
(2008) 05 DEL CK 0226
In the Delhi High Court
Case No : Writ Petition (C) 2042 of 1985

S. Ujjal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2008) 103 DRJ 581

Hon'ble Judges : T.S. Thakur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : N.S. Vashisht, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari, the petitioner calls in question the validity of a notification dated 5th November, 1980 issued u/s 4 of the Land Acquisition Act, 1894 and a declaration dated 21st May, 1985 issued u/s 6 of the said Act whereby nearly 21 bighas of land situate in Sy. Nos. 245, 247, 248 and 340/250 of village Said-ul-Ajaib has been notified for acquisition for the public purpose of planned development of Delhi. The factual backdrop in which the challenge has been mounted may be summarised as under:

2. The petitioner claims to be owner/bhumidar of land measuring 12 bighas and 12 bids was in Sy. No. 245 of village Said-ul-Ajaib. He also claims to have entered into an agreement to sell with the owners of nearly 8 bighas of land in Sy. Nos. 247, 248 and 340/250 of which he claims to be in possession upon payment of a major part of the consideration settled for the same.

3. By a preliminary notification dated 5th November, 1980 issued u/s 4 of the Land Acquisition Act, the entire land situate in revenue estate of villages Tughlaqabad, Tikri, Deoli, Khanpur, Said-ul-Ajaib, Neb Sarai, Hauz Rani and Khirki except those excluded under the said notification were notified for acquisition by the Delhi Administration for the public purpose of planned

development of Delhi. In response to the said notification, the petitioner filed his objections before the Collector, Land Acquisition, Tis Hazari Courts, Delhi on 4th December, 1980. It is common ground that on 11th January, 1984, i.e. more than 3 years after the issue of the preliminary notification, the petitioner received a notice dated 6th January, 1984 from the office of the Collector, Land Acquisition, Delhi whereby he was asked to appear before the Collector for a personal hearing of the objections on 12th January, 1984. The petitioner accordingly appeared before the Collector on 12th January, 1984 in response to the said notice and filed some additional objections also to the proposed acquisition proceedings. The Collector appears to have considered the said objections and submitted a report culminating in a declaration dated 21st May, 1985 u/s 6 of the Act. Aggrieved by the said notification and the declaration, the petitioner has filed the present writ petition for a writ of certiorari quashing the same and for a prohibition restraining the respondents from proceeding further in the matter or dispossessing him from the land in question.

4. Appearing for the petitioner Mr. Vashisht made a three-fold submission before us. Firstly, he contended that the declaration issued by the respondents was rendered illegal by the denial of a hearing as envisaged u/s 5A of the Act in support of the objections filed by the petitioner. Secondly, he contended that the declaration was beyond the period stipulated in the proviso to Section 6 of the Land Acquisition Act, hence rendered illegal. Thirdly, it was argued by the learned Counsel that the Collector had not properly considered the objections filed before him and acted mechanically thereby rendering the entire acquisition proceedings illegal.

5. Appearing for the respondents, Mr. Poddar on the other hand argued that there was no denial of personal hearing to the petitioner as argued by Mr. Vashisht. He submitted that the contention was contrary to the averments made in the writ petition from which it was evident that the Collector had indeed afforded to the petitioner a personal hearing in support of the objections filed by him. Even the report submitted by the Collector, argued the learned Counsel, clearly proved that a hearing had indeed taken place on 12th January, 1984, which fact has not been disputed by the petitioner in the writ petition. So also, the contention that the declaration was beyond the period stipulated in the proviso to Section 6 of the Land Acquisition Act was according to the learned Counsel untenable. That aspect of the matter had, according to Mr. Poddar, been examined by a Full Bench of this Court in Balak Ram Gupta Vs. Union of India (UOI), and the contention that the declaration was beyond the prescribed period specifically repelled. He drew our attention to the said decision to urge that the period between 30th September, 1981 to 15th November, 1983 had to be excluded from reckoning as the acquisition proceedings had been stayed by this Court in different petitions filed against the same during the said period. So viewed, the declaration was, according to the learned Counsel, within the stipulated period of three years from the date of the publication of the preliminary notification. As regards the consideration of the objections, it was

argued by Mr. Poddar that the objections were purely legal in nature which had been examined and rejected by the Collector, Land Acquisition in his report. There was, according to Mr. Poddar, no illegality in the consideration of the objections nor was it a case of non-application of mind on the part of the Collector to warrant any interference.

6. We have given our anxious consideration to the submissions made at the bar and perused the record. The following three questions fall for determination:

(i) Was a personal hearing u/s 5A of the Act in support of the objections denied to the petitioner?

(ii) Is the declaration u/s 6 of the Act within the period stipulated by the first proviso to that provision?

(iii) Have the objections raised by the petitioner been properly considered by the Collector, Land Acquisition?

We shall deal with the questions ad Serialtim.

Re Question No. 1:

7. A personal hearing in support of the objections, if any, filed by the affected land owner is absolutely necessary in terms of Section 5A of the Act. The legal position in that regard is fairly well settled by a long line of decisions rendered by the Supreme Court including those in *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, *Munshi Singh and Others Vs. Union of India (UOI)*, *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, *Shyam Nandan Prasad and Others Vs. State of Bihar and Others*, *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, *Mr. Poddar*, learned Counsel for the respondent did not Therefore argue and, in our opinion, rightly so that a denial of hearing could be ignored by the Court as inconsequential. What was contended by Mr. Poddar was that there was no such denial alleged or established by the petitioner in the instant case. This would necessarily require a careful reading of the averments in the writ petition for it is only if the petitioner has set up a case of denial of hearing to him that the Court may examine the same and test the validity of the acquisition proceedings on that basis. In para 8 of the writ petition, the petitioner has inter alias stated that after filing his objections, he was informed by the officials of the respondent that the petitioner would be served with another notice whereby the Collector would give him a personal hearing and also an opportunity to lead evidence in support of his objections. In para 9, the petitioner alleges that he did not either hear from the Collector, Land Acquisition or any other official of the respondents regarding the objections filed u/s 5A of the Act. Para 10, however, makes an important admission by the petitioner to the effect that a notice dated 6th January, 1984 was received by him on 11th January, 1984 from the Collector,

Land Acquisition, Delhi directing him to appear before the Collector on 12th January, 1984 for a personal hearing of the objections filed by him. Para 10 of the petition reads as under:

10. That the petitioner on 11.1.1984 received a notice dated 6.1.1984 from the office of the Land Acquisition Collector, Delhi, whereby he was directed to appear before the Land Acquisition Collector on 12.1.1984 for personal hearing of the objections filed by the petitioner on 4.12.1980 i.e. after a lapse of more than three years from the date of filing the objections and from the date of publication of the notification u/s 4 of the Act.

8. In para 11 of the petition, the petitioner admits having appeared before the Land Acquisition Collector through his counsel and filed supplementary objections inter alias stating that since the period of more than three years has lapsed, so the Collector had become functus officio and the notification had exhausted itself. Para 11 may also be extracted at this stage:

11. That on 12.1.1984 the petitioner appeared before the Land Acquisition Collector through his counsel and filed supplementary objections stating that since the period of more than three years has lapsed, so the learned Land Acquisition Collector has become functus-officio and the notification u/s 4 of the Act has exhausted. The petitioner also took various other objections. The true copy of the supplementary objections filed by the petitioner before the Land Acquisition Collector on 12.1.1984 is filed herewith as Annexure "B".

9. In para 12, all that the petitioner alleges is that the Collector, Land Acquisition did not consider the supplementary objections of the petitioner. In the subsequent paragraphs, the writ petition inter alias alleges that a declaration u/s 6 could only be made within three years from the date of publication of the preliminary notification and that the declaration in the instant case having been issued beyond the said period was illegal. Suffice it to say that the writ petition does not make any allegation about denial of a hearing to the petitioner on 12th January, 1984 for which he was summoned to the office of the Collector and in response to which he had admitted having appeared through a counsel. Confronted with this position, Mr. Vashisht argued that the petitioner had alleged denial of an opportunity to the petitioner to lead any evidence in support of his objections though requested by the petitioner and non-consideration of the objections as also the supplementary objections filed by him. In support, he relied upon the following two grounds urged in the writ petition:

viii. Because the learned Land Acquisition Collector did not afford any opportunity to the petitioner to lead any evidence in support of his objections, though requested by the petitioner.

ix. Because the declaration u/s 6 of the Act has been issued without considering the objections as also the supplementary objections filed by the petitioner at the time of the hearing of the objections.

10. The above averments do not, in our view, spell out a case based on the alleged denial of a hearing in terms of Section 5A of the Act. If no hearing of the objections had indeed taken place on 12th January, 1984, there was nothing that prevented the petitioner from specifically saying so. The absence of any such assertion clearly implies that a hearing had indeed taken place before the Collector on 12th January, 1984 and the only infirmity which the petitioner alleged in the proceedings conducted by the Collector was that the petitioner did not get an opportunity to lead the evidence. So also the alleged non-consideration of the objections filed by the petitioner referred to in Ground 9 above does not imply a denial of personal hearing as envisaged by Section 5A. All that it implies is that the petitioner is aggrieved of non-consideration or an unsatisfactory consideration of the objections raised by him which is not the same thing as denial of a personal hearing to him on the date specifically fixed for that purpose. Mr. Poddar is, Therefore, justified in arguing that the charge of denial of a personal hearing to the petitioner was unsupported by any corresponding averment in the writ petition. Whether or not a hearing was given is a question of fact which the petitioner ought to have specifically alleged in the writ petition. The Court cannot assume that a hearing is always denied nor is there any question of any such assumption being made in the instant case where the petitioner has on his own showing not only received a notice inviting him to appear for a personal hearing but appeared before the Collector and filed objections to the same. This is particularly so when the petitioner had taken care to engage the services of a lawyer to represent him at the hearing. Neither the petitioner nor the lawyer concerned have alleged, leave alone on affidavit, that a hearing was denied to them on the date fixed for that purpose. That apart, the official record produced by the petitioner which contains the report of the Collector specifically refers to the hearing granted to the petitioner on 12th January, 1984. In that view, Therefore, we have no hesitation in answering question No. 1 in the negative and holding that there was no denial of personal hearing to the petitioner as argued by Mr. Vashisht.

Re Question No. 2:

11. The preliminary notification was, in the instant case, issued on 5th November, 1980. A declaration under the first proviso to Section 6 could Therefore be published within a period of three years from the date of the publication of the said notification. The declaration in the instant case was, however, published only on 21st May, 1985 which is admittedly beyond the period of three years stipulated under the proviso. In terms of Explanation I, any period during which the acquisition proceedings are stayed by an order of a Court is liable to be excluded while computing the period referred to in the first proviso. It is not in dispute that the notification in question which related to a much larger area, had been assailed in a number of writ petitions between 30th September, 1981 to 15th November, 1983. If the period of 2 years and 1-1/2 months is added to the period of three years prescribed under the proviso to Section 6, a declaration issued on 21st May, 1985 would be within the extended period, hence

valid in the eye of law. This aspect has been considered at some length by a full bench of this Court in Balak Ram's case (supra) where not only did the Court examine whether interim orders in every writ petition challenging the notification could result in extension of time but also whether there was any such stay against the impugned notification during the period mentioned above. Answering the first question in the affirmative, the Court observed:

31. We have, Therefore, to give full effect to the language of the section and the stay orders in question, in the above context and background. The use of the word "any" in the Explanation considerably amplifies its scope and shows clearly that the Explanation can be invoked in any case if some action or proceeding is stayed. It may be a complete stay of the operation of the entire notification or may even be a partial stay - partial in degree or in regard to persons or lands in respect of whom it will operate. The words used in the Explanation are of the widest amplitude and there is no justification whatever to confine its terms and operation only to the cases in which the stay order is actually obtained.

12. On the second aspect, namely, whether there was a stay order, the Court answered in the affirmative and after excluding the period during which the stay was operative held the notification to be within time. The Court observed:

39. We have, for the reasons stated above, come to the conclusion that the period during which stay orders were in force should be excluded in computing the validity of the declaration u/s 6. So far as the notification dated 25-11-80 is concerned, we find that the latest of the Section 6 declarations was on 26-2-86. The stay order (in C.M.P. 668/81) was in operation from 18-3-81 to 15-11-83 i.e. for a period of 2 years, 7 months and 27 days. They are Therefore in time having been issued within three years plus 2 years 3 months, i.e., 5 years 3 months of the Section 4 notification. So far as the notification dated 5-11-1980 is concerned, we find that the latest of the Section 6 declaration was issued on 7-6-1985, i.e., 4 years 7 months after the Section 4 notification. The stay order (in CMP 4226/81) was operative from 30-9-1981 to 15-11-1983, i.e., for 2 years and 1 1/2 months. If this period is excluded the declaration is within time. We answer the principal issue debated before us accordingly.

13. In the light of the above, we have no difficulty in answering question No. 2 in the affirmative and holding that the declaration is within the period prescribed for the same under the first proviso to Section 6 of the Act.

Re Question No. 3:

14. The objections raised by the petitioner have been noticed by the Collector in the report submitted by him. A reading of the said report further shows that the objections filed by the petitioner and his son Vikramjit Singh were similar. The objections inter alias alleged that the notification u/s 4 was not in conformity with the provisions of the Act, that no public notice at convenient places was given in the locality by the Collector, that there was no public purpose and the alleged purpose of planned development of Delhi was meaningless and the

acquisition proceedings are mala fide. The Collector has, while rejecting the said objections, observed:

I have considered the objections as well as supplementary objections filed at the time of hearing. These objections are enclosed herewith which may kindly be perused. The extract of objections have been discussed above. The objectors have inter alia requested for the release of their land and have stated that notification issued u/s 4 is illegal and infructuous. They further stated that the same has lapsed since no notification u/s 6 has been issued after a period of three years from the date of notification u/s 4. Some of the persons have taken plea that the land under houses be released as no settlement has taken place after the year 1864. The notification No. F.9(16)/80-L&B dated 25.11.80 issued u/s 4 of the L.A. Act is legal. It was issued by the appropriate authority and is in order. Since several writ petitions challenging the acquisition proceedings were pending in the High Court, notification u/s 6 must be prepared earlier. It has not lapsed as the period of stay of the Court is to be excluded from the period of three years. The Wakf Board has also requested for the release of the land. The Wakf land is also covered under the notification u/s 4 and thus cannot be released. As regard the provisions of facilities and sites for extended abadi, same can be considered by the DDA after the acquisition of the land. All these objections have got no force. It is, Therefore, suggested that the land may be notified u/s 6 of the L.A. Act.

15. We do not find any legal infirmity in the above recommendation made by the Collector. The Collector has clearly held that the notification u/s 4 is legally valid and issued by the appropriate authority. He also held that since several writ petitions had been filed, the period during which the proceedings remained stayed in the said petitions had to be excluded while reckoning the period of three years stipulated under the proviso to Section 6. The consideration accorded to the objections filed by the petitioner cannot Therefore be said to be mechanical or unsatisfactory so as to warrant interference with the impugned notification. Mr. Vashisht was unable to point out any substantial objection that required any further consideration by the Collector while making his report. That planned development of Delhi is a public purpose is now well settled by the Supreme Court in *Aflatoon v. Lt. Governor of Delhi* (1974) 2 SCC 285. Apart from these above objections, there was no objection that was either "land specific" or "owner specific" to call for any further consideration by the Collector. That being so, we see no merit in the contention urged on behalf of the petitioner that the Collector had not properly considered the objections raised by him. Question No. 3 is answered accordingly.

16. In the result, there is no merit in this petition which fails and is hereby dismissed with costs assessed at Rs. 5,000/-.