

**(2005) 05 DEL CK 0248**  
**In the Delhi High Court**  
**Case No : WP (C) No. 472 of 1985**

Smt. Shashi Jai Krishna

APPELLANT

Vs

The Land Acquisition Collector and Others

RESPONDENT

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**Date of Decision :** 12-05-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17  
Constitution of India, 1950 — Article 226  
Delhi Development Act, 1957 — Section 22  
Land Acquisition Act, 1894 — Section 10, 16, 4, 4(1), 5

**Citation :** (2005) 82 DRJ 383

**Hon'ble Judges :** Swatanter Kumar, J; Madan B. Lokur, J

**Bench :** Division Bench

**Advocate :** N.S. Vasisht, for the Appellant; Geeta Luthra and C.M. Rao, for DDA, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Swatanter Kumar, J.—The Petitioner approached this Court under Article 226 of the Constitution of India raising a challenge to the notification dated 24.10.1961 issued u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) and the award dated 9.12.1983 arising from the said notification. The Petitioner claimed the following reliefs in the Writ Petition :-

"(a) issue a writ of certiorari or such other appropriate writ, direction or order to quash the award No. 75/83-84 dated 9.12.1983.

(b) issue a mandamus to the respondents directing them to desist from taking any action under the Land Acquisition Act with relation to the petitioner's aforesaid lands.

(c) issue a writ of certiorari or such other writ, order or direction quashing the entire proceedings for acquisition relating to the acquisition of the petitioner's lands measuring 20 bigas 6 bids was in village Mehrauli.

AND

in the alternative

(d) issue a writ of mandamus or such other writ or order or direction directing the respondents to pay compensation to the petitioner for her acquired lands to be determined in accordance with the prevalent market price on the date of the Award, taking into consideration the developments made upon the land by the petitioner as stated in para 3 of this petition or direct the respondents to give comparable alternate land to the petitioner.

(d) pass such other and further orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case."

2. This Writ Petition was filed by the Petitioner on 22nd February, 1985. However, as it is evident from the above prayer clause the Petitioner did not pray for quashing of the notification issued u/s 4 of the Act or the declaration issued u/s 6 of the Act. This application under Order 6 Rule 17 of the CPC was filed by the Petitioner which was allowed by an order of the Court dated 27th November, 2000. The amended petition was taken on record and the respondents were called upon to file counter affidavit to the amended petition.

3. In the amended petition, the Petitioner, in addition to the reliefs already prayed in the original petition, added another relief which reads as under :-

"cc) : Issue a declaration, declaring that the land of the petitioner comprised in Khasra Nos. 74/23/2, 77/2/2, 77/3/1, 77/3/2, 77/9/1, 77/12/2, 77/13/1, 77/19/1, 77/18/1, totally admeasuring 20 Bighas and 6 Biswas, situated within the revenue estate of village Mehrauli in the National Capital territory of Delhi has never been notified u/s 4 of the Land Acquisition Act and is, Therefore, free from any sort of acquisition proceedings."

4. Despite the fact that the Writ Petition was filed in the year 1985, the respondents till date did not care to file a counter affidavit despite number of opportunities have been granted by the Court. Having left with no alternative and finding no reason for adjourning the case any further and as the records were brought by the respondent in Court on the date of hearing, we have heard the matter on merits on the basis of the records produced before us.

5. The Petitioner claims to be owner of the land admeasuring 20 Bigas and 6 bids was in Khasra Nos. 74/24/2, 76/10, 77/3/2, 77/4, 77/7, 77/8/1, 77/13/2, 77/14, 77/17, 77/6 situated in Village Mehrauli, Delhi. The Government had issued a notification u/s 4 of the Act acquiring large tract of land including the land of the Petitioner. The land was acquired for a public purpose, viz., planned development of Delhi. Declaration u/s 6 of the Act was issued on 4th January, 1969. The Respondents made the award in relation to the land in question on 9th December, 1983. The Petitioner has made the above-mentioned prayers on the ground that the petitioner have made various improvements on the land in question under a bonafide belief that the acquisition proceedings have been

dropped as no steps were taken by the Respondents since 1961. It is also the case of the petitioner that the land of the Petitioner was not even included in the notification u/s 4 of the Act and as such the said land cannot be acquired and taken possession of by the Respondents. Notices u/s 9 and 10 of the Act were not issued to the Petitioner and there was no fair determination of the market value of the land acquired. It is also the contention of the Petitioner that the award dated 9th December, 1983 is illegal on the ground of unexplained and inordinate delay on the part of the Respondents in finalisation of the proceedings. The first and foremost question which requires consideration of the Court is whether the Khasra numbers stated by the Petitioner in the Writ Petition were specified in the notification issued u/s 4 of the Act or not.

6. The notification u/s 4 of the Act was issued on 24th October, 1961. The declaration u/s 6 of the Act was issued on 4.1.1969. In the declaration duly notified in terms of the Section 6 of the Act, the name of the village, area as well as the field of Khasra numbers were duly notified in the notification. The Khasra numbers indicated in this notification does not show the Khasra numbers stated by the Petitioner in the Petition. However, we may notice here that the award No. 75/83-84 dated 9.12.1983 in relation to the land in question was announced on 9.12.1983 itself. In the award the old Khasra numbers of the acquired land Along with the new Khasra numbers, or thereof and even the kind of the soil Along with the village have been specified. In this award the Khasra numbers shown by the Petitioner in the Writ Petition have been shown Along with their old Khasra numbers. For instance :-

Khasra Number shown by the Petitioner

Old Khasra Number of the same Khasra Number as per award Area acquired

1. 74/24/2

1076 Min.

Measuring about 0-16 biswas

2. 76/10

1976/1069-1977/1069

Measuring about 10 biswas

3. 77/3/2

1076m-1075m

Measuring about 0-11 biswas

4. 77/4

1089m

Measuring about 4-16 biswas

5. 77/6

1070m-1069m

Measuring 4-19 biswas

6. 77/7

1063m-1064m

Measuring about 4-00 biswas

7. 77/13/2

1064m-1065m

Measuring 1-12 biswas

8. 77/14

1089m

Measuring about 1-07 biswas

9. 77/17

1060m-1065m

Measuring about 1-04 biswas

7. The above particulars as shown in the award is a duly authenticated document and is a final and conclusive evidence in regard to the contents thereof. Though the Petitioner himself has referred to the commencement of the consolidation proceedings in the village Mehrauli but has made no mention about giving of new Khasra numbers even to the acquired land. Obviously when the Section 4 notification was issued in the year 1961 it related to old khasra numbers and by the time the award was made after completion of the consolidation proceedings new khasra numbers have been given to all the lands including the land subject matter of the present writ petition. The Petitioner filed the Writ Petition in the year 1985. In our view it was necessary for the Petitioner to make a mention about the new Khasra numbers of the acquired land. From the records produced before us it is clear that in paragraph 5 of the notification issued u/s 4 of the Act on 24th October, 1961 interested persons were called upon to file their objections within 30 days of the publication of the notification before the Collector of Delhi. There is no averment made in the Writ Petition that the Petitioner filed any objections u/s 5(a) of the Act. Even from the record which have been produced by the Respondents before us it is not evident that any objections u/s 5(a) of the Act were filed by the Petitioner wherein he had taken up the pleas which are now sought to be raised in the present Writ Petition. Having failed to file any objections u/s 5(a) of the Act, the Petitioner would be debarred from questioning the validity or raise any other challenge to the notification u/s 4 of the Act. Reference in this regard can be made to the case of Anil Hada Vs. Indian Acrylic

Limited, wherein the Court held as under :-

"Claimants who have not filed objections to the Section 4 notification cannot be permitted to contend before the Court that Section 5A inquiry is vitiated so far as they are concerned. Nor can they be permitted to seek quashing of Section 6 declaration on that ground."

8. Even for this reason the Petitioner in the present Writ Petition would not be entitled to the relief of quashing of the notifications.

9. Another factor which would go against the Petitioner is that the award in relation to the acquired land was made on 9th December, 1983 and it was argued before the Court that possession of the land in question has already been taken and to show that the property already vests in the government, reference was made to the Khatoani pemaish relating to khasra numbers of petitioner in Village Mehrauli. The main line of argument of the petitioner that land in question was not specified in the notification u/s 4 having been rejected by us, the latter submission of the respondents that possession of the land under acquisition has already been taken and as such the petitioner has no right to question the legality or validity of the notification issued u/s 4 of the Act, gets strengthened. The award also would not support the case of the petitioners. Learned Counsel appearing for the petitioner contended that "paper possession" is no possession and the petitioner still continues to be in physical possession of the land in question. Once the records maintained in the normal course of business by the concerned authorities show that a particular act has been done in accordance with law, the presumption would be in favor of such an act, of course which is rebuttable by cogent and proper evidence. In the present case, the petitioner has not annexed any document to the writ petition or even subsequent thereto which would show that the petitioners are still in possession of the land, much less in lawful possession of the land. The deprivation from the land has to be determined on the facts of the case. Even if we presume for the sake or arguments that physical possession of the land has not been taken, still it will be of no avail to the petitioners because wherever large tracks of land is acquired, of which land of the petitioner is a small fraction, taking of actual physical possession of every inch of the land may neither be practical nor possible. At this stage, we may make a reference to certain judgments of the Supreme Court and this Court.

10 It will be relevant to mention at the very outset on the discussion of this very issue that in the case of Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., which was relied upon by the petitioner itself, the Supreme Court had clearly held as under :-

"It is settled law by series of judgments of this Court that one of the accepted modes taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it is would be impossible to

take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

11. In the case of Mahavir and Another Vs. Rural Institute, Amravati and Another, , the Supreme Court took the view that where interest and the land was transferred after notification u/s 4(1) of the Act, such transaction would not bind the State and furthermore where the land has been transferred to the Society which in turn became the owner, the plea of continuity/adverse possession could not be held in favor of such subsequent purchasers. In the present case also parts of lands in the revenue estate of different villages have been taken possession by recording memorandum of taking possession commonly known as Kabza Karbai and thereafter the land has been placed at the disposal of the DDA. In relation to these lands it can safely be stated that the lands have been vested in the State free of any encumbrances.

12. In the case of Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , the Court held as under :-

"4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."

13. A Division Bench of this Court, in the case of Nagin Chand Godha Vs. Union of India (UOI) and Others, took the view that taking of symbolic possession is sufficient compliance to the provisions of the Act and if the petitioner is enjoying the possession after symbolic possession of the property has been taken, he

does not do so as the trustee and it cannot be considered to be a ground to contend that possession is not taken.

14. We do find merit in the contention raised on behalf of the respondents particularly in the facts and circumstances of the case that the petitioners have firstly approached this Court after lapse of considerable period and secondly, the land has already vested in the Government u/s 16 of the Act and as such they cannot question the legality or validity of the notification issued by the government u/s 4 of the Land Acquisition Act. This contention need not detain us any further, particularly in view of the judgment of a Division Bench of this Court in the case of *Laxmi Narain Gupta v. Union of India and Ors.* in W.P.(C) No. 2221/1986 decided on 3rd March, 2005 where the court held as under:-

"We are of the view that the writ petition is liable to be dismissed because possession of the acquired land has already been taken by the Respondents. In an application filed by the Respondents seeking interim orders, it has been categorically stated that out of 6 bighas 12 bids was of land sought to be acquired, possession of 6 bighas 11 bids was has been taken over prior to the interim stay granted by this Court. Possession of 1 bigha could not be taken due to a shed existing at the site. Along with application, a possession report dated 23rd September, 1986 has been annexed and also a Notification dated 9th October, 1986 under the provisions of Section 22 of the Delhi Development Act, 1957 wherein it has been notified that 6 bighas 11 bids was of the land in question has been placed at the disposal of the Delhi Development Authority for the purpose of development in accordance with the provisions of the Delhi Development Act.

It has been held by the Supreme Court in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, that once land vests in the State (after possession is taken u/s 16 of the Act) then the Court is not justified in interfering with notifications published under appropriate provisions of the Act. This statement of law is binding upon us and for this reason it is not possible to entertain the writ petition.

A Division Bench of this Court in *Ajit Singh and Others Vs. Union of India and Others*, has independently taken the same view as the Supreme Court. It has been said, a bit dramatically, that the effect of taking possession u/s 16 of the Act is that the curtain is drawn so far as land acquisition proceedings are concerned."

15. An attempt was also made on behalf of the petitioner that the land of the petitioner was beyond half a mile as specified in the notification u/s 4 of the Act. It is for this purpose reference was made to a so called certificate issued by Mr. A.P. Saxena, Architect, an approved valuer, which reads as under:-

"TO WHOM EVER IT MAY CONCERN

This certifies That I have measured the distance from Andheria Mor crossing crossing to the exhausting Farm of Mrs Shashi Jai Krishna W/O Shri Late Jai

Krishna Bearing Khasra No. 77/24//2, 76/10, 77/3/2, 77/4, 77/7, 77/8/1, 77/13/2, 77/14, 77/17, 77/6 admeasuring 20 Bighas and 6 bids was situated within the revenue estate of village & tehsil Mehrauli. The exact distance is 0.96 KM which is more than half mile.

A.P. Saxena

Architect and approved valuer

Valuer Regd. No. I-2/88.."

16. This certificate at the face of it is without any substance. The concerned architect, did not even care to mention in this certificate that the old khasra numbers as described in the notification u/s 4 of the Act had been renumbered. He has also not indicated the measurement of each khasra numbers and the certificate has been issued in a most casual manner. In our view, the certificate is nothing but a desperate attempt on the part of the petitioner to support untenable pleas. We would have expected an architect to be more responsible, specially in regard to the matters which are pending before the Court and not issue certificates, which are incomplete and uncertain. No diagram or site plan is annexed to the said certificate and issuance of the certificate in the year 2004, is of a land which had been acquired in the year 1961 and which had apparently undergone definite changes, as even renumbering of the khasra numbers. We would decline to rely upon this certificate. In our opinion, the petitioner has failed to disclose true and correct facts in the writ petition.

17. For the reasons aforestated, we find no merit in this petition and the same is dismissed, while leaving the parties to bear their own costs.