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**(1998) 09 DEL CK 0134**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1283 Of 1996 and C.M.No. 2439/96

Nirmalendu Dev Nath and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 23-09-1998

**Acts Referred:**

**Citation :** (1998) 6 AD 458 : (1998) 4 CLT 324 : (1998) 75 DLT 765 : (1999) 48 DRJ 147

**Hon'ble Judges :** A.D. Singh, J

**Bench :** Single Bench

**Advocate :** Mr. R.K. Saini and Mr. Vinod Yadav, for the Appellant; Ms. Geeta Luthra and Mr. R.K. Khanna, for the Respondent

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## **Judgement**

Anil Dev Singh, J.—This is a writ petition whereby the petitioners seek a writ, order or direction in the nature of certiorari for quashing Award No. 13/95-96 dated December 20, 1995 (Annexure "P-7" to the writ petition) rendered by the Land Acquisition Collector, Delhi, and the proceedings culminating into it. The facts giving rise to this writ petition are as follows :-

2. The petitioners purchased twenty plots measuring 4 Bigha 4 Biswas, located at Pankha Road, New Delhi, in a residential colony known as Vashisht Park Extension, Village Dabri, Delhi. These purchases were made from agriculturists in the year 1974 by way of registered sale deeds. After purchase of the land the petitioners constructed tenements which are being used for residential as well as commercial purposes. The area has been urbanised and the petitioners have the facilities of water, electricity, telephones and ration cards. The names of the residents including that of the petitioners figure in the voters' lists. The petitioners also claim that the colony has been regularised and the House-tax is being levied by the Municipal Corporation of Delhi.

3. On September 21, 1993, the Land Acquisition Collector issued a notification u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") in respect of the land in question for "the planned development of Delhi, i.e., development of Dwarka

Project". By the same notification, the provisions of section 5-A of the Act were dispensed with u/s 17(1) read with section 17(4) thereof. Thereafter, on December 21, 1993 a declaration was issued u/s 6 of the Act. On the same day a notification was issued by the Delhi Administration in the name of the Lt. Governor of Delhi u/s 17(1) of the Act whereby the Land Acquisition Collector, Delhi, was directed to take possession of the land on expiration of fifteen days from the publication of the notification under sub-section (1) of section 9 of the Act. But despite the direction the possession was not taken over after the expiry of fifteen days from the publication of the notice u/s 9 of the Act. The land acquisition proceedings culminated in the impugned Award No. 13/95-96 dated December 20, 1995.

4. The petitioners are aggrieved of the acquisition proceedings and the above said Award of the Collector. The basic grievance of the petitioners is that the Collector by invoking the provisions of section 17(4) of the Act has deprived them of their right to file objections to the acquisition proceedings u/s 5-A of the Act. Mr. Saini, learned counsel for the petitioners submitted that the notification does not give any reason for invoking the provisions of section 17(4) of the Act. He contended that the notification, without spelling out any justification for application of the provisions of section 17(4) of the Act, has taken away a very valuable right conferred on the land owners u/s 5-A of the Act. It was canvassed that there was no urgency involved in the case and, Therefore, the provisions of section 5-A of the Act could not have been dispensed with. The action of the Land Acquisition Collector has been criticised as being malafide and a fraud on the statute.

5. I have considered the submissions of the learned counsel for the petitioners. As is apparent from the notification, the land is required for the planned development of Dwarka Project. Similarly, in the counter-affidavit as well it has been stated that the land is required for the development of Dwarka Project, a sub-city which has been constructed by the Delhi Development Authority. The city has two phases - Phase I and Phase II. It is to cater to the needs of millions of people. It will provide housing to a large number of persons. Besides, it will be used for commercial, industrial, recreational and other purposes including utility services. Crores of rupees have already been spent on the development of the Dwarka Project. It is also claimed that the land in question is required by the D.D.A. for connecting the Palam Drain with the Panka Road Drain so that the discharge capacity of the Palam Drain could be increased. At this stage, it will be appropriate to extract the relevant averments made in the counter-affidavit filed by the Delhi Development Authority :-

".... It is submitted that the present land is required by the authority for getting the Palam Drain connected with the Panka Road Drain so that the discharge capacity of the Palam Drain is increased. It is submitted that the matter was discussed in the meeting and it was decided that part of the discharge from the Palam may be diverted to Pankha Road drain so that the Palam drain will be able

to cater the discharge from the adjoining colonies. It is submitted that the capacity of the Palam drain is 800 cusecs and out of which it was decided to divert 1000 cusecs to the Panka Road Drain. It is submitted that for this diversion the alignment was so finalised so that it may only affect a very small part of the built up structure. It is further submitted that several aspects of the matter were considered while deciding to have a diversion....."

6. Thus, it is obvious that the purpose for which the land is required is connected with the planned development of a residential project. The need to provide shelter to the homeless is the constitutional obligation of the State. The State is empowered to exercise power u/s 17(4) when it is of the opinion that it is necessary to acquire immediate possession of the land for a public purpose. In the instant case the land is required in connection with the development of a housing colony which is to accommodate large sections of the people from different walks of life. Having regard to the phenomenal rise in population in the urban areas, urgent measures for planned development are required to be taken, and in such matters the Government can validly exercise its power u/s 17(1) read with section 17(4) of the Act for dispensing with the enquiry u/s 5-A of the Act. In *State of U.P. Vs. Smt. Pista Devi and Others*, , the Apex Court recognized that private housing accommodation is a national urgency of which the court should take judicial notice. The invocation of section 17(4) of the Act on the above consideration was upheld. It is significant that in that case the notification u/s 4 did not specifically state the reason for application of section 17(4) of the Act and dispensing with the enquiry u/s 5-A of the Act. All that was stated was that the land was required for housing accommodation in regard to the planned development of Meerut.

7. In *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, , the Supreme Court held that very often persons interested in the land proposed to be acquired make representations to the concerned authority which is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. It was further observed that very often delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. In *Chameli Singh and others etc. Vs. State of U.P. and another*, , the Supreme Court, while dealing with the notification u/s 4(1) of the Act and the exercise of power by the State u/s 17(1) read with section 17(4) of the Act dispensing with the enquiry u/s 5-A of the Act, held that the opinion of urgency formed by the appropriate Government is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power. Drawing support from its earlier decisions and keeping in view Articles 19(1), 21, 39(b), and 46 of the Constitution of India, Article 25(1) of the Universal Declaration of Human Rights, Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, 1966, etc., the Supreme Court held that right to shelter is a fundamental right and it includes adequate living space, safe and decent structure, clean surroundings, sufficient light, pure air and water,

electricity, sanitation and other civic amenities like roads, etc. so as to have easy access to one's daily avocation. It further held that right to shelter does not mean a mere right to a roof over one's head but right to all that which is necessary to enable him to live and develop as a human being. It was emphasised that the State should be deemed to be under an obligation to secure for its citizens, of course subject to its economic budgeting, housing equipped with facilities commensurate with the dignity of the person. The Supreme Court, following the decisions in *State of U.P. Vs. Pista Devi (supra)*, *Aflatoon and others etc. Vs. Lt. Governor, Delhi and others*, (1975) 2 S 285, and *Deepak Pahwa (supra)*, upheld the notification issued u/s 17(1) read with section 17(4) of the Act even though lapse of eight years had occurred due to inter departmental discussions before its issuance. Again in *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, , the Apex Court reiterated that the opinion of urgency formed by the appropriate authority u/s 17(4) is subjective one and so long as there is material upon which it could have formed the said opinion fairly, the Court will be loathe to interfere. In such matters it would also not examine the material as an appellate authority who could take the decision with regard to the determination of the question relating to existence of urgency. In *State of Uttar Pradesh and another Vs. Keshav Prasad Singh*, , The Supreme Court while expressing the same sentiments as were expressed in *Pista Devi's case (supra)* held that the State was entitled to exercise power u/s 17(4) of the Act to dispense with the enquiry u/s 5-A of the Act where the land is required in connection with a housing project. In *Meerut Development Authority, etc. Vs. Satbir Singh and others, etc.*, , the Supreme Court upheld the application of section 17(4) of the Act on the ground that acquisition for housing development is an urgent purpose. In this regard it was held as follows :-

"... It is now settled legal position that acquisition for planned development of Housing Scheme is also urgent purpose as laid down by this Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, and *State of U.P. Vs. Smt. Pista Devi and Others*, and in recent judgment of this Court in *State of Tamil Nadu Vs. L. Krishnan*, (1996) 7 S 450 : (1995) AIR SCW 4390). In the light of the settled legal position the acquisition for housing development is an urgent purpose and exercise of the power u/s 17(4) dispensing with the enquiry u/s 5-A is not invalid. "

8. Acquisition of the land for providing housing to the vast urban population on the face of it spells urgency. In such circumstances urgency is of such a nature that it will not brook any delay for conducting an enquiry u/s 5-A of the Act. Experience shows that the objections u/s 5-A of the Act retards the execution of the much needed housing projects. The problem of housing in the urban areas being acute has to be fought on war footing. Acquisition proceedings for planned development where section 5-A is not dispensed with, take unduly long periods of time resulting in not only enormous delays but also creates complications such as sale and purchase of notified lands and large scale constructions making it impossible for the Government to act in furtherance of the avowed purpose for

which the acquisition proceedings were initiated.

9. As already seen, a right to shelter will include every other right including clean and decent surroundings, sanitation and other civic amenities. Providing a housing colony without basic amenities and clean environment will defeat the very purpose for which it is being set up. In the instant case the construction of the drain is connected with the development of the housing project undertaken at Dwarka. In the opinion of the authority it is essential to connect the Palam Drain with the Panka Road Drain so that the discharge capacity of the Palam Drain is increased. The Panka Road Drain is to carry diverted 1000 cusecs of discharge in case of need and for this diversion the alignment was finalised so that it may affect a very small part of the built up structures. In taking the decision, in this regard, the matter was considered by the authority. It is for the authority to decide which land will be more appropriate for the purpose of acquisition. The petitioners claim that alternative land belonging to the D.D.A. is available for joining the Palam Drain with the Panka Road Drain. It is not for this court to decide which land would be suitable for the public purpose sought to be achieved by the notification. Learned counsel for the petitioners relying upon the decision of this Court in *S.K. Gupta Vs. The Union of India and Others*, , submitted that in the instant case it has not been recited in the notifications under sections 4, 6 and 17(4) that there was urgency to acquire the land. Therefore, the burden to prove urgency is on the State. Continuing his submission he contended that the State has not discharged its burden to prove urgency and, Therefore, the acquisition proceedings stand vitiated. The submission of the learned counsel for the petitioner overlooks the fact that the land was required for the construction of the housing project where the urgency to acquire the land is in-built. The above argument is not available to the learned counsel for the petitioner in view of the above said judgments of the Supreme Court in *State of U.P.Vs. Pista Devi (supra)*, *Aflatoon and others etc. Vs. Lt. Governor, Delhi and others*, (1975) 2 S 285, and *Deepak Pahwa (supra)*. In any event the respondent in the counter-affidavit has justified the application of section 17(1) read with section 17(4) of the Act.

10. Learned counsel for the petitioner then submitted that though the notification dispensed with the provisions of section 5-A of the Act, the possession of the land was still with the petitioners. By this learned counsel wants me to conclude that there was no urgency in the matter, and the provisions of section 5-A should not have been dispensed with. I am not persuaded to accept the submission of the learned counsel for the petitioner. The urgency to take over the land can not be diluted just because the authorities delayed the taking over of possession of the land. Lethargy and tardiness of the officials in a matter of this nature where the land is required for housing project is not sufficient to nullify the urgency which existed at the time of issuance of the notification. In *Chameli Singh's case (supra)* the Supreme Court following the decision of the earlier three judge Bench in *Deepak Pahwa's case (supra)* held that delay by the officials in finalising the acquisition proceedings can not be held to be a ground to set at

naught the invocation of the urgency clause. In this regard the Supreme Court observed as follows :-

" ... It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In *Jage Ram and Others Vs. State of Haryana and Others*, , this Court held the exercise of the power of urgency u/s 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight...."

11. Mr. Saini contended that the Government in view of its policy decision can not acquire built up area and, Therefore, the acquisition proceedings must be quashed. The contention of the learned counsel is not well founded. The power to acquire land is to be exercised in the manner laid down by the Act. The power is statutory power which is required to be exercised in public interest. If the land is needed for a public purpose the mere fact that there is a policy of the Government not to acquire built up area can not come in the way of acquisition. If it was otherwise, the public authorities will not be able to acquire built up areas to decongest the localities and to provide civic amenities including sanitation, parks, amusement centres, etc. which are essential for healthy living. In *M/s. Prem Chand Ramesh Chand Vs. Delhi Development Authority and another*, (1977) D L T 482, a Division Bench of this Court relying on *Attar Singh Vs. D.D.A.* (C.W.P. No. 3110 of 1991, decided on August 10, 1992); *Shri Bhagwan and another v. Union of India and others*, 1991 (2) D L 59 , and *Roshanara Begum Vs. Union of India*, , held as follows :-

"The contentions that there is any policy to regularise unauthorised colonies or there is a policy decision not to acquire built up area, are concluded against the petitioner by a Division Bench decision of this Court in the case of *Attar Singh v. D.D.A.* (C.W. 3110 of 1991) decided on 10th August, 1992. In *Attar Singh's* case also it was alleged that the petitioner had a godown built up area situate in village Haiderpur on private land and no action can be taken by the respondents against the petitioner. In that case too, the Bench referred in the judgment to the same Award No. 50/80-81 made on 18th July, 1980. The contention that there was a policy of Government to regularise the unauthorised colonies and also not to acquire built up area was rejected and it was observed that :

"It was further contended that unauthorised colonies on Government land are sought to be regularised. It is possible that a political decision to this effect may be taken with regard to some of the colonies but as far as this land is concerned, there have been valid proceedings for acquisition under the provisions of the Land Acquisition Act. If there was any built up area as on the date when section 4 notification was issued, the claimants would be entitled to receive compensation in accordance with law. As far as the petitioner is concerned, we

do not find that the petitioner is entitled to any compensation and in fact it is one Udai Singh who has already received the compensation. Be that as it may, merely because some of the colonies are going to be regularised cannot be of any assistance to the petitioner specially when, in the writ petition, there is no challenge to the acquisition proceedings. The proposal of excluding the land from the award which was there in 1968 has apparently been given a go by and this has resulted in, first Notification u/s 6 being issued on 2nd January, 1969, followed by the award in 1980."

The contention in respect of the policy of leaving out from the acquisition built up area has also been repelled in another Division Bench decision of this Court in *Shri Bhagwan and Another Vs. Union of India and others*, 1991 (2) Delhi Law 59. This decision has been affirmed by a Full Bench of this Court in *Roshanara Begum Vs. Union of India*, . We may also notice that the appeal filed against Full Bench decision has been dismissed by the Supreme Court (See: *Murari and others Vs. Union of India and others*, 1997 (1) S 15 = (1997) CLT 250."

12. In view of the above discussion, the writ petition fails and is accordingly dismissed. However, it is clarified that the petitioners shall be entitled to alternative sites in lieu of their acquired plots in accordance with clause (iv)(a) and (b) of the policy of the Government of India, Ministry of Works and Housing, dated February 16, 1977 (page 49 of the writ petition), or any other policy in vogue.

13. The Government of Delhi will institute an enquiry to ascertain as to why the compensation was not paid to the land owners after expiration of fifteen days from the publication of the notification under sub-section (1) of section 9 of the Land Acquisition Act, 1894 which led to the situation where land owners are still retaining the possession of the land. The report of the enquiry shall be submitted within six weeks.

14. List the matter on December 14, 1998 for perusal of the enquiry report.