

(2006) 07 DEL CK 0104

In the Delhi High Court

Case No : Writ Petition (C) No. 10138 of 2005

Panchayat Mahajanan

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 13(2)
Delhi Land Revenue Act, 1954 — Section 21(3)
Land Acquisition Act, 1894 — Section 11, 4, 48, 48(2), 6

Citation : (2006) 90 DRJ 606

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Aditi Gupta for V.R. Datar, for the Appellant; Sanjay Poddar and Sachin Nawani and Sangeeta Chandra, for the DDA/Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner is a body of Vaish Community of Village Naharpur and through their Secretary Jai Bhagwan, they have filed the present petition praying for quashing of the letter dated 8.5.2003 vide which the application of the petitioner for release of the land measuring about 13 biswas part of khasra No. 184, situated in Village Naharpur, Delhi was rejected. The facts giving rise to the present petition fall within a very narrow compass. The petitioner claims to be a Society registered under the Society Registration Act. They owned the above indicated land which falls in the revenue estate of Village Naharpur and are in possession of this land under the management of Shri Thakur Dass since 1938. The petitioners claim to have planted trees, got a well dug and built a dharamshala on the land in question which is stated to have been occupied by them for a considerable time. Chief Commissioner, Delhi vide notification dated 25.8.1959 issued under Clause (i) Section 13(2)(c) of the Delhi Land Reforms Act exempted the land from the provisions of the said Act on account of it being held by the petitioners for a public purpose. It is stated by the

petitioners that they were maintaining a piao in addition to running a dharamshala for public benefit. However, subsequently the Deputy Commissioner, Delhi passed an order vesting the land in question in the "Gram Sabha". Being aggrieved from the said order, petitioner filed a civil suit for declaration before the Court which was decreed on 18.4.1964 holding that the order of the Deputy Commissioner vesting the land in the Gaon Sabha was illegal and the land was exempted under the provisions of the Delhi Land Reform Act. Despite the order of the Civil Court, the petitioner filed an application u/s 21(3) of the Delhi Land Revenue Act in the Court of the Revenue Assistant, Delhi requesting for correction of khasra girdwari. Vide order dated 19.5.1981 the correction was made.

2. The land of Village Naharpur was notified for acquisition u/s 4 where after declaration u/s 6 of the Act was issued on 6.12.1966. The award was made u/s 11 of the Land Acquisition Act in 1978-79. According to the petitioner possession of the land was not taken and the petitioner filed W.P.(C) No. 676/1982 titled as Jai Bhagwan v. Union of India challenging the acquisition proceedings and the award. The court initially directed parties to maintain status quo regarding possession vide its order dated 10.5.1982. whereafter the writ was finally disposed of vide order dated 20.3.1997 keeping in view the Full Bench decision" of the court in the case of Roshanara Begum v. Union of India and Ors., 61 (1996) Delhi Law Times 206 (FB). The Court while dismissing the writ petition granted liberty to the petitioner to pray for such relief before the competent forum as they may be entitled to in law. The operative part of the order dated 20.3.1997 reads as under:

The petitioners may apply in terms of the above paragraph to press their claims to which they are entitled in accordance with law.

3. In furtherance to the above orders of the Court, the petitioners moved a representation for release of the land from acquisition on 18.8.2001. Still another representation was moved through MLA of the area on 12.3.2003. The request of the petitioner was declined vide letters dated 8.3.2003 and 9.6.2003 by the authorities on the ground that as per the Land Revenue records recorded owner of the land was the Gaon Sabha and the piece of the land is surrounded by flats on all sides and as such the request of the applicant was rejected. It will be useful to refer to the contents of the above two letters which read as under:

Letter dated 8.5.2003 No. F.11(52)/2001/L&B/LA/1508 Dated: 8/5/03 Hon"ble Shri Jai Bhagwan Aggarwal, MLA A-17, Saraswati Vihar, Delhi.

Sub: Representation for release of land bearing Kh. No. 184, (area 13 Biswa) situated in Village Naharpur, Delhi.

Sir, With reference to your application dated 12.3.2003 on the subject cited above, I am directed to convey that your representation for release of land has been considered & rejected by the Competent Authority on the following grounds:

The request for denotification of 0-13 bigha situated in village Naharpur is on the ground that a piao, a night shelter for poor and drinking water facilities for cattle are available on the land since 1938. As per the report of ADM, possession of this particular piece of land could not be taken on the account of a writ petition (CWP 1264/82) under which a stay has been granted by the High Court. As per the land records, the recorded owner of this land is Gram Sabha.

As per the said notification carried out by Commissioner (LM) DDA, this piece of land is surrounded by flats on all sides and hence, it is required for further constructions of flats. Keeping in view of the requirement of land for planned development of Delhi, the Competent Authority has rejected, the application.

Further the undersigned has already intimated to you vide this office letter No. F.1K52V2001/L&B/LA/10483 dated 12.9.2002 (copy enclosed).

Yours faithfully, End.: as above (H.D. Mahi)

Dy. Secretary (LA) Letter dated 9.6.2003

F.14(39)69/CRC/DDA New DI-I/99Dated 9/6/03

From Dy. Director (NL) To Shri Jai Bhagwan Aggarwal MLA Delhi Aggarwal Dharamshala, Pkt. A-3, Sector-7, Rohini Delhi-85. Sub. Denotification of land bearing Kh. No. 184 (0-13 Biswas) of Village Naharpur, Delhi (representation of Panchayat Mahajanan)

Please refer to your letter No. Chi./Ba./03-310 dt. 12.3.03 addressed to L.G. And copy endorsed to Vice-Chairman D.D.A on the above noted subject. In this connection it is intimated that the Kh. No. 184 area measuring 0-13 Biswa has been acquired vide award No. 35/78-79. But the physical possession of the same has not been handed over to DDA by the LAC/L&B Deptt due to built up. The land in question is required for Rohini Residential Scheme. Hence the request of panchayat Mahajanan for denotification of the land in question cannot be acceded to.

Dy. Director (NL)

4. The petitioners challenge the correctness of the above letters of the respondents in the present writ petition primarily for the reason that as per the policy guidelines of the respondents, the cases for denotification are to be considered by the concerned Committee while keeping in mind one of the basic principle of the policy that the properties built up prior to issue of notification u/s 4 of the Act would entitle the applicant for denotification. It is also their contention that the said land was already being used for a public purpose and no fruitful purpose could be achieved by acquisition of such a small piece of land measuring about 13 bighas.

5. Separate counter affidavits were filed on behalf of the DDA and respondents No. 1, 2 and 4 (jointly). The stand of the DDA is that the order of Denotification Committee dated 8.5.2003 and 9.6.2003 is correct and does not call for any

interference and in any case the present writ petition has been filed by the petitioner at a belated stage. It is averred that the petitioner applied for denotification of the land in question which had been acquired vide award No. 35/1978-79 in relation to the Revenue Estate of Village Naharpur. It is further stated that the physical possession of the land had not been handed over to the LAC despite request of the DDA and since the land in question, is surrounded by residential flats the same is required for the public purpose of "Planned Development of Delhi" namely the "Rohini Residential Scheme". Therefore, the request of the petitioner for denotification of the land has rightly been rejected.

6. While according to the other respondents, the writ petition of the petitioner is liable to be dismissed as they are guilty of *suppressio veri suggestio falsi*. It is argued on behalf of the respondents that the petitioners have lost in different legal proceedings and still they are persisting by filing frivolous litigations on the same grounds and cause of action. The petitioners have no right, title or interest in or to the land in question as the land had vested in the gram sabha as per revenue records. It is further stated that the request of the petitioner u/s 48 of the Act had rightly been rejected by the respondents. As far as vesting of the land in the gaon sabha and the litigation resulting therefrom between the parties is concerned, the same would hardly have any material bearing on the controversies in issue in view of the approach that we propose to adopt.

7. It was seriously contended that the learned Civil Judge, Delhi had no jurisdiction to pass the judgment and decree dated 18.4.1964 and the order of the Revenue authorities dated 19.5.1981 being based on the judgment without jurisdiction was also inconsequential. It was further argued that the land still stands in the name of gaon sabha and as such the claim of the petitioners is baseless. In this regard, copy of the khasra girdwari for the year 1994-95 has been filed on record. On the other hand, the petitioners have relied upon the khasra girdwari for the year 1984-85 to state that the land still stands in the name of the petitioners. In the award, the land in question has been shown as acquired land and has been described as "CHH Pukhta" measuring about 0.13 biswa. Again the land in this khasra number has been mentioned as a good quality land while determining the market value of the land but there is no discussion on the ownership of the land as well as the alleged structures existing on the site. In the present writ petition, the petitioner has chosen not to implead gaon sabha as a party and in any case there is nothing on record before us on the basis of which the court could hold that the petitioners are entitled to the relief prayed for in this writ petition. We would leave the questions relating to vesting of lands as well as its ownership open as it may not be necessary for us to adjudicate upon these issues for deciding the limited questions which arise for consideration of the court in the present writ petition. For the sake of arguments even if we assume that the petitioner has some right over the land still the main question would be whether it affects the impugned orders in the present writ petition in any manner or not.

8. The authorities concerned have passed the impugned orders after taking into consideration the various aspects. Section 48 does not vest any indefeasible legal right in any person to claim denotification and release of his land from acquisition proceedings. It is primarily a discretion which vests in the Government and only the Government can withdraw any land from acquisition, but this discretion is also restricted to the extent that the provisions of Section 48 would not be applicable, where the possession had already been taken. In other cases, the competent authority has to consider every application on its own merits and keeping in view the rules, if framed and the declared policy of the authorities in that regard. The Government has been granted liberty by the Legislature in its wisdom to withdraw a land from acquisition proceedings which in the opinion of the Government needs to be withdrawn, but for the reasons which are not arbitrary, discriminatory and/or which are not offending to public policy or law. The purpose appears to be that by such withdrawal no irreparable loss is caused to the owners of the land and even if he has suffered some damage in consequence of the acquisition proceedings, he can be compensated as contemplated u/s 48(2). The power of withdrawal is so wide that it can be uniformly exercised by the State. The authorities in the present case have exercised their discretion and have given reasons for exercise of such discretion. Reference in this regard can also be made to the judgments of the Supreme Court in the case of Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others, Special Land Acquisition Officer, Bombay v. M/s. Godrej and Boyce AIR 1987 2421.

9. As is clear from the above referred letters/orders of the respondents wherein it has been stated that the piece of land is surrounded by flats on all sides and hence it is required for further construction of flats under the head "Planned Development of Delhi". The request of the petitioners for denotification of the said land on the ground that it was being used for running a piao, night shelter for poor and drinking facility for cattle was not considered a reason enough to denotify the land and it was also stated that recorded owner of this land was gaon sabha. The DDA persisted vide its letter dated 9.6.2003 for taking possession of the acquired land.

10. Merely because it is a built-up area by itself necessarily need not bind the respondents to denotify and release the said land from the acquisition. The policy framed by the respondents is merely a guideline which has to be applied keeping in view the facts and circumstances of a given case.

11. At this stage, we may refer to a recent Division Bench judgment of this Court in the case of Raheja Hospital and Psychiatric Research Institute Vs. Lt. Governor of Delhi and Others, where the court discussed the scope of Section 48 at some length and held as under:

18. In Special Land Acquisition Officer, Bombay v. M/s Godrej and Boyce (1998) 1 SCC 50 the Supreme Court, while considering the scope of Section 48 of the Act noted in paragraphs 5 and 6 of the Report, that Section 48 gives liberty to

the State Government to withdraw from the acquisition at any stage before possession of acquired land is taken.

The State Government can exercise the power of withdrawal unilaterally.

There is no requirement that the owner of the acquired land should be given an opportunity of being heard before the State Government withdraws from the acquisition.

A decision of the State Government to withdraw from acquisition need not necessarily be backed by reasons. [In that case, the Court assumed that even if reasons should be given, the decision was not vitiated in any manner whatsoever.

19. What is of seminal importance for the purposes of the present case (and indeed this appears to have been overlooked) is that Section 48 of the Act does not confer any right on a landowner, but gives liberty to the State to withdraw from acquisition. Consequently, can it reasonably be said that u/s 48 of the Act, a landowner has a right to compel the State to exercise the liberty granted to it; or can it reasonably be said that a Court can issue a mandamus to the State to exercise a liberty granted to it.

20. Liberty granted to the State u/s 48 of the Act is extremely wide and it is only to channelise that liberty that the Secretary (Revenue/Land) has issued policy guidelines dated 2nd December, 1998. By these guidelines, a Committee called the Denotification Committee is constituted to examine denotification proposals and submit its recommendations to the Lt. Governor. The guidelines lay down only a framework within which the Denotification Committee may operate and cases that may be considered for denotification. A recommendation of the Denotification Committee is only a recommendation and, therefore, not binding on the Lt. Governor, who may take a decision on each recommendation at his discretion. The guidelines are not intended to cabin, crib or confine the discretion of the Lt. Governor -- he may add to or subtract from the cases for denotification if he thinks it appropriate. Also, the power of the Lt. Governor to take his own decision, which may involve a departure from the recommendation of the Denotification Committee, or not to strictly adhere to the views of the Denotification Committee, is untouched. The terms of the policy guidelines do not entitle a landowner, as of right, to petition the Court to direct the Lt. Governor to stick only to the guidelines, more particularly if any departure there from does not affect any right of the landowner or arbitrarily discriminate against him.

12. In light of the above decision, we may now revert back to the facts of the case. It is an admitted position that the land measures only 650 sq. yds. (13 Biswas) and is situated in the middle of the developed areas where LIG flats have been constructed and there are two main roads leading to that colony. It is stated to be part of the "Rohini Residential Scheme". Firstly, there is no evidence to show that there was construction right from 1938 as alleged by the petitioner. Even if a part of the said land was having constructed portion, this itself would

not render the land in question as unacquirable. The acquisition is for a public purpose, namely, "Planned Development of Delhi" and to frustrate such plan merely because the petitioner wants to run a piao, to have a night shelter (dharamshala) and drinking water facility for catties would not be in conformity with the larger public purpose. The court is not to examine the decision of the respondents as superior or appellate authority would do and a writ jurisdiction can be invoked only if the decision was patently so arbitrary and discriminatory that it would offend the known judicial principles or when the decision is so unconscionable or is violative of the rules that it would require judicial intervention. None of these ingredients are satisfied in the present case. The petitioners had approached the court by raising these pleas while challenging the notification u/s 4 which was also dismissed by the court vide a detailed judgment in W.P.(C) No. 1264/1982. Repetitive attempts to have the action of the respondents nullified on similar grounds is not to be encouraged by the courts. According to the petitioners, the decision of the respondents suffer from factual error as the owner of the land was not gaon sabha as stated in the impugned order. Firstly, the respondents have shown certain grounds including that of jurisdiction in the civil court which passed the judgment and decree in relation to revenue entries and secondly, the finding on this issue would no way materially alter the decision of the present writ petition. To have an animal shelter, a piao and a small dharamshaala in an area of 650 sq. yds. in the middle of a developed colony would hardly serve a larger public interest and we cannot fault the order of the respondents in declining to denotify and release the lands in question from acquisition. The records were produced before the Court and we have examined recommendations of the Denotification Committee. From the records, it is clear that the said Committee had applied its mind and the reasons stated therein, are neither opposed to policy nor are foreign to the object sought to be achieved by formulation of such policy.

13. Consequently, we find no merit in this writ petition and the same is dismissed, while leaving the parties to bear their own costs.