

(2007) 07 DEL CK 0228

In the Delhi High Court

Case No : Writ Petition (C) No. 4981 and CM. No. 9308 of 2007

Shri Ram Niwas

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

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

Metro Railways (Construction of Works) Act, 1978 — Section 19, 20, 21, 22, 23

Citation : (2007) 97 DRJ 567

Hon'ble Judges : Vikramajit Sen, J; S.L. Bhayana, J

Bench : Division Bench

Advocate : P.S. Vats, for the Appellant; Sanjay Poddar, for LAC, Monica Garg, for UOI and V.K. Shali, for Metro Railway Corporation in W.P. (C) Nos. 4984, 4985, 4987, 4988, 4999 and 5013 and CM. Nos. 9313, 9316, 9318, 9319, 9342 and 9354 of 2007 and Sanjay Poddar, for LAC, Monica Garg, for UOI, V.K. Shali, for Metro Railway Corporation and Sujata Kashyap in W.P.(C) Nos. 5000, 5001, 5010 and 5049 and CM. Nos. 9343, 9347, 9352 and 9403 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—The matter has been heard in detail. The prayers in the writ petition are as follows:

(i) To pass an appropriate writ order or direction for quashing/setting aside the impugned notification dated 31.1.2007 bearing No.F-7(21)/2005/L&B/LA/MRTC/W/16141 issued u/s 4 of the Land Acquisition Act and any other subsequent acquisition notification and or proceedings and Rehabilitation Policy.

(ii) To direct the respondents to apply the Metro Railway (Construction of Works) Act, 1978 for any proposed and present above acquisition for Metro Station Mundka, Delhi or any other work or construction for Metro in Delhi.

(iii) To declare provisions of The Metro Railway (Construction of Works) Act, 1978 as ultra virus of the Constitution of India.

(iv) To pass an appropriate writ order or direction where by directing respondents to have a record survey and construct of Metro Rail alignment projection on the vacant land which are available near the land of the Petitioner and in general where properties are either vacant or less inhabited.

2. The first contention raised by Mr. P.S. Vats, learned Counsel appearing for the Petitioners, is that the Competent Authority as well as the Appellate Authority has not been appointed by the Delhi Metro Rail Corporation. In this respect, it has been contended by Mr. Shali, learned Counsel appearing for the Delhi Metro Rail Corporation, that the provisions of the Metro Railway (Construction of Works) Act, 1978 (hereinafter referred to as 'the Metro Act') have not been resorted to. Acquisition is being carried out under the Land Acquisition Act, 1894 (hereinafter referred to as 'the L.A. Act'). Mr. Shali states that as and when the provisions of Metro Act are invoked, the statutory obligation to appoint a Competent Authority as well as an Appellate Authority shall inevitably be fulfilled. We are satisfied with his response.

3. The next question which has been raised by Mr. Vats is that Section 30 of the Metro Act gives unlimited powers to D.M.R.C. to acquire lands much in excess of their needs. Acquisition can, Therefore, be carried out in a malafide in order to annihilate the rights of the owners and thereafter make large profits for the D.M.R.C. As has already been explained, Section 30 of the Metro Act has not been resorted to. The acquisition of lands has taken place under the L.A. Act.

4. So far as the acquisition under the L.A. Act is concerned, some of the petitioners before us have duly filed objections u/s 5A of the L.A. Act. The law does not compel every person who is affected by acquisition to per force file Objections u/s 5A. Persons who have not filed Objections cannot be allowed to take advantage of their default. Section 6 Declaration was made on 24.5.2007. It was published in "The Hindustan Times" on 27.5.2007 as well as in the Official Gazette. The presumption so far as the Court is concerned is that the Report pursuant to Section 5A, Objection would have been prepared in accordance with the L.A. Act. The Report is dated 30.3.2007. The Lt. Governor considered the Report and directed issuance of the Declaration u/s 6 on 16.5.2007. If the Petitioners would have any grievance against the Declaration, they could have laid a challenge to the Declaration. We cannot accept the bald statement that the Petitioners were not aware of the publication of the Declaration.

5. Mr. Vats next contends that commercial spaces which presently are given by the DMRC on license after inviting public tenders, should be allotted to the persons whose lands have been acquired. It is contended that the misery that is caused to the owners would be eliminated to some extent. It is trite that under Article 226 of the Constitution of India, the Writ Court will not lay down policy or interfere in policy already put in place by a Competent Authority. The present case is not one where the policy has been implemented in a manner which infringed Articles 14 or any other provision of the Constitution. No scope of interference is made out.

6. So far as not resorting to the Metro Act and instead acquiring lands via the L.A. Act is concerned, the matter has been considered in great detail in the decision of the Division Bench titled as Pawan Singh and Ors. v. UOI and Ors. (2004) (DB) 420 . Significantly, Mr. Vats also appeared in that case. The Court upheld the acquisition under the L.A. Act even though an alternate method under the Metro Act was available and had not been utilized. We find no reason whatever to take a different view from this detailed and lucid judgment, and instead refer the matter to Hon''ble the Chief Justice for constitution of a Larger Bench. The argument is rejected.

7. So far as the virus of the Metro Act are concerned, since this Statute has not been resorted to, the challenge is academic. We decline to enter into this exercise. We may only observe that on the one hand the virus are assailed, and on the other, the provisions are sought to be relied upon by the Petitioners.

8. Mr. Vats further contends that D.M.R.C. must per force comply with Sections 19 to 25 of the Metro Act. According to him, this would necessitate the appointment of the Competent Authority as well as the Appellate Authority. As we have already observed that if any right or remedy is available to any citizen in terms of these provisions, necessary action will have to be taken in this regard by the DMRC. No cause of action in this context has arisen till date.

9. The petitions are without merit and are dismissed.