

(2013) 09 DEL CK 0518

In the Delhi High Court

Case No : Writ Petition (C) 6624 of 2012

Sanjay Khanna (HUF)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 17, 17(1), 4, 4(1)

Citation : (2013) 10 AD 171 : (2013) 204 DLT 95 : (2013) 138 DRJ 353

Hon'ble Judges : Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : N.S. Vasisht in W.P.C Nos. 6624-25/2012, Ms. Shoma Chaudhuri in W.P.C No. 1018/2013 and Mr. R.S. Rana in W.P.C No. 1797/2013, for the Appellant; Roshan Lal Goel, Ms. Mansi Gupta for UOI in W.P. (C) Nos. 6624-25/2012, Ms. Saakshi Agrawal, Himanshu Bajaj for UOI in W.P. (C) No. 1018/2013, Mr. Vijay Kenger for UOI in W.P. (C) No. 1797/2013, Mr. Sanjay Kumar Patha, Rohit Rai, Ms. Jhum Jhum Sarkar, Advocates for Land and Building and LAC, Mr. Tarun Johri for DMRC Ltd. Mr. Kushal Yadav, proxy counsel for Ms. Sonia Arora for Respondent Nos. 2 and 4 in W.P. (C) No. 1018/2013, Mr. Sandeep Sethi, Prashant Mehta, Himanshu Kapoor and Mr. Mahinder Rana, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—These writ petitions have been filed essentially challenging the acquisition notice dated 15.12.2000 issued u/s 4 read with Section 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). The challenge is also to the declaration u/s 6 of the Act which was notified on 14.02.2001. By virtue of the said notification and declaration, land to the extent of 30,500 sq meters situated at Mall Road, Delhi was acquired for the public purpose of Mass Rapid Transit System (MRTS). Essentially, the said land was acquired for the purpose of setting up of the Vishwavidyalaya underground station for Delhi Metro Rail Corporation Ltd. (hereinafter referred to as "DMRC"). However, the said acquisition has been challenged only to the extent of land that was surplus with respondent No. 3 (DMRC). A prayer has also been made for

issuance of a writ of mandamus or any other writ or direction or order of a similar nature directing the respondents and in particular respondent No. 3 (DMRC) to return surplus land acquired under the said Notification dated 15.12.2000 to the petitioners on pro rata basis. The facts are that 30,500 sq meters of land was acquired for the above purpose. After acquisition, the said land was utilized by the respondent No. 3 (DMRC) for setting up the Vishwavidyalaya station. After completion of the said station, surplus land to the extent of 20,000 sq meters was available with DMRC and the same was put to public auction for a Residential Group Housing Complex. Respondent No. 6 (M/s. Young Builders Pvt. Ltd.) was successful in the auction. We may point out that the auction was held on 24.07.2008. Prior to the holding of the said auction, a Gazette Notification had also been take out by the Ministry of Urban Development on 23.09.2005 modifying the Master Plan for Delhi, 2021 in which the land use of the Vishwavidyalaya plot (subject matter of the said auction) was changed from "public and semi public" to "residential".

2. It should also be pointed out that earlier the petitioners in these writ petitions had challenged the acquisition proceedings in W.P. (C) No. 1540/2001 and W.P. (C) No. 4589/2000 and other connected matters. The said writ petitions were disposed of on 22.07.2002. The main order was passed in W.P. (C) No. 4589/2000 and the other writ petitions including W.P. (C) No. 1540/2001 were disposed of in terms of the orders passed on 22.07.2002 in W.P. (C) No. 4589/2000. The order passed in W.P. (C) No. 4589/2000 reads as under:-

CW No. 4589/2000 has been filed by the New Amar Talkies through the Receiver, who was appointed by the Court in the dispute amongst the owners of the Cinema property CW No 111/2001 is by the employee of the Amar Talkies.

Initially, the challenge in these petitions was to the proceedings taken out to acquire land for public purpose namely construction of Mass Rapid Transit System (MRTS). Considering the larger public interest, the said challenge was given up. The only grievance of the petitioners which survives is for making allotment of alternate allotment of plot. We are informed that on 31.01.2002, by Circular No. MRTS/64/TPT/2000-PT File/291-305, basic guidelines on relocation and rehabilitation policy in respect of the project-affected persons of all categories, due to the implementation of Phase-I of Delhi MRTS project were modified as per the decision of the Cabinet dated 10.12.2001. Policy is stated to have covered all categories of cases including structures on Government land, residential units on private land in unauthorised colonies, private land in authorised colonies, shops, commercial establishments etc. In terms of the policy, a number of Writ Petitions were decided by the learned Single Judge. One of the writ petitions decided is CW No. 4374/2000, Harish Kalra vs. Union of India & Ors, on 26.02.2002. Directions were issued to respondents to make alternate allotment to the petitioners in these cases in terms of the circular and in terms of observations made in the said order. It is also prayed by learned counsel for the parties that these petitions be also disposed of with similar direction and with further

observations that while taking decision for making the allotment of alternate plots/areas, respondents may also consider the suggestions of the petitioner on the selection of site, appropriate size of the plot to be allotted in proportion of the land acquired and also on the rates to be paid by the allottees whether pre-determined or other rates.

Learned counsel for the petitioner however points out that the said circular does not take care of property which was acquired and is the subject matter of these petitions. He further prays that a direction deserves to be issued to the respondents to take a policy decision in view of the circular aforementioned, vis-?-vis the owners of the Cinema as also its employees so as to relocate them.

In the facts and circumstances, no other or further direction deserves to be issued in this petition except by directions that the respondents will take appropriate decision on the petitioner's representation as may be deemed appropriate in terms of the policy and in the facts and circumstances of the case within a period of six months from the date of receipt of representation from the petitioners and in case decision is taken, further steps will be taken to implement the said decision within the same time.

Ordered accordingly.

The petitions stands disposed of.

From the second paragraph of the above extract, it is apparent that the challenge to the acquisition of land for the public purpose, namely, construction of a Master Rapid Transit System (MRTS) was given up by the petitioners considering the larger public interest. The only grievance in those writ petitions that survived was for making allotment of an alternative plot. It is in that backdrop that a direction was given in those writ petitions that the respondents would take an appropriate decision on the petitioners' representations in terms of the policy referred to in the above extract and in the facts and circumstances of the case within a period of six months.

3. What happened to that representation is not relevant for our purposes because in the present spate of writ petitions, once again a challenge has been laid to the acquisition itself but limited to the extent of the surplus land available with the DMRC after) the construction of the Vishwavidyalaya station at Mall Road, Delhi. According to the petitioners, the surplus land ought to be de-notified and returned to the petitioners on a pro rata basis as it is no longer required for the purposes for which it was originally acquired.

4. Mr. Vasisht, the learned counsel appearing on behalf of the petitioners placed before us certain decisions of the Supreme Court in order to support his contentions that the surplus land ought to be returned to the petitioners. Those decisions were as under:-

1. Greater Noida Indusl. Devt. Auth. Vs. Devendra Kumar and Others,

2. Royal Orchid Hotels Ltd. V. G. Jayarama Reddy & Ors: (2011) 10 SCC 608
3. Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others,
4. Patasi Devi Vs. State of Haryana and Others,
5. Mr. Vasisht, the learned counsel, submitted that the acquisition was bad inasmuch as respondent No. 3 was seeking to utilize the surplus land for a purpose other than for which the said land was acquired. This amounted to a diversion of the purpose for which the land was acquired. He further submitted that the respondents cannot be permitted to profiteer at the cost of the petitioners whose land had been acquired. He further submitted that respondent No. 3 had acquired much more land than it actually needed and therefore, to the extent of surplus land, the acquisition was a colourable exercise and, therefore, to that extent the acquisition ought to be quashed.
6. Mr. Sandeep Sethi, the learned senior counsel, appearing on behalf of respondent No. 6 as well as the learned counsel appearing for DMRC (respondent No. 3) and the other learned counsel appearing for the other respondents have supported the acquisition.
7. The learned counsel for the respondents submitted that the land owners including the petitioners, after withdrawing that challenge to the acquisition, had already accepted compensation of about Rs. 2.50 crores and thereafter, have filed appeals for enhancement which are pending in this Court.
8. Essentially, the arguments advanced by the learned counsel for the DMRC is that the entire land which was acquired under the said Notification was required for the said Vishwavidyalaya station. It is also submitted by him that the entire 30,500 sq meters of land was utilized for the purposes of constructing the Vishwavidyalaya station. It is another matter that after the construction is over, there is surplus land to the extent of 20,000 sq meters which is now available with respondent No. 3 and it is for that purpose that the land use was altered and the auction was held in 2008.
9. It is further contended by the learned counsel appearing on behalf of the DMRC that initially the Vishwavidyalaya metro station was envisioned to be a terminal station under Phase-I of the MRTS Project and, therefore, there was a greater requirement for parking area.
10. Subsequently, under Phase-II plan which was envisioned in 2006, the Central Secretariat-Vishwavidyalaya line was extended to Jahangirpuri and therefore, the Vishwavidyalaya station no longer remained the terminal station, the same having been shifted to Jahangirpuri. As a result of which, post acquisition, the requirement of land for the Vishwavidyalaya station was reduced and that is how surplus land was available with the DMRC.
11. In the counter affidavit filed on behalf of respondent No. 3, following has

been stated:-

That the contents of Para 3 of the Petition as stated are incorrect and are denied. It is denied that answering Respondent has violated any provisions of the Land Acquisition Act, 1894 or any other law, as alleged. It is once again submitted that the Land in Question belonging to the Petitioner was fully utilised for the construction and implementation of the underground section of Phase-I, MRTS, Project namely for the construction of underground tunnel and the underground station at Vishwavidyalaya. Further, a part of the Land for the project for construction of Vishwavidyalaya station, has also been used as parking area on the south side of the Vishwavidyalaya Metro station. It is submitted that since, the above metro station was the last/terminal Metro station on the Central Secretariat-Delhi University Metro Corridor, hence the provision was made for the large parking space, on this station, as the commuters in large number used to park their vehicles at the said station and thereafter embark on the Metro journey, however, in the year, 2006, the Govt. decided to extend the Metro line from Vishwa Vidhalaya Metro station to Jahangirpuri. As such, Jahangirpuri Metro Station became the last/terminal station, and the requirement of maintaining a large parking space at the Vishwavidyalaya station decreased considerably. The parking area land which became vacant at the Vishwavidyalaya station due to aforesaid reason was utilized for property development, which is one of the sanctioned activities of the Project.

12. The learned counsel for the respondents have also submitted that the present writ petitions ought not to be entertained in any event inasmuch as the petitioners had, in the first round of writ petitions referred to above, given up their claim against the acquisition as such. The learned counsel for the respondents also referred to the decision of a Division Bench of this Court in the case of Adil Singh Vs. Union of India (UOI) and Others, wherein a similar situation had arisen with regard to the acquisition of 10,800 sq. Mtrs of land comprised in Plot No. 2, Block No. 125 also known as 8 Jantar Mantar Road for the public purpose of traffic integration and intake shaft for the underground metro at Patel Chowk, MRTS Station.

13. The SLP preferred against the decision of this Court in Adil Singh (supra) was also dismissed by the Supreme Court by an order dated 03.01.2011 in SLP (Civil) No. 33808/2010.

14. In that case also a plea had been taken that although 10,800 sq. mtrs. had been acquired for the DMRC purposes indicated above, land to the extent of 8386.6 sq. Mtrs remained unutilized on the surface, although there had been work done underground. In that case also, the petitioner being 50% erstwhile owner of the land in question asked for return of the surplus land. That plea was rejected by this Court by virtue of the said decision. While, examining the plea this Court had examined several decisions of the Supreme Court and observed as under:-

37. These principles are well-settled. But the question arises as to whether they help the petitioner at all? The plea of the petitioner is that his land measuring 10800 sq. mtrs. was acquired for the purposes of traffic integration and intake shaft for the underground metro at Patel Chowk, MRTS Station. According to the petitioner, the entire land was not utilized and only an area of 2413.4 sq. mtrs. had been used by DMRC leaving a balance available land of 8386.6 sq. mtrs. The plea of the petitioner is that the DMRC only required 2413.4 sq. mtrs. of land for the public purpose of traffic integration and intake shaft for the underground metro at Patel Chowk, MRTS Station, yet, the petitioner's land to the extent of 10800 sq. mtrs. was acquired and the balance 8386.6 sq. mtrs. was first sought to be utilized for the purposes of a Five Star Hotel, which project has since been dropped, and now it is to be used for a commercial building as part of property development. The petitioner has objected to this on the ground that when only a part of the land was required for the project, why was an additional area of 8386.6 sq. mtrs. acquired and why is this area now sought to be used for a commercial purpose at the expense of the petitioner's rights to the said land? It is in this context that the petitioner has prayed for the quashing of the acquisition in respect of 8386.6 sq. mtrs. of land and return of the said land to the petitioner and the other co-owners.

38. On a consideration of all the facts and circumstances of the case, we find that the petitioner's land had been utilized for the said project. In fact, as stated in the said additional affidavit on behalf of the DMRC, virtually the entire land had been excavated upto a depth of 15 metres. Tunnels have been made beneath the land and part of the Metro Station is also beneath the said land. It is only after all the construction activities were done, which took about three years, that the excavation was back-folded and now it appears that on the surface, an area of 8386.6 sq. mtrs. is available for property development. It cannot be said that the entire land was not acquired for the purposes which were mentioned in the notification u/s 4(1) of the said Act. It is only subsequently that part of the land is available for property development. Therefore, the decisions cited by the learned counsel for the petitioner would be of no help to the petitioner because we do not find that there has been any fraud on the power nor is the original acquisition tainted in any manner. This is so because the public purpose mentioned in the notification u/s 4 was undoubtedly a public purpose and it is for that purpose that the entire land was required at that point of time. It is only subsequent to the acquisition and vesting of the land in the Government that part of the land is available for property development. Thus, the initial acquisition cannot be faulted. More so, because the petitioner had withdrawn the earlier writ petition wherein the acquisition had been challenged.

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45. From all these decisions, a clear line of thought is discernible, and that is, that where land is acquired for one public purpose and part of it is left unused, the same can be used for another public purpose. In case this is done, merely

because the unused land is used for another public purpose would not be a ground for challenging the original acquisition itself. It is further clear that once the land has vested in the State either by virtue of Section 16 of the said Act or by virtue of Section 17(1), in urgent cases, there is no question of the land being re-vested in the erstwhile owners. The Government can withdraw from the acquisition only upto the point it does not take possession of land sought to be acquired. Once possession has been taken, the acquisition cannot be given up. It is also clear that though part of the land acquired for one public purpose could be used for another public purpose, without invalidating the acquisition itself, land acquired for a public purpose cannot be used for a private objective. But, even if part of the land is sought to be used for a commercial purpose, the same would not revert to the original owner though the appropriate Government would be subject to an action in case the allotment for commercial use is arbitrary or unreasonable. Where a portion of the land acquired for a public purpose is left unused, it would be open to the State Government to utilize the same for a commercial purpose provided it is done in a transparent manner either through an open tender or through an auction.

From the above extract, it is apparent that even if a part of the land which was initially acquired is sought to be utilized for commercial purpose, the same would not revert to the original owner though would be subject to an appropriate action in case the allotment for commercial use is arbitrary or unreasonable. Furthermore, where a portion of the land acquired for a public purpose is left unused it would be open to the State Government to utilize the same for a commercial purpose provided it is done in a transparent manner either through an open tender or through an auction. On the above basis, it was contended on behalf of the respondents that this is exactly what has been done by the respondents inasmuch as land to the extent of 20,000 sq. mtrs. has been put to an auction and it is only thereafter, that the respondent No. 6 has acquired rights in the said land through the auction. The auction has been conducted in a transparent manner and there is no allegation that the auction was not done in accordance with law.

15. We have heard the learned counsel for the parties and examined the rival contentions. The main point urged by the learned counsel for the petitioners was that the land which was acquired for a public purpose and part of which remained unutilized had to be returned to the petitioners on a pro rata basis. Insofar as this aspect of the matter is concerned, it is no longer open for debate in view of the decision of this Court in *Adil Singh* (supra). The decision cited by the learned counsel for the petitioners related either to colourable exercise of power at the stage of acquisition or to the wrongful use of the urgency provisions u/s 17 of the said Act. In the present case, on the basis of material on record neither of these situations arose. This is so because it has neither been alleged nor can be alleged that the urgency provisions of Section 17 were wrongly invoked in the present case. The requirement for a mass transit system is a well known requirement and the urgency of providing the same cannot be contested.

In any event, the petitioners even in the first round had withdrawn their challenge to the acquisition because of the larger public interest involved in the acquisition of the land for the purposes of a mass transit system.

16. Insofar as, the question of colourable exercise of power is concerned that does not arise in the present case. There is no dispute, in view of the counter affidavit filed on behalf of the DMRC, that initially the entire 30,500 sq. mtrs. of land was required for the purpose of the Vishwa-Vidyalaya Metro Station. This was so as per the plan envisioned under Phase-I. However, subsequently, during the execution of the project, in 2006, when Phase-II was envisioned, the Vishwa-Vidyalaya Metro Station was no longer the terminal station and that the line from Central Secretariat to Vishwa-Vidyalaya had been extended to Jahangirpuri. It is because of the fact that the Vishwa-Vidyalaya Station was no longer the terminal station that the requirement for parking space was reduced and that is why there was a surplus available with the DMRC. The important point to note is that at the time of acquisition in 2000, Phase-II would not have been in contemplation and, under Phase-I, the Vishwa-Vidyalaya Metro Station was envisioned as the terminal station and, therefore, the requirement of 30,500 sq. mtrs. of land for that purpose was considered necessary. The learned counsel for the petitioner has also taken us through the Report of five General Consultants which are at pages 333 to 339 in W.P. (C) No. 1540/2001. If one was to examine paragraph 3 of the said report which deals with the current land requirement it would be apparent that the total land requirement was 48010 sq. mtrs but that was on the basis that land would be required on the North as well as on the South of Mall Road. The land required on North of Mall Road was to the extent of 16,100 sq. mtr. and the land required on the South of Mall Road was to the extent of 31,910 sq. mtrs. It ultimately transpired that no land was acquired on North of the Mall Road and, therefore, the entire land was acquired only on the South of the Mall Road which was to the extent of 30,500 sq. mtrs. which is almost the same as the requirement of 31,910 sq. mtrs shown in the report. It is only subsequently in 2006 when the Phase-II was contemplated that the requirement of land got consequently reduced because of the shifting of the terminal station from Vishwa-Vidyalaya Metro Station to Jahangirpuri. In this backdrop, it cannot be said that the acquisition of land by virtue of the initial notification dated 15.12.2000 was a colourable exercise of power. Therefore, the decisions of the Supreme Court cited by the learned counsel for the petitioner would be of no assistance to the petitioners in the facts and circumstances of the present case.

17. Consequently, we find that the present case of the petitioners is virtually the same as that of the petitioners in Adil Singh (supra). Following the decision in that case, we are also of the view that the land cannot be returned to the petitioners. The writ petition is liable to be dismissed. It is ordered accordingly. There shall be no order as to costs. Interim orders stand vacated.