

(2019) 04 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 5740 Of 2018, Civil Miscellaneous No. 22265, 26245 Of 2018

Renu Gupta

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

National Highways Fee (Determination Of Rates And Collection) Rules, 2008 — Rule 8
National Highways Act, 1956 — Section 2, 2(2), 3A, 3A(1), 3B, 3C, 3D, 3G(1), 3G(7)
Land Acquisition Act, 1894 — Section 5A

Citation : (2019) 258 DLT 773 : (2019) 5 AD(Delhi) 136

Hon'ble Judges : Dr. S. Muralidhar, J; I.S.Mehta, J

Bench : Division Bench

Advocate : Sumit Bansal, Prateek Kohli, Vishnushree Dalmia, Ajay Verma, Sumit Mishra, Abha Malhotra, P.S. Singh, Annu Singh, Sameer, Padma Priya, Mukesh Kumar, Yeeshu Jain, Rajneesh Bhaskar, Jyoti Tyagi

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1.The challenge in this petition is to a notification dated 15th May, 2017 issued by the Ministry of Road Transport and Highways, Government of India under Section 3-A (1) of the National Highways Act, 1956 ("NH Act") declaring the intention of the Central Government to acquire the land of the Petitioner admeasuring 0.620 acres forming part of Survey No. 56//16, 56//17/1 and 56//24/2 situation at Bijwasan Village, Southwest Delhi for the public purpose of "building (widening/four laning etc.), maintenance, management and operation of Dwarka Expressway on stretch of land from km 1.500 to km 9.900 in District South West in the State of Delhi". Also challenged in this writ petition is the subsequent declaration dated 20th November, 2017 under Section 3-D of the NH Act. The order passed by the Competent Authority Land Acquisition("CALA") under Section 3-C of the NH Act on 31st August, 2017/ 6th September, 2017, disallowing the objections filed by the Petitioner, has also been questioned.

2. This writ petition was filed on 23rd May, 2018. On 25th May, 2018, while directing notice to issue, the case was fixed for hearing on 30th August, 2018.

3. It is significant that although the Petitioner had sought for an interim relief against dispossession, no interim stay was granted by this Court.

4. In the reply filed to the petition by the NHAI (Respondent No. 2) on 3rd August, 2018, a reference was made to an order dated 1st May, 2018 passed by a Coordinate Bench of this Court in W.P.(C) No. 4520/2018 (Ferrari Estates LLP v Union of India) and W.P.(C) No. 4521/2018 (Purshottam Behl v UOI) respectively where again the Court had declined to grant ad interim relief in similar circumstances.

5. It is further pointed out that by a notification dated 23rd June, 2017, in exercise of the powers under Section 2(2) of the NH Act, the Central Government had declared a highway starting from its junction with NH-48 near Shiv Murti connecting Bharthal Chowk, Delhi and terminating near Kherki Daula on NH 48 in the State of Haryana as National Highway No. 248BB. It is stated that the said highway is also called the "Dwarka Expressway". It is, inter alia, pointed out that the Dwarka Expressway will provide a bypass to the existing NH-8 which will provide a high speed alternative connectivity (parallel to existing NH-8) and this will help in decongestion of the NH-8. Enclosing a copy of the order dated 6th September, 2017 passed by the CALA, rejecting the Petitioner's objections under Section 3-C of the NH Act, the NHAI points out that the said order has not been challenged by the Petitioner. It is claimed that the land is vested with the NHAI under Section 3-B of the NH Act.

6. By an order dated 20th March, 2018, the CALA has assessed the compensation under Section 3-G (1) read with Section 3-G (7) of the NH Act. It is claimed that the acquisition proceedings have been carried out strictly in accordance with the procedure laid down in law. It is submitted that the benefits of acquisition along with detailed reasons for choosing the site of the Toll plaza has also been communicated to the Petitioner.

7. Mr. Sumit Bansal, learned counsel appearing for the Petitioner, has submitted as follows:

(i) The acquisition is for "Dwarka Expressway", which is neither proposed as a national highway nor notified as national highway under Section 2 of the NH Act prior to the issuance of the notification dated 15th May, 2017 under Section 2 (2) of the NH Act.

(ii) If the law requires that a thing to be done in a particular manner, it has to be done in that manner or not at all. The said notification is accordingly bad in law.

(iii) The impugned notification did not state the purpose of the acquisition as construction of a toll plaza and, therefore, the Petitioner was not in a position to file effective objections. This purpose ought to have been explicitly made clear in the notification itself.

(iv) The toll plaza is in contravention of the National Highways Fee (Determination of Rates And Collection) Rules, 2008, (Fee Rules") which requires establishing a toll plaza at a distance of 10 km from the municipal or local town limits. The proviso thereto is not applicable inasmuch as the expressway is neither primarily for the use of the residents of the municipal or town area.

(v) The CALA has mechanically disallowed the objections under Section 3-C of the NH Act without application of mind independent with the "clarifications" provided by the NHAI.

8. Mr Bansal placed reliance on the decision in *Competent Authority v Barangore Jute Factory* (2015) 13 SCC 477 and *Hindustan Petroleum Corpn. Ltd. v Darius Shapur Chennai JT* 2005 (8) SC 470. Reliance is also placed on the decision in *Babu Ram v State of Haryana* (2009) 10 SCC 115.

9. In reply, Ms Padma Priya, learned counsel appearing for the NHAI, pointed out that the acquisition could well be for the public purpose of a "proposed" national highway. In any event, by a separate notification, the "Dwarka Expressway" was declared to be a national highway. Therefore, there was no illegality attached to the acquisition of the land. She further submitted that the objections of the Petitioner were duly considered and an order was passed by the CALA under Section 3-C of the NH Act. The said order could not be said to be an unreasonable one. There was no violation of the Fee Rules since the 2nd proviso to Rule 8 permitted the establishment of a toll plaza within 5 kms of the municipal or town area provided that the section of the national highway (which includes an expressway) is primarily for the use of residents of such municipal or town area.

10. The above submissions have been considered. In the first place, it requires to be noticed that the notification under Section 3-A of the NH Act dated 15th May, 2017 refers to the public purpose as "the building" of the Dwarka Expressway. While it is true that at this point in time, there was no express declaration of the "Dwarka Expressway" as a national highway, the notification was issued within a month thereafter on 23rd June, 2017. A perusal of the said notification dated 23rd June, 2017 reveals the complete description of the entire highway 248-BB, which in effect is the "Dwarka Expressway". According to Section 3-A of the NH Act, it does not restrict the issuance of a notification only to an existing national highway. It obviously can apply to a proposed national highway also. While the wording of the notification could have been clearer, the Court is not persuaded that merely because the Dwarka Expressway had not already been notified as a national highway by that date, a notification under Section 3-A of the NA Act would be bad in law for that purpose. The declaration of the Dwarka Expressway as a national highway number 248-BB took place within a month on 23rd June, 2017 under Section 2 (2) of the NH Act and the notification itself says that the said highway "shall be deemed to be inserted in the Schedule to that Act with the new serial numbers". The Court finds no illegality, therefore, attached to the notification issued under Section 3-A of the NH Act.

11. The legal position explained by the Supreme Court in *Competent Authority v Barangore Jute Factory* (supra) to the effect that "where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone" cannot said to have been violated in the present case. In this context, it requires to be noticed that while the actual use of the land of the Petitioner for the public purpose of "toll plaza" was not mentioned specifically, the toll plaza certainly is a part of the Dwarka Expressway. It appears that the Petitioner was indeed aware that a toll plaza was contemplated and the objections filed by the Petitioner under Section 3-C of the NH Act raised this issue. The order dated 31st August, 2017/ 6th September, 2017 passed by the CALA notes that the Petitioner raised an objection "on the location of the toll plaza within Delhi". It also sets out the clarification of the NHAI that the location of the toll plaza was away from the urban area and it was best suited to capture the maximum toll-able traffic between Delhi and Gurgaon. The location was also "reasonably away from major intersections and urbanized locations". The Court is satisfied that there is no illegality in not specifically mentioning the purpose in the notification under Section 3-A of the NH Act or the declaration under Section 3-D of the NH Act that the acquisition was for the toll plaza as long as the main public purpose of the Dwarka Expressway was mentioned.

12. Mr. Bansal's objections to the order passed under Section 3-C of the NH Act by the CALA disallowing the objections of the Petitioner are based on the observations of the Supreme Court in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai* (supra) and *Babu Ram v State of Haryana* (supra). No doubt the Supreme Court laid great emphasis on the sanctity of the procedure under Section 5-A of the Land Acquisition Act, 1894 (LAA). Where the Supreme Court felt that the said provision was observed in the breach, it has gone to the extent of invalidating the acquisition proceedings themselves. Likewise, the observations in *Babu Ram v State of Haryana* (supra) to the same effect also are to be understood in the context of the facts of that case. In *Babu Ram v State of Haryana* (supra), the matter was remanded to the stage of considering the objections of the Petitioner under Section 5-A of the LAA. In *Hindustan Petroleum Corpn. Ltd. v Darius Shapur Chennai* (supra), the relief granted was to fix the date with reference to which the compensation was payable. The Court was conscious not to quash the notification "in order not to disturb what has already taken place by way of the use of the acquired land for construction of a national highway".

13. Here again, it is not practical or possible for the Court to put the clock back as far as the construction of the highway itself is concerned. While there is merit in the contention of Mr. Bansal that the order passed by the CALA under Section 3-C of the NH Act leaves much to be decided, the Court notes that there is no specific challenge to the said order in the prayer in this petition. While clarifying that under Section 3-C of the NH Act, the CALA is not expected to merely reproduce the clarification issued by the NHAI to the objections raised by the land owners, but has to give specific reasons in disallowing or allowing the

objections as the case maybe, the Court does not consider it necessary in the instant case to interfere with the said order in view of the subsequent developments. As observed in *Competent Authority v Barangore Jute Factory* (supra), it is not possible for the Court to reverse the process of the construction of the highway.

14. Consequently, the Court is not inclined to interfere with the impugned notifications issued under Section 3-A and 3-D of the NH Act.

15. The petition is accordingly dismissed. The pending applications are also disposed of. No costs.