

(2011) 09 DEL CK 0438

In the Delhi High Court

Case No : Writ Petition (C) No. 3021 of 1998

Rajesh Bhasin and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 5A

Citation : (2011) 8 AD 16 : (2011) 184 DLT 657

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : Bhuvan Gugnani and Gurvinder Pal Singh, for the Appellant; Arun Birbal, for Respondents No. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The Petitioners are the recorded owners and in physical possession of the land and built up approved farm houses and structures located in Khasra Nos. 32/2 (2-08), 32/3 min (3-07) 32/4/1 min (3-04), 32/7 (4-16) 32/3 min (2-19), 32/4/1 min (1-09), 32/4/2 (0-3), 32/5 (4-16) and 32/6 (4-16) ad measuring 27 Bighas 18 Biswas situated in the revenue estate of Village Baprola alias Bapdola, Tehsil Punjabi Bagh, Delhi in pursuance of the registered Sale Deeds. It is submitted that the land use as per MPD - 2001 was agricultural farm house. Mutations were also carried out in favour of the Petitioners and the construction is stated to have been carried out in pursuance of the Building Plans duly sanctioned by the Municipal Corporation of Delhi. The construction is, however, stated to have been completed only after fresh sanctions were obtained and the completion certificate was issued on 01.05.1996. The property is assessed to house-tax.

2. The Petitioners are aggrieved by the notification issued u/s 4 read with Section 17(1) of the Land Acquisition Act, 1894 (for short, "the said Act") dated 12.08.1997 seeking to acquire the land in question for public purpose, namely,

setting up of a Growth Centre. The Petitioners claim to have made a representation to the Lieutenant Governor on 28.08.1997 followed up by various representations to de-notify the land, but to No. avail, though de-notification was recommended in case of the land of certain other Respondents. We may note that the total area sought to be acquired was 505 Bighas 2 Biswas under the notification.

3. A declaration is stated to have been issued u/s 6 of the said Act on 31.05.1998 and since steps were being taken for taking over possession of the land, the present writ petition was filed under Article 226 of the Constitution of India challenging the said notification.

4. It is the case of the Petitioners that another writ petition being titled "Prem Nath and Ors. v. Union of India and Ors. CWP No. 2932/1998" raising similar and identical questions regarding another notification under Sections 4 and 17(1) of the said Act had been filed in which stay of dispossession had been granted. Reference had also been made to titled "Chaman Lal Malhotra v. Union of India CWP No. 4002/1997" in which also status quo order was granted and the same was related to a notification issued on the same day for acquiring the land in question albeit for a different public purpose, i.e., Sports School.

5. The writ petition in Chaman Lal Malhotra's case (supra) was decided on 08.08.2005 and the impugned notification was quashed. However, a SLP (Civil) No. 26722/2005 was filed by the Respondents and the operation of the Order of the Division Bench of this Court dated 08.08.2005 was stayed on 23.03.2006. It is in view thereof that this matter got adjourned from time to time to await the decision of the Supreme Court.

6. The decision has been finally rendered by the Supreme Court in SLP (C) No. 26722/2005 on 25.04.2011, whereby the petitions have been dismissed and interim orders vacated by a speaking order.

7. We may also note for the purpose of completion of facts that even in Prem Nath's case (supra), the writ petition was allowed vide Order dated 26.09.2001 where land was sought to be acquired for a multi-purpose community centre by invoking the urgency provisions u/s 17 of the said Act and dispensing with the enquiry u/s 5A of the said Act. It was held that even though the requirement for a multi-purpose community centre would be a public purpose, there was No. valid reason for invocation of the emergency powers.

8. In so far as the case of Chaman Lal Malhotra (supra) is concerned, the issue once again revolved around the invocation of emergency powers u/s 17 of the said Act and dispensing with the conduct of enquiry u/s 5A of the said Act. It was observed that in view of a catena of judgments of the Supreme Court and of this Court, dispensing with such an enquiry has to be with proper and careful application of mind. It was found that there was No. direction that a notification u/s 17(4) of the said Act needs to be issued leave alone any specific opinion recorded on the file that the case was a fit one for invoking urgency clause as it

could brook No. delay and, thus, enquiry u/s 5A of the said Act should be dispensed with. The Supreme Court has given its imprimatur to this Order by a reasoned decision in this behalf while dismissing the SLP on 25.04.2011.

9. Learned Counsel for Respondents No. 2 to 4 does not contest that the factual position and that the material regarding invocation of the urgency clause is identical in the two cases where notifications are of same date, but submits that the public purpose for which the two lands are sought to be acquired are different.

10. In our considered view, the aforesaid makes No. difference as the issue is of application of mind for invoking the emergency powers u/s 17 of the said Act for dispensing with the enquiry u/s 5A of the said Act - on which aspect, two cases are stated to be identical. We draw strength from the observations made in the Order passed in SLP (Civil) No. 26722/2005 dated 25.04.2011 where the principles governing the matter in issue have been culled out, specifically as set out in Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, after detailed examination of the scheme of the Act and review of various authoritative judicial pronouncements on the subject, which are as follows:

(i) "Eminent domain" is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, ; Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., .

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly. D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others, ; State of Maharashtra and Another Vs. B.E. Billimoria and Others, and Dev Sharan v. State of U.P. Civil Appeal No. 2334 of 2011 decided on 7.3.2011.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and / or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/ instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not

entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry u/s 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power u/s 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government u/s 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in Sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under Sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power u/s 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government u/s 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition.

(Emphasis supplied)

It is in view thereof, it was observed that the principles No. (vi), (vii) and (viii)

would show that the view taken by the Division Bench of the Delhi High Court was the correct view in law.

11. In the end, we may only emphasize that the power of eminent domain does not imply the right to take away the land vested in a citizen (a constitutional right under Article 300A of the Constitution of India) except by procedure prescribed by law. The procedure envisaged under the said Act requires various stages to be gone through including the important stage as envisaged u/s 5A of the said Act of an enquiry being held. It is only in exceptional situations that the emergency powers u/s 17 of the said Act can be invoked where the requirements of the public purpose is such that it would brook No. delay. This was certainly not the position in the present case. We may add in the end that after the Supreme Court had rendered the judgment in Chaman Lal Malhotra and Ors.'s case (supra), the Respondents should have, in fact, conceded the matter rather than inviting a judgment.

12. Accordingly the impugned notification dated 12.08.1997 is quashed qua the land of the Petitioners to the extent that the same dispensed with the enquiry u/s 5A of the said Act, and consequently, all further actions taken by the Respondents pursuant to the said notification including the declaration u/s 6 of the said Act are also quashed. The order shall, however, not prevent the Respondents from taking any further action on the basis of the preliminary notification as may be permissible in law.

13. In view of the Respondents insistence on contesting the matter despite the judgment of the Supreme Court, we consider it appropriate to impose costs on Respondents No. 2 to 4, quantified at Rs. 25,000/-, to be paid to the Petitioners within two weeks from today.

14. The writ petition is allowed in the aforesaid terms.