(2006) 07 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition (C) 5663/05

P.C. Khanna APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Land Acquisition Act, 1894 — Section 11, 17, 17(1), 31, 31(1)

Citation : (2006) 90 DRJ 684

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

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Sanjay Poddar, Sanjay Pathak and Sachin Nawani, for the Respondent

Judgement

Swatanter Kumar, J.—The petitioner on the strength of Articles 14 and 16 of the Constitution of India is demanding parity in relation to allotment of "Land in lieu of acquired land" as was done in the case of acquisition of property at 26, Alipur Road, Sham Nath Marg, Delhi. In other words, the petitioner prays for issuance of a direction to the respondents requiring them to allot to petitioner 798 square meter of land in the Lucknow Road, (Mall Road), Delhi as an alternative to award of compensation in terms of the provisions of Land Acquisition Act. The emphasis is that in the adjacent property to that of the petitioner i.e 26 Alipur Road, Sham Nath Marg the respondents have given to the owner of the property, M/s Jindal Pipes Ltd. equal land to the acquired land on the adjoining Lucknow Road (Mall Road) and not only this, in addition to grant of land even some compensation has been paid to that party and now the respondents cannot treat the petitioner differently and otherwise also his case is similar to that of M/s Jindal Pipes Ltd. To examine the merit of this patently simple but giving rise to some complex issue, it would be appropriate to refer to the basic facts.

2. The petitioner is owner of properties bearing No. 13, 15 & 17, Sham Nath Marg, Delhi-54. On 12.6.97 the respondents have issued notification u/s 4 and

17 of the Land Acquisition Act inter alia acquiring the property Nos. 13 and 15, Sham Nath Marg for Mass Rapid Transport System of Delhi. Award No. 2/1999-2000 was made on 27.7.1999. Another notification was issued u/s 4 of the Land Acquisition Act acquiring another chunk of 15, Sham Nath Marg. A notification u/s 17 was also issued on 18.1.2000. In furtherance to the said notification award was made on 25.5.2001. Still another notification was issued by the respondents u/s 4 and 17(1) of the Act on 11.2.05. By this notification, the respondents acquired an area of 798 square meter from the property known as 15, Sham Nath Marg. According to the petitioner, the respondents have not fully paid and settled the compensation of his land which was acquired by earlier two notifications and the notification dated 11.2.05 has lapsed as no declaration u/s 6 has been issued by the respondents within the prescribed period. However, during the pendency of the present writ petition the respondents even issued another fresh notification u/s 4 acquiring the same land of 798 square meter dated 10.5.06 to overcome the difficulty arising from lapse of the earlier notification dated 11.2.05. Thereafter, the respondents have also issued a declaration u/s 6 dated 11.5.06. Obviously, no compensation has been paid to the claimants so far in relation to the acquisition of his land. On this premise the petitioner submits that petitioner has a legal right for allotment of land for land in terms of. Section 31(3) of the Act, particularly when the respondents have already entered into an exchange deed, Land for Land, in favour of M/s Jindal Pipes Ltd. and had even paid compensation in addition thereto. The respondents cannot discriminate the petitioner in not allotting him equal area of land at a place similar to that already allotted to the other party. In order to establish his claim in that behalf, the petitioner had also made a representation on 1.2.05 to the respondents but since no response was received from the respondents, the petitioner was compelled to file the present writ petition.

Separate counter affidavits were filed on behalf of the respondents No. 1 and 4. The facts are hardly in dispute. It is not seriously disputed that the previous notification issued u/s 4 of the Act dated 11.2.05 has already lapsed and in lieu thereof they have already issued another notification u/s 4 dated 10.5.06 and a declaration u/s 6 dated 11.5.06. While contesting the claim of the petitioner for entitlement of a land for land, it is stated on behalf of the Government that the Government wanted to acquire 26, Alipur Road, Sham Nath Marg for the reason that Dr. B.R. Ambedkar had stayed there during his last days and because of closely associated memories of Baba Saheb to the said premises, the Government sought to acquire the land and the premises for setting up of a ''National Memorial in honour of Bharat Ratna Babasaheb Dr. B.R. Ambedkar''. It is stated that the Government of NCT initiated the action to acquire the land under the provisions of the Act. The owner of 26 Alipur Road Sham Nath Marg, M/s Jindal Pipes Ltd. filed writ petitions being civil writ Nos. 5582 & 5602/1997 in this Court where an interim stay was granted restraining the appropriate Govt. from declaring the award and dislodging of the owners/petitioners therein. Considering the urgency of the matter and the fact that the National Memorial was likely to be delayed beyond the date on which it was to be commenced, the Central Government, Ministry of Social Justice and Empowerment took an independent decision to enter into an exchange agreement with the owner of the property.

This was done with the approval of the Union Cabinet. In furtherance to this an exchange deed was executed by and on behalf of President of India on the one hand and M/s Jindal Pipes Ltd. on the other. The copy of the said exchange deed is placed on record as Annexure R-1 to this counter. According to the respondents, facts in the case of the petitioner are incomparable and no way attracts the provisions of Articles 14 and 16 of the Constitution of India. It is also the case of the said respondent No. 1 that the Land Acquisition Collector in the order dated 25.5.05 rejected the claim of the petitioner whereby he had claimed a compensation of Rs. 36 crores for the 15, Sham Nath Marg property. In these circumstances, it is prayed that the writ petition be dismissed. On behalf of respondent No. 4, it has been stated that it is not the acquiring agency and it has no jurisdiction to allot land in lieu of acquisition of any property. The land was acquired by the Lt. Governor of Delhi for MRTS project and the same has been utilized for the said purpose.

3. From the above narration of factual matrix of the case it is clear that the land stands acquired vide notification dated 10.5.06 issued u/s 4 of the Act. The provisions of Section 31(3) of the Act do not give any indefeasible legal right to any person to claim land in lieu of compensation payable for acquisition of his land. The process of acquisition is the rule while provisions of Section 31(3) are an exception that too with a very limited application. The most pertinent expression used by the legislature in the language of the said provision is person having limited interest in such land. This expression has to be understood in clear contradistinction to owner of the property as understood in law. Limited interest indicates interest of a limited nature like lease hold, a tenant or permissive use for a specified purpose. These are merely illustrative examples and the expression cannot be explained exhaustively in a judgment. Section 31(4) of the Act vests vide powers in the Collector to enter into any arrangement with any person interested in the land and competent to contract. Wider the power vested, greater is the responsibility upon the Collector to act fairly. These provisions are also to be exercised sparingly and that too for valid and justifiable reasons. In the case of Jaipur Development Authority Vs. Radhey Shyam and Others, the Supreme Court stated that issuance of a direction even in execution for delivery of possession of the land awarded in lieu of compensation was invalid and could not be executed. In fact, the Court stated that. Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. The power is only to allot any other land in exchange to a person who has a limited interest. In another case titled as Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, the Apex Court held as under:

We may at tis juncture dispose of the contention that the ratio in Radhey Shyam case is per incuriam. The basic postulate of the contention is the omission to refer to Rules 31 and 36 of the Rajasthan Land Acquisition Rules, 1956. Rule 31 was made to guide the exercise of power of the Collector (LAO) u/s 31(3) of the Act. As seen, the Government has empowered the Collector to allot "any other land'' in lieu of money compensation only when the land acquired belongs to a person having "limited interest in the land", like widow''s estate or minor''s estate, Mutawali etc. In that behalf, Rule 31 amplifies the exercise of the power by the authorized LAO. It says that the Collector cannot force a party to take land in lieu of cash. Where, however, the interest of the party is so limited, as in the case of a trustee of a wakf property or a Hindu widow, as to make it extremely difficult, if not impossible, to arrive at an adequate cash estimate of its value or where, from the circumstances of a case, it is impossible to place the parties concerned by cash compensation in the same or nearly the same position as before acquisition, sub-section (3) enables the collector to arrange to award land (subject to the same limitation of interest) in lieu of cash. In Radhey Shyam case the scope of sub-section (3) of Section 31 has been considered and explained in extenso. Rule 31 is only to elongate the discretion which the LAO is expected to exercise in awarding land in lieu of cash consideration and the circumstances in which it would be done. Equally, Rule 36 deals with disposal of the excess land acquired by the collector for a company and imposition of the conditions for sanction of transfer of excess land. Therefore, the absence of reference to them does not make any dent into the principle of law laid in Radhey Sham case.

4. The scheme of Section 31 has to be understood in its proper perspective. The primary mode in an acquisition proceeding is to pay the compensation determined by making an award u/s 11 of the Act as postulated u/s 31(1) of the Act. Further obligation is imposed upon the respondents u/s 31(2) of the Act to deposit compensation in the Court of competent jurisdiction if the claimants do not accept or give their consent to receive the compensation. Exceptions to this general methodology in acquisition proceedings have been stated in Section 31(3) and 31(4) of the Act. As already stated provisions of Section 31(3) have a very restricted application and even the persons who are entitled to claim such a relief are persons with limited interest in the land. These provisions merely vest enabling power in the Collector which he will exercise depending on the facts and circumstances of the case but it does not vest any legal, much less an indefeasible and legally enforceable right in the owner of the land.

5. We are also of the considered view that there is no violation of principle enshrined in Articles 14 and 16 of the Constitution of India. The case of execution of an exchange deed by the Central Government after its approval by the competent authority in accordance with rules of business, with M/s Jindal Pipes Limited is not a comparable case or instance to the case of the petitioner. The exchange deed was executed for a national cause and purpose and keeping in view the fact that Dr. B.R. Ambedkar had stayed in that property during his

last days. It was more because of pendency of litigation in the Court and the order of stay granted by the Court that the competent authority opted to enter into exchange deed to achieve the object of making a museum in furtherance to a national cause and to ensure its achievement within time. Another reason for declining to entertain such a contention of the petitioner is that the petitioner has not impleaded M/s Jindal Pipes Ltd. as a respondent to the present petition and secondly there is no prayer questioning the correctness of the said exchange deed before the Court. The writ petition filed by the petitioner, thus, is procedurally defective and in any case has no merit in equity and law. For claiming the relief on the principle of equality, it is essential for the petitioner to demonstrate before the Court that he was placed similar if not identical to the other party. Principle of equality have no application to unequals.

6. During the course of hearing records were produced before us and a specific question was posed by the Court to the counsel appearing for the respondents as to why the notification dated 11.2.05 was permitted to lapse. If the Government did not intend to acquire the said land then why subsequent notification u/s 4 dated 10.5.06 was issued. This besides being prejudicial to the interest of the State would certainly cause avoidable financial liability on the public exchequer. From the file it appeared that the Lt. Governor vide his order dated 9.5.06 had directed that an enquiry be conducted immediately as indifferent attitude towards a serious issue was apparent and an action be taken against the erring officers. We do hope and expect that all the concerned authorities would ensure compliance to the order of the Lt. Governor in its true spirit and substance. It should be a result oriented action rather than a mere formality of compliance.

7. We may also notice that at least now the respondents would act expeditiously and settle the claim of compensation of the petitioner at the earliest and in accordance with law. Writ petition is disposed of with the above directions, while leaving the parties to bear their own costs.

