi.

(7) That Shri Dharam Vira took this decision is apparent from the file. The question that arises is whether his decision is the decision of the Government. This point, however, need not detain us very long because in terms of section 3(8) of the General Clauses Act read with section 3(60) of the same Act the then Chief Commissioner of Delhi would be appropriate Government for the purposes of acquisition of land under the Land Acquisition Act, 1894 and his decision would be the decision of the Government within the meaning of section 48(1) of the Land Acquisition Act. I, therefore, hold that once the decision had been taken by Shri Dharam Vira the Government must be held to have withdrawn from the acquisition under section 48 of the Act. Whether that decision was communicated or not would be immaterial but in the present case it stands established on record that the decision was communicated by Shri Dharam Vira himself to the petitioners and that fact has not been refuted or challenged. No formal communication was necessary and in that view of the matter the proposed acquisition of the property in dispute comes to an end. The revival of the acquisition proceedings by Shri V. Vishwanathan if at all it amounts to revival is wholly illegal as once the Government has withdrawn from acquisition it can only reacquire the land in accordance with the provisions of Land Acquisition Act, namely, by issuing fresh notifications under sections 4 and 6 of the Act and taking the necessary proceedings thereafter culminating in the award and taking of the possession. I, therefore, issue a writ declaring that the intended acquisition by the Government of the premises known as 21-Rajpur Road, Delhi has come to an end by the act of the Government withdrawing from the acquisition on 17-11-1964 and restrain the respondents from proceeding to acquire the said property in pursuance of the earlier notifications u/s 4 and 6 of the Land Acquisition Act issued on 26-5-1960 and 8-8-1961 respectively. In the circumstances it is not necessary to advert to the other objections to the acquisition taken by the petitioners. The petitioners will also be entitled to

their costs.