

(1999) 02 DEL CK 0067
In the Delhi High Court
Case No : C.W.P. No. 1270 of 1989

Phool Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Citation : (1999) 78 DLT 348 : (1999) 49 DRJ 223 : (1999) 1 ILR Delhi 353

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Ms. Nandini Sahni, for the Appellant; Mr. R.D. Jolly, for the Respondent

Judgement

C.M. Nayar, J.

C.M. Nos. 1701-1702/91 & 2953/98

1. There is no appearance on behalf of the applicants. The applications are, Therefore, dismissed.

C.W.P.No. 1270/89

2. The present petition is directed against the respondents impugning the Notification dated February 3, 1989 issued u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act"). This Notification reads as under:

(DELHI ADMINISTRATION, DELHI (LAND & BUILDING DEPARTMENT)

Notification

Dated: 3.2.1989

No. F.9(4)/81-L&B/ (1), whereas it appears to the Lt. Governor, Delhi that the land is likely to be required to be taken by Government at the public expense for a public purpose, namely for planned Development of Delhi, it is hereby notified that the land in the locality described below is likely to be required for the above

purpose.

This notification is made under the provisions of Section 4 of the Land Acquisition Act to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi is pleased to authorise the officer for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts, required or permitted by that section.

The Lt. Governor being of the opinion that provisions of Subsection (1) of Section 17 of the said Act are applicable to this land, is further pleased under Sub-section (4) of the said section to direct that the provisions of Section 5A, shall not apply.

SPECIFICATION

Name of	Total Area	Kh.Nos.	Area	Village	(Bigha-Biswa)	(Bigha-Biswa)
Humayunpu	2-16	50	2-16	1		

By Order

Sd/-

(K.K. BHASIN)

Special Secretary (L&B)"

Subsequently, another Notification dated February 21, 1989 was issued u/s 6 of the Land Acquisition Act for acquisition for a public purpose, namely, "Planned Development of Delhi". The same may be reproduced as follows:

"DELHI ADMINISTRATION:DELHI LAND & BUILDING DEPARTMENT

Dated: 21.2.1989

NOTIFICATION

No. F.9(4)81-L&B (2): Whereas the Lt. Governor, Delhi, is satisfied that the land is required to be taken by Government at public expense for a public purpose namely,"planned Development of Delhi", it is hereby declared that the land described in the specification below is required for the above purpose.

This declaration is made under the provisions of Section 6 of the land Acquisition Act, to all whom it may concern and under the provisions of Section 7 of the said Act, the Collector of Delhi is hereby directed to take order for the acquisition of the said land.

A plan of the land may be inspected at the office of the Collector of Delhi.

SPECIFICATION

Name of	Total area	Khasra Nos.	Area	Village	(Bigha-Biswa)	(Bigha-Biswa)
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Humayunpur 2-16 50/1 2-16

By Order

sd/-

(Mrs. Geeta Sagar)

Joint Secretary (Land & Building)

Delhi Administration: Delhi.

The Notification u/s 17(1) of the Act was issued on the same day which may be reproduced as follows:

DELHI ADMINISTRATION:DELHI LAND & BUILDING DEPARTMENT

Dated: 21.2.1989

NOTIFICATION

No. F.9(4)81-L&B (3): In exercise of the powers conferred by Sub-section (1) of Section 17 of the Land Acquisition Act, 1894, the Lt. Governor, Delhi is pleased to direct the Land Acquisition Collector, Delhi, to take possession of land the specification of which is given in his Notification No. F.9(4)/81-L&B (1) dated 3.2.1989 and No. F.9(4)/81-L&B/(2) dated 21.2.1989 on the expiration of 15 days from the publication of the notice under Subsection (1) of Section 9 of the said Act.

By Order

sd/-

(Mrs. Geeta Sagar)

Joint Secretary (Land & Building)"

3. The land which was acquired measured 2 Bighas 16 Biswas. The petitioner is alleged to be in possession of only 13 bids was as the remaining land i.e. 2 Bighas 3 bids was was acquired and was the subject matter of Award No. 11/90-91 dated January 31, 1991. There is no challenge to that acquisition and the same has since become final as the land owners have already received compensation in respect thereof. The Award was made known as Award No. 11/90-91 dated 31st January, 1991 and the claims of the land owners were stated to be as under:

Claims

The following interested persons have filed their claims for compensation etc.:

S. Name of the claimant Kh.No. Compensation claimed No. 1. Kansi Ram s/o late Bhartu 50/1 Requests that Ram R/o H.No.1, acquisition proceedings Humayunpur Delhi may be dropped 2. Chand Kaur w/o 50/1 --- late Sh. Jage

Ram 3. Smt.Sukhbiri Devi 50/1 & No compensation wd/o Sh. Faquir Chand 50/2 claimed & request R/o H.No.2 Humayunpur, that acquisition Delhi proceedings be dropped. 4. Smt. Ramkali wd/o -do- No compensation Lala Ram R/o H.No. 4 claimed but request Humayunpur, Delhi for dropping of acquisition proceedings. 5. Phool Singh s/o Pema 50/1 No compensation R/o H.No.19, claimed Humayunpur Delhi 6. Sh.Khem Chand, Bhoru 50/1 Rs. 5,000/- per sq.yd. & 18 others all R/o. (2-16) i.e. Rs. 50,00,000/- Humayunpur, Teh. per bigha for land; Mehrauli Delhi. 30% solatium, interest @ 9,12 & 15% as per provisions of Land Acquisition Act & Rs. one lac for structures. The reading of the Award will indicate that though the petitioner was in possession of the remaining 13 bids was of land he did not claim any compensation and impugned the Notifications issued as referred to above which are the subject matters of the present proceedings.

4. This Court issued notice and passed an interim Order of stay on May 4, 1989 which was subsequently confirmed when Rule was issued on November 9, 1989.

5. The short question which arises for consideration in the present petition is as to whether the respondent Authority i.e. Delhi Administration was justified in invoking the provisions of Section 17(4) of the Act in the present circumstances when the land was being acquired for public purpose, namely, for planned Development of Delhi. It is contended that recourse could not be taken to urgency provision of Section 5-A of the Act which could not be dispensed with until and unless there was strong and grave urgency. Reliance is placed on the judgments reported as Dora Phalauli Vs. State of Punjab and Others, ; State of Punjab and Another Vs. Gurdial Singh and Others, ; Union of India and Others Vs. Nand Kishore, ; Dhani Ram and Others Vs. Union of India and Others, and Mahant Ram Nath Chela of Mahant Prithvi Nath Vs. Union of India and Others,

6. It has been held in paragraph 2 of the judgment reported as Dhani Ram & Ors (supra) as follows:

"2. It is time that the notification does not give any reason invoking the provisions of Section 17 and this case is clearly covered by the decision of their Lordships of the Supreme Court in the case of Dora Phalauli Vs. State of Punjab and Others, In the said case, it has been laid down that the right of a person having any interest in the property to file an objection u/s 5-A of the Act should not be interfered with in such a casual or cavalier manner. It has further been held that the notification must mention that there is urgency and only then the provisions can be invoked. In the present case, as we have already indicated there is no such mention and as such following the decision of their Lordships, we have no hesitation in coming to the conclusion that the notification cannot be sustained. Consequently, the rule is made absolute and the impugned notification dated 28.9.1987 is hereby quashed. No order as to costs."

7. Similarly, it has been held in Union of India & Others Vs. Nand Kishore (supra) while dealing with the provisions of Section 17 of the Act in paragraphs 17 to 23

as follows:

"17. Now emergency, whether foreseeable or unforeseen, must exist before action can be taken by the Government u/s 17. On this there has to be satisfaction of the Government. If the Government is satisfied that a sudden situation has arisen which calls for immediate action only then Section 17 can be invoked. This satisfaction can be reasoned on the circumstances existing at the time the notification u/s 17 is issued. If at the time of the notification u/s 17 the public purpose was the building of the fire station it cannot be changed later to the construction of staff quarters for the simple reason that the satisfaction arrived at on 4th May, 1960 was not arrived at when the purpose was changed to staff quarters on 16th November, 1971. There is an interval of 11 years between the first public purpose and the second public purpose. Section 17 Therefore cannot be invoked by the Government now for the purpose of construction of staff quarters because this new purpose may not have the same urgency for the acquisition of land which animated the action of the Government when they were faced with the pressing need of building a fire station in 1961.

18. Section 17 confers extraordinary power. The statutory powers must be exercised subject to the conditions and limitations laid down by the Statute. The major condition is that the Government must be satisfied that there is a situation, grave and sudden, which calls for an immediate action. If that situation existed on 4th May, 1960 it cannot be said that the same emergency continued when notices under Sections 9 and 10 were issued for a different public purpose, namely, construction of staff quarters on 16th November, 1971. In 1971 the entire landscape changed. Emergency was long over; No longer was there need to resort to an extraordinary power and an abridged statutory procedure.

19. What is the theory of Section 17? The taker of the land has to be satisfied that there is an emergency, an unforeseen combination of circumstances, that calls for immediate action. Unless it is shown that there was an urgency created by a special situation the Government cannot resort to the extraordinary power conferred by Section 17. The Government must strictly adhere to the purpose for which the emergency powers were invoked. There must be "fixity of purpose" as Banerjee, J. said. In law as in life there must be steadfastness of purpose. The purpose cannot be ambulatory. The Statute does not contemplate as wandering purpose. It would lead to an astonishing result if the Government were to seize and use the property of its subjects for a purpose other than that which it notified under Sections 6 and 17.

20. The right to seize, take and use the property of the subject is exercisable on publication of notice u/s 9(1). On taking possession, whether it is foreseeable emergency under Sub section (1) or "unforeseen emergency under Sub-section (2) Section 17 provides that the land shall vest absolutely in the Government free from all encumbrances. So the property acquired becomes the property of the Government without any conditions or limitations either as to title or possession. The Legislature makes it clear that the vesting of the property is not

for any limited period of limited duration. Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust,

21. Section 17(2) vividly illustrates the principle of the section. "Unforeseen emergency" cannot be anticipated. There is a concurrence of circumstances which no one can foresee. No one can be prepared for a sudden happening. For example, there is a sudden change in the channel of a navigable river or other unforeseen emergency which makes it necessary for the Railway administration to acquire the immediate possession of any land for the main tenancy of their traffic or for the purpose of making thereon a river-side ghat station or of providing convenient connection with or access to any such station. There may be a storm or tempest. There may be violence of winds or waves. Suppose an unforeseen emergency overtakes the Railway Administration which calls for immediate action. There is a total dislocation of traffic. The emergency crews of the Railway are working for the maintenance of traffic day and night to cope with the sudden and grave emergency caused by the great forces of nature. Engaged in a struggle with the elemental force scourging the earth wrathfully, they "like Him that kept Israel, neither slumber nor sleep." (O.T.121:4 RSV). They work round the clock. There is no night for sleep. While racing against some elemental catastrophe the statutory powers authorising the Government to acquire private property of the citizen for public good can be exercised with utmost expedition.

22. The question in this case is narrowed to one point and one point only. Can emergency powers be exercised for taking the land of the subject by changing the purpose from one to the other? How will satisfaction be reached by the executive when the purpose is changed from the fire station to staff quarters? Satisfaction was arrived at in 1960 when it was felt that a fire station in the locality is an urgent need. In 1960 the necessity was urgent. It did not admit of delay. But the same cannot be predicated of the other public purpose, namely, the construction of staff quarters in 1971.

23. The right to take the property of the subject in times of necessity for public need is exercisable only on the existence of an emergency u/s 17. But if the emergency no longer exists at the time of the publication of the notice u/s 9(1) the taking of the land will not be in the exercise of the statutory powers but wholly arbitrary. The taking is not under the Act then it will be taking by the Government outside the Act. That will be a wrongful act. The taking in itself will be illegal. The dispossessed owner is left in no position but that of the sufferer of a wrong."

the same view is taken in the judgment reported as Mahant Ram Nath Chela of Mahant Prithvi Nath (*supra*).

8. It has been held in paragraph 2 of the judgment reported as Dora Phaululi (*supra*) as follows:

"It is to be clearly understood that under Sub-section (4), the appropriate Government may direct that the provision of Section 5-A shall not apply where in

the opinion of the State Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, otherwise not. For making the provisions of Sub-section (1) applicable, two things must be satisfied that the land in respect of which the urgency provision is being applied is waste or arable and secondly that there is an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection u/s 5-A should not be made available to him. In the portion of the Notification which we have extracted above, it is neither mentioned that the land is waste or arable nor has it been stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act. A direction to the Collector has been given to take action u/s 17 on the ground of urgency but this is not a legal and complete fulfillment of the requirement of the law. It is to be remembered that the right of a person having any interest in the property to file an objection u/s 5A of the Act should not be interfered with in such a casual or cavalier manner as has been done in this case."

Similar view has been taken in the judgment reported as *State of Punjab & Another Vs. Gurdial Singh & Others* (supra).

9. The respondents have not explained any grave and sudden urgency which necessitated them to take away the rights of the land owners by resorting to emergency provision of Section 17(4) thus denying the right of a citizen to put forward or to file objections u/s 5-A of the Act. In view of the settled position of law as stated above, the Notifications issued in the present case relating only to the remaining 13 bids was of land which is allegedly in possession of the petitioner have to be quashed. The learned Counsel for the petitioner has also referred me to pending civil proceedings between the petitioner and other parties in which possession of the petitioner has been protected by an order dated October 9, 1996 passed by the Civil Judge, Delhi rejecting the application of the plaintiffs therein who had moved against the petitioner under Order 39, Rules 1 and 2, CPC as they were held not to be in possession of the land . The learned Counsel for the respondent MCD has contended that the petitioner has not proved to be in an authorised occupation of the land as he is merely in possession without any valid title. The land, it was stated, was handed over to MCD as a park by Delhi Development Authority on August 26, 1987 and the petitioner is in an unauthorised occupation of about 13 bids was of land forming Khasra No. 50/1 though it is argued by learned Counsel for the petitioner that the petitioner is shown to be in possession on the basis of the entries made in Khasra Girdwari with effect from 1961. It will not be necessary to give any finding in respect of this contention as it will be open for the parties to agitate the rights in appropriate proceedings and quashing of the present Notifications will not stand in the way for determining of such rights and the respondents shall be at liberty to take recourse to an action as permissible in law.

10. In view of the above, the impugned Notifications are quashed so far as the land comprising 13 bids was which is alleged to be in possession of the petitioner

is concerned. The present petition is allowed in the above terms. Rule is made absolute. There will be no order as to costs.