
(2006) 01 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) 22072-73 of 2005

Narain Dass and Another

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 4, 48, 5A, 6

Citation : (2006) 2 AD 425

Hon'ble Judges : T.S. Thakur, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Rakesh Munjal and Vikram Nandrajog, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In the first round of litigation that concluded with the order passed by a Division Bench of this Court on 31st May, 2005, the petitioners had challenged the validity of notifications issued u/s 4 and the declaration issued u/s 6 of the Land Acquisition Act. The principal ground of attack, mounted in the said earlier petitions was that the enquiry u/s 5A of the Act was vitiated on account of violation of principles of natural justice. It was alternatively argued that in terms of the policy of the Government, the lands owned by the petitioners could not be acquired as the same were situate within 50 metres of the village abadi. Rejecting the challenge to the validity of the enquiry, this court held that the acquisition in question was for a public purpose and that the original record produced before the Court sufficiently showed that the objections filed by the petitioners had been considered by the Collector in detail not only in the note sheet but also in the report submitted to the competent authority. Relying upon decisions of the Supreme Court in Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, , Sam Hiring Co. Vs. A.R. Bhujbal and others, and Tej Kaur and Others, etc. Vs. State of Punjab and Others, , the Court held that since an opportunity had been given to the petitioners and the objections considered, the principles of

natural justice stood complied with.

2. In so far as the alternative contention regarding the existence of a Government policy and a possible exclusion of the petitioners' lands from acquisition under the same was concerned, this Court declined to interfere with the acquisition proceedings for a two-fold reason. Firstly, this Court held that there was nothing on record to show whether the policy in question was still in force. Secondly, the Court held that even if the policy was in force, it was for the concerned authorities to examine the relevant facts while applying the provisions of the policy to the lands in question. The following observations are in this regard apposite :-

Firstly, there is nothing on record before us to show whether the policy in question is still in force. Even if the policy was in force, it is for the concerned authorities to examine various facts of enforcement of the scheme vis-a-vis the acquisition of land. Such decision would primarily fall in the domain of the administrative authorities and would hardly call for judicial intervention unless exercise of such power was patently arbitrary or the decision was so preserve so as to defeat the public purpose rather than promote the same. We are unable to find any merit in the contention raised by the petitioners even on this ground, that the report of the Collector and the acquisition proceedings taken should be set aside.

3. The Court, accordingly, left the issue regarding exclusion of the land owned by the petitioners under the policy open. The Court recorded a concession made on behalf of the petitioners that they did not press their challenge to the acquisition proceedings on the touchstone of the Government policy and would be content if their representation u/s 48 of the Act is directed to be considered by the competent authority and a decision taken on merits in regard to denotification of the land. Support in that regard was drawn by the petitioners from a Division Bench decision of this Court in *Daya Nand (Shri) and Ors. v. Union of India and Ors.*, 2004 IV AD (Delhi) 313. The result was that the petitions filed by the petitioners were disposed of with the following directions :-

In view of our above detailed discussion we dispose of these writ petition and while rejecting all other contentions raised on behalf of the petitioners we direct the Respondents to consider the representation of the petitioners preferred u/s 48 of the Act and/or treat this writ petition as a representation in that regard and pass an order, if necessary, after hearing the petitioners, within 8 weeks from the date of pronouncement of this order. The order passed shall be communicated to the Respondents or their representatives by registered post immediately thereafter. It is evident that no award has been made so far. Admittedly, the possession is with the petitioners and in fact the proceedings under Sections 9 and 10 of the Act are in progress before the competent authority. As such no prejudice would be caused to the respondents if the parties are directed to maintain status quo in regard to possession and construction of the property in question, for a period of 10 weeks from the date of pronouncement of this

judgment.

4. The representations made by the petitioners seeking deletion of their land from acquisition proceedings u/s 48 of the Act on the strength of the Government policy relied upon by the petitioners were pursuant to the above directions considered by the Denotification Committee constituted for the purpose who recommended the rejection of the said representations which recommendations were, in turn, approved by the Lt. Governor of Delhi, who happens to be the competent authority. Aggrieved, the petitioners have challenged the said orders of rejection in the present batch of petitions.

5. We have heard learned counsel for the parties and perused the record. The legal position regarding the right of a land owner to demand denotification of land otherwise validly notified for acquisition is settled by two Division Bench decision of this Court in *Raheja Hospital and Psychiatric Research Institute Vs. Lt. Governor of Delhi and Others*, and *Radhasoami Satsang Beas Vs. Union of India (UOI) and Others*, . Relying upon the decision of the Supreme Court in *Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce*, , this Court in *Raheja Hospitals*" case (supra) held that Section 48 of the Land Acquisition Act simply gave liberty to the State Government to withdraw from the acquisition at any stage before possession of the acquired land is taken and that the State Government could exercise that liberty unilaterally without giving any opportunity of being heard to the owner of the land proposed to be acquired. The Court also dealt with the question whether the guidelines formulated by the Government for the exercise of its power u/s 48 were statutory in nature and enforceable in law. Relying upon the decision of the Supreme Court in *Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others*, , this Court held that the guidelines in question were non-statutory in character and, could not, Therefore, be enforced in a court of law. "Policy is not the law. The statement of policy is not a prescription of binding criterion", observed the Court. Having said so, this Court, summed up the legal position as under, taking support from the Supreme Court in *Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others*, :

For the reasons given by us above, we are of the view that the guidelines dated 2nd December, 1998 are non-statutory and, Therefore, not legally enforceable. These guidelines do not confer any enforceable right on any landowner. Consequently, a landowner has no enforceable right to make a representation u/s 48 of the Act nor are the Respondents obliged to consider such a representation even if a landowner has made it, more particularly when the acquisition is upheld by a Court of law, as in the present case. However, if there is any deviation from these guidelines resulting in any discriminatory treatment against a landowner, then and only then could a landowner seek enforcement of the guidelines, which may even then be declined, if sufficient cause is shown. The right of a landowner in respect of the applicability of the guidelines is limited only to this extent.

(Emphasis supplied).

6. The correctness of the above statement of law was not disputed before us by counsel for the petitioners. In the absence of any plea to the contrary, justifying a reference to a larger Bench, we as a Bench of coordinate jurisdiction, are bound by the statement of law made in the above decision. That being so, the petitioners can seek interference from this Court only on the plea of discrimination in the matter of implementing the Government policy. The question, Therefore, is whether there is any discrimination in the matter of grant or denial of benefits under the policy.

7. The petitioners case as set out in the petition is that the policy guidelines formulated by the Government, a copy whereof has been placed as Annexure P-3 to the petition, land situate within 50 metres of village abadi is generally immune from acquisition proceedings. The petitioners land is, according to the averments made in the writ petitions, situate within a distance of 50 metres from the village abadi and could not, Therefore, have been notified for acquisition. The petitioners have summed up their case as regards the plea of discrimination in the following words :-

Lands situated in Khasra Nos. 21/10, 21/11, 21/12, 21/13, 21/18, 21/19, 21/20, 21/21, 21/22 and 21/23 measuring about 10 acres as well as certain other lands situated in Khasra No. 25/18/2, 25/19, 25/22, 35/1, 35/2, 35/3, 35/4, 35/8 and 35/9, 96/1 and 96/68 have not been notified for acquisition in the Section 4 notification dated 27.1.2003. Lands situated in Khasra No. 96/2, 96/3, 96/4, 96/5, 96/6, 96/7, 96/8, 96/9, 96/10 and 96/11 which were initially notified for acquisition in Section 4 notification dated 27.1.2003 have since been excluded in the Section 6 notification dated 23.1.2004. All the Khasras left out of acquisition either in Section 4 notification or in Section 6 notification are marked in colour "PINK". The petitioners Khasra is marked in colour "RED". Perusal of the map annexed as Annexure P-7 reveals that all these khasras No. 35/1, 35/2, 35/3, 35/4, 35/8 and 35/9 and khasras 96/1 to 96/9 and 96/68 are lands within 50 meters of the village abadi. All these lands have been left out either in the Section 4 notification or subsequently in the Section 6 notification. The land of the petitioners being similarly situated was, however, included in both Section 4 and Section 6 notification. Non-application of mind, arbitrariness and discrimination qua the petitioners is evident on the face of the record.

8. It is evident from the above that the petitioners allege discrimination on account of non-inclusion of certain khasra nos. in the preliminary notification u/s 4 and deletion of certain other khasra numbers from the acquisition proceedings at the stage of issuing the declaration u/s 6 of the Act . The allegation is that the land so deleted being situate similarly as the land of the petitioner, the refusal of the respondents to delete the petitioners land also results in discriminatory treatment against them.

9. The counter affidavit filed on behalf of the respondents emphatically denies the correctness of the allegations made by the petitioners. According to the respondent the petitioners are not similarly situate with the owners of the land

referred to in para 11 of the petition extracted above. It is stated that as far as land comprising khasra numbers 21/10, 21/11, 21/12, 21/13, 21/18, 21/19, 21/20, 21/21, 21/22 and 21/23 and 25/18/2,19,22,3 & 4 and 96/1 are concerned, the same were neither required by the Delhi Development Authority nor were ever notified u/s 4 of the Act. This was mentioned even by the Collector in his report u/s 5A dated 11th June, 2003. There was thus no discrimination vis-a-vis the petitioner. The respondents further allege that in so far as lands comprising khasra no. 25/1,2,8 and 9 were concerned, the allegation that the same had been released from acquisition proceedings or left out from Section 6 declaration was false. That leaves land comprising in khasra nos. 96/2,3,4,5,6,7,8 and 9 which has, according to the respondents, been left out of acquisition pursuant to an order passed by the competent authority on the ground that the said land fell within "lal dora", i.e., residential area limits declared under the relevant Act. Since the petitioners land did not admittedly fall in "lal dora" and is governed by Delhi Land Reforms Act, 1954 under which it can be utilised only for agricultural purposes, the plea of discrimination was unfounded. The allegation that there is any goshala (cattle pend) existing on the spot is also denied. The petitioners have, according to the respondents, constructed godowns over the land under acquisition in violation of the provisions of the Land Reforms Act.

10. The policy guidelines formulated by the Government for purposes of denitrifying lands under acquisition make the following provision, upon which the petitioners" place reliance:-

4.0 CASE WHICH MAY BE CONSIDERED FOR DENOTIFICATION

Cases of the following nature may be considered for denotification :

4.1 REQUEST OF REQUISITIONING DEPARTMENT

Where the requisitioning department itself requests denotification of a land, it may be recommended for denotification.

4.2 LAND WITHIN 50 METERS OF VILLAGE ABADI

As per the decision of the Standing Committee in the meeting dated 3.6.93 land 50 meters from village abadi is not acquired. However, in case any such land has been notified for acquisition, it may be recommended for denotification provided its absence will not materially affect the public purpose for which it is being acquired.

4.3 X X X X X X

4.4 X X X X X X

11. The Petitioners allege that while giving effect to the said policy, lands within 50 metres have been acquired in their case while those similarly situate have been excluded thereby bringing about a hostile discrimination between persons similarly situate. That position is, as noticed above, seriously disputed by the

respondents who have, on affidavit, stated that some of the khasra nos. mentioned by the petitioners as initially notified were never required by the Delhi Development Authority nor were the same ever included in Section 4 notification. There is, Therefore, no question of drawing parity with any such parcels of land. Khasra nos. 96/2,3,4,5,6,7,8,9,10 and 11 were, however, left out as the same fell within "lal dora" (residential area). The lands owned by the petitioners do not, according to the respondents, fall within the "lal dora" and were not, Therefore, liable to be excluded from acquisition on the analogy of lands that fell within "lal dora" limits. In the rejoinder filed by the petitioners, that part of the assertion made by the respondents has not been disputed. It is not the case of the petitioners that the reason for exclusion of lands situate in khasra nos. 96/2,3,4,5,6,7,8,9,10 and 11 was applicable even to their lands so as to result in a hostile discrimination unless their lands were also similarly excluded. That being so, the plea of discrimination remains unsubstantiated. It is trite that the burden of proving a case of discrimination rests entirely on the persons who allege such discrimination. Failure to prove facts necessary to constitute such discrimination to the satisfaction of the court must consequently result in rejection of the plea. In the absence of any plea that the petitioners lands are also similarly situate within the "lal dora", there is no question of there being any discrimination against the petitioners. In any event, even if petitioners had alleged their lands to be within "lal dora" limits which fact the respondents seriously dispute, it may not have been possible to resolve that controversy in the present proceedings. A plea of discrimination that cannot be substantiated on the material before the court and that may call for an enquiry and investigation based on evidence regarding the relevant facts cannot obviously succeed particularly when the same arises in proceedings for acquisition of land for public purpose validity whereof has already been examined and upheld by the court. It is not a case where lands have been excluded on the basis of the guidelines in one case while such exclusion has been refused in the other even when the two parcels of land are similarly situate. There is in fact no denotification issued by the competent authority in the present case whether on the basis of the policy guidelines or otherwise. The petitioners cannot, Therefore, establish any discriminatory treatment based on the said guidelines.

12. In the totality of the above circumstances, Therefore, we see no reason to interfere. The writ petitions fail and are hereby dismissed but in the circumstances without any orders as to costs.