
(2008) 05 DEL CK 0025

In the Delhi High Court

Case No : Writ Petition (C) No. 7698 of 2007 and CMs 14666-67/07

Saroj Bhatnagar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 28(1), 4, 4(1), 5A, 6

Citation : (2008) 103 DRJ 429 : (2009) 1 ILR Delhi 103

Hon'ble Judges : Veena Birbal, J;T.S. Thakur, J

Bench : Division Bench

Advocate : Sanjay Goswami, for the Appellant; Sanjay Poddar and 2, Gaurav Sarin and Sumita Kapil, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—Present is a writ petition under Article 226 of the Constitution of India wherein prayer is made for issuance of writ of mandamus or any other appropriate writ against the respondents for quashing and setting aside the acquisition proceedings initiated after the issuance of notifications u/s 4 and Section 6 of the Land Acquisition Act and all subsequent proceedings arising thereafter including award dated 7.9.2007 in respect of land measuring 445.85 sq. metres at Circular Road, Shahdara, Delhi in village Chandrawali, Shahdara.

2. The facts alleged in the petition are that the petitioners are owners of land measuring 445.8 sq. meters forming part of Khasra No. 1796/651 min./1 in village Chandrawali, Shahdara. It is alleged that respondent No. 4 i.e. MCD has been running a veterinary hospital and MCD store on the said piece of land. Petitioners as owners had filed a suit for possession in the year 1991 against the MCD i.e. respondent No. 4 and had obtained decree for possession on 16.12.1998 from the court of Ms. Kamini Lau, Civil Judge, Delhi in respect of aforesaid land.

It is alleged that respondent authorities, acting in a mala fide and arbitrary

manner, to deprive the petitioners from the fruits of decree of possession, issued a notification u/s 4 of Land Acquisition Act dated 13.1.2006 proposing to acquire the aforesaid property of the petitioners for public purpose, namely, Veterinary Hospital and MCD store. On 15.2.2006, petitioners filed objections u/s 5A of Land Acquisition Act against the issuance of notification u/s 4 of the Act. It is alleged that petitioners also got possession of aforesaid land on the basis of execution proceedings through police aid on 22.2.2006 from respondent No. 4. On 15.6.2006, declaration u/s 6 of the Land Acquisition Act was issued by respondents. Notice dated 5.7.2006 was issued to petitioners u/s 9 of the Land Acquisition Act for inviting claims regarding compensation. Petitioners had earlier filed writ petition No. 14710-26/2006 challenging notifications u/s 4 and Section 6 of the Act. The said writ petition came up for hearing on 18.9.2006 before this Court and the same was disposed of by this Court with the following order:

This writ petition has been filed at the stage when the objections filed by the petitioner u/s 9 of the Land Acquisition Act, 1894 (Act) have yet not been decided. In our view, the above writ petition is pre-mature and the grievance of the petitioner cannot arise before the objections u/s 9 of the Act are decided. In this view of the matter, the petitioner is permitted to withdraw the writ petition. In case, the objections of the writ petitioners are decided against him, the status quo shall be maintained by the parties within six weeks after communication of the said order.

In view of the above, the writ petition stands dismissed as withdrawn. dusty.

It is alleged that petitioners had also filed their claims in respect of notices u/s 9(1) of Land Acquisition Act. It is further alleged that objections of the petitioners u/s 5A were rejected without application of mind and award dated 7.9.2007 has been passed. Aggrieved with the acquisition proceedings leading to passing of the award, the present writ petition is filed.

3. Learned Counsel for the petitioner contended that acquisition of land of petitioner was a mala fide exercise of power as the respondent No. 4, MCD having lost a legal battle in a suit for possession for aforesaid property filed by petitioner, got the proceedings initiated for the acquisition of property of petitioners. It is contended that government is already having large tracts of land in the vicinity of land of petitioner as such acquisition for "public purpose" is only a pretext. It is also contended that land in question is on a busy street of Shahdara which has been declared commercial under New Master Plan of Delhi 2021 and there is no sense in acquiring the said land on a busy commercial road for running the veterinary hospital and medical store.

4. On the other hand, Shri Sanjay Poddar, Advocate appearing for respondents refuted the submissions made on behalf of the petitioners. It is pointed out that the veterinary hospital has been in existence for a long time. It is further contended that there is no legal bar to acquire the land even if the government has lost litigation in respect of a particular land.

5. We have considered the submissions made and perused the record.

6. The submission of the respondents that veterinary hospital has been existing over the acquired land for the past 20 years has not been denied during the course of arguments. In the petitioner also existence of veterinary hospital and MCD store is admitted. In our opinion, mere fact that the acquisition proceedings have been resorted to overcome the decree of possession passed by the Civil Judge in favor of the petitioners would not lead to conclusion that the acquisition was a colourable/arbitrary exercise as is alleged as has been held in catena of judgment.

In State of Uttar Pradesh and another Vs. Keshav Prasad Singh, , the land in question was required for public office. During construction of the public office, the authorities encroached upon land of the respondent. The respondent approached civil court and mandatory injunction was granted in his favor directing the authorities to demolish the wall and hand over land to the owner. During the pendency of the appeal, the State initiated acquisition proceedings. The Supreme Court repelled challenge to the acquisition with the following observation:

4. It is seen that when that land was needed for a public purpose, i.e. as part of public office, the State is entitled to exercise its power of eminent domain and would be justified to acquire the land according to law. Section 4(1) was, Therefore, correctly invoked to acquire the land in dispute. It is true that the State had not admitted that its officers had encroached upon the respondent's land and had carried the matter in appeal. The finding of the Civil Court was that the property belongs to the respondent. The factum of the action under the Act implies admission of the title of the respondent to the extent of land found by the civil court to be an encroachment. Though the State chose to file the appeal which was pending, better Judgment appears to have prevailed on the State to resort to the power of eminent domain instead of taking a decision on merits from a Court of Law. In view of the fact that the PWD Office building was already constructed and a compound wall was needed to make the building safe and secure and construction was already made, which is a public purpose, the exercise of power of eminent domain is perfectly warranted under law. It can neither be said to be colourable exercise of power nor an arbitrary exercise of power.

In State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, the State was in possession of school building as a tenant. The respondent obtained an eviction decree against the State of Andhra Pradesh. The State sought to acquire the respondent's land vide notifications u/s 4 and 6 of the Land Acquisition Act. The Supreme Court again rejected the contention of the respondent/owner that the acquisition proceedings were initiated malafidely to frustrate the execution of decree. The Apex Court explicitly observed as under:

In our opinion even if that be the situation that the State as tenant of the school

building took no step to acquire the land before the order of eviction and direction of the High Court, it cannot be held that when it decided to acquire the building, there existed no genuine public purpose. If only the possession of the property could be retained as a tenant, it was unnecessary to acquire the property. The order of eviction as well as the direction to vacate issued by the High Court only provide just, reasonable and proximate cause for resorting to acquisition under the Land Acquisition Act. Resort, Therefore, to acquisition at a stage when there was no other alternative but to do so to serve a genuine public which was being fulfilled from 1954 signify more a reasonable and just exercise of statutory power. Such exercise of power cannot be condemned as one made in colourable or mala fide exercise of it.

Recently the Supreme Court again in *H.M.T. Ltd. rep. by its Deputy General Manager (HRM) and Another Vs. Mudappa and Others*, , while dealing with a validity of preliminary notification issued after decree by a court of law held that issuance of preliminary notification after a decree by a court of law would not ipso facto make it vulnerable and exercise of power mala fide with following observations:

9. In our considered view, however, this approach is neither legal nor permissible. Passing of a decree by a competent court is one thing and exercise of statutory power by the authority is altogether a different thing. It is possible in a given case to come to a conclusion on the basis of evidence produced and materials placed on record to conclude that the action has been taken mala fide or for a collateral purpose or in colourable exercise of power. But, in our opinion, issuance of preliminary notification after a decree by a court of law would not ipso facto make it vulnerable and exercise of power mala fide. To us, Therefore, the authorities were right in raising a preliminary objection that the petition was premature as by issuance of notification under Sub-section (1) of Section 28 of the Act, an intention was declared by the State to acquire the land for public purpose i.e. for developing industry.

Under the Statute, discretion vests with the government to acquire any land. It is not disputed that the veterinary hospital/MCD store is already functioning for a long period. The government has also acquired the land for said purpose only as is evident from the notifications under Sections 4 and 6 of the Act. Under the circumstances it cannot be stated that acquisition is a colourable/mala fide exercise, as is alleged.

7. Coming to the alternative submissions it needs to be noted that the same relate to policy decision of the government. As per settled law, a court of law while examining the validity of acquisition of a particular piece of land is not exercising appellate jurisdiction over the decision of a competent authority about suitability and the object for which the acquisition is made. The veterinary hospital has been in existence there for about two decades. Whether the government would like to retain the said hospital at its existing place or would like to shift it to some other place is an administrative decision. The same would

normally be not open to judicial review. We are of the view that contentions raised in this regard have no force and as such the same are rejected.

8. In view of the above discussion, the present petition stands dismissed. There is no order as to costs.