

(1995) 01 DEL CK 0082

In the Delhi High Court

Case No : Civil Writ Appeal No. 229 of 1992

Sudhir Chaudhary

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(1)

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 6

Citation : AIR 1995 Delhi 391 : (1995) 32 DRJ 623

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Arun Jaitley, H.S. Phoolka and S.K. Mahajan, for the Appellant;

Judgement

Usha Mehra, J.

(1) Petitioner has challenged the notification u/s 4 read with Section 17(1) of the Land Acquisition Act (in short the Act) issued by Delhi Administration dated 6th March, 1987, published in the Indian Express on 8th March, 1987. Declaration was made on 10th March, 1987 u/s 6 of the Act. The challenge to the said notification is primarily based on three grounds namely (1) lack of urgency, (ii) fraud on the power of appropriate Government and. lastly (iii) that the acquisition of the property by the respondent for official use is contrary to the approved use of the property i.e. residential.

(2) Brief facts of the case are that this property bearing No.11 Lancers Road, Delhi was acquired by the petitioner by means of gift from his mother on 22nd May, 1963. The entire property was taken over on lease for five years by Delhi Administration on 6th January, 1965. However, on 16th March, 1990 (sic.), the Administration informed the owner that property will be vacated as the same was not required any more. Instead of vacating the property as promised, the Administration issued show cause notice dated 6th September, 1970 intimating as to why the property be not requisitioned. The petitioner filed objections to the

fixation of rent on 12th May,1971 and requested the respondent to vacate the premises as the same was required for his personal use. Thereupon on 31st January,1981 the Administration issued show cause notice for the acquisition of the front portion of the property. The said notice was replied on 6th February, 1981. Subsequently, in 1986 a policy decision was taken by the Administration to derequisition the property. Requisitioning and Acquisition of Immovable Properties Act,1952 lapsed on 10th March,1987. Just few days after coming to an end of the said Act, the Administration issued Notification u/s 4 of the Land Acquisition Act (hereinafter called the Act) and on 10th March,1987 the respondent issued declaration u/s 6 of the said Act. It is against the issuance of the impugned Notification that the present writ petition has been filed, inter alia, on the ground that the" Notification does not state the ground of urgency. Moreover, the invocation of Section 17 of the Act was a fraud and misuse on the power of the Administration. The respondent was fully aware that the Requisitioning and Acquisition of Immovable Property Act,1952 was going to lapse. Its validity was not going to be extended, instead of returning the property after the lapse of the Requisitioning and Acquisition of Immovable Property Act,1952, the Administration invoked the urgency clause which is nothing but a fraud of the power of the Administration. By invoking the provisions of Section 17(1) of the Act, the Administration has deprived the petitioner of his right to file objections u/s 5A of the Act. This being a residential building could not have been acquired for commercial use. The use of the building for commercial purpose is against the approved use mentioned in the Master Plan of Delhi. The lease deed executed by the mother of the petitioner with the President of India at the time of acquiring this property clearly stipulate that this building has to be used for residential purpose only. The property in question is situated in a densely populated area, which as per the accepted policy of the respondent cannot be acquired. The front portion of the property has been in unauthorised occupation of the respondent since 16th April,1970. The respondents have not paid any rent/compensation for the use and occupation of that portion for the last more than ten years. Moreover, the impugned notification has already been quashed by the Division Bench of this Court in C.W.P.No-2385/88.

(3) Developing his arguments on the basis of above submissions, Mr. Jaitley contended that as the impugned notification does not disclose any urgency of taking possession particularly when the possession of the premises was already with the Delhi Administration, hence this notification has to be declared bad in law. The very language of the notification shows non-application of mind. The notification was issued in a hurry in order to over-reach the law of the land, Therefore, this notification stands vitiated on this ground also.

(4) To appreciate his arguments, we have to look the contents of the impugned notification issued u/s 4 and 17(1) of the Act dated 6th March,1967, it reads as under :

"WHEREAS it appears to Lt. Governor, Delhi, that the land/properties are likely to

be required to be taken by the Govt. at the public expense for the following public purposes. It is hereby notified that the land in "the locality described below is likely to be required for the above purpose. This notification is made under the provisions of Section 4 of the Land Acquisition Act, to all whom it may concern. In exercise of the powers conferred by the aforesaid Section, the Lt.Governor is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and all other acts required or permitted by that Section. The Lt.Governor being of the opinion that the provisions of subsection (1) of Section 17 of the said Act are applicable to this land is further pleased under sub-section (4) of the said Section/to direct that the provisions of Section 5A shall not apply."

(5) Admittedly, the notification nowhere indicates the basis and the material relying on which the Lt.Governor came to the opinion that provisions of subsection(1) of Section 17 apply to this property. Even in the counter affidavit filed, the respondent has admitted the non-mentioning of urgency. Because of the non-compliance of this statutory provision, the petitioners have been deprived of their valuable right of being heard. They could not raise objections as provided u/s 5A of the Act, which right is given to them under the Statute. In order to deprive a citizen of his right to defend his property, there ought to have been a real urgency and not made up urgency. Sub Section (1) of Section 17 of the Act provides for special powers in case of urgency. The Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, observed that compulsory taking of a man's property is a serious matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness and denial of this administrative fairness is constitutional anathema except for good reasons, save in real urgency where public interest does not brook even the minimum time needed to give a hearing. Reliance was also placed on the decision of this Court in *Banwari Lal & Sons (P) Ltd. Vs. Union of India & ors.*, Drj 1991 supp. 317 where while dealing with impugned notification and declaration this Court declared the same to be bad in law because of non-compliance of the requirement of mentioning the purpose of urgency in the notification itself.

(6) Mr. S.K. Mahajan on the other hand appearing for the Delhi Administration tried to justify the impugned notification and the declaration, by urging that even though purpose of urgency was not expressly stated in the impugned notification, still the same can be justified from the office file. Office record shows that since there was acute shortage of office accommodation to house the officers of the respondent Therefore, this notification was issued. Since the Requisitioning and Acquisition of Immovable Property Act was going to lapse on 10th March, 1987, in that case the Administration would have been deprived of this property which was being used for its offices. The officers had to be housed in this premises in order to run the business of the Administration. It was only after careful deliberation, the Administration proposed to acquire this property by invoking the urgency provision. For arriving at such decision it took time for the Administration. It is only after due deliberation that the Administration decided to

dispense with the enquiry u/s 5A of the Act. As this matter was urgent and was in public interest, Therefore, provision of Section 17(1) was resorted. Moreover, the correctness and the satisfaction of the appropriate authority in arriving at that decision is the subjective satisfaction of that authority alone. This Court in Writ petition cannot go into these facts. This argument of Mr. Mahajan, to my mind, is without substance. The Administration was aware that the provisions of Requisitioning and Acquisition of Immovable Property Act was going to lapse on 10th March, 1987, it should have taken the decision much earlier in order to enable the petitioner to raise objection to the same. By not doing so, the Administration acted arbitrarily. Mere non-availability of official accommodation will not make it a case of urgency as required u/s 17(1) of the Act. Moreover, an acquisition of a property cannot be for a purpose contrary to the statute. Admittedly this is a residential property. The petitioner has placed on record the perpetual lease deed which provides that the land on which this building was-raised would be used for residential purposes only. Therefore, the contention of Mr. Mahajan that this property was required urgently for office accommodation is contrary to the terms of the lease deed. This property could not have been required for any other purpose than what is stipulated in the lease deed. The said covenants of the lease deed was executed under the Governments Grants Act and thus will prevail over the legislation to the contrary. The respondent inspire of the prohibition contained in the lease deed and of the Master Plan of Delhi did not take any action to remove its offices to .an alternative confirming area. Instead it clamped the present notification u/s 17(1) of the Act without mentioning any urgency in the said notification, which is nothing but a fraud and colourable exercise of the power of the appropriate authority.

(7) MR.MAHAJAN, however, raised an interesting plea regarding delay and latches. According to him, the impugned notification was issued in March,1987 whereas the present petition was filed in January,1992, Therefore,. suffers from delay and latches. While placing reliance on the decision of Hari Singh and Others Vs. State of U.P. and Others, , he contended that since the petitioner failed to exercise his right in. a reasonable time, hence this petition be dismissed on this ground alone.

(8) So far as the legal position is concerned, there cannot be any quarrel.

However, the facts of this case, this argument of Mr. Mahajan cannot be supported. Admittedly, petitioner had filed earlier a writ petition in February, 1987 bearing No-632/87 seeking possession of this property and also seeking restraining order against the respondent from acquiring the property in question. Interim order was passed in his favor. But during the pendency of the said writ petition, the impugned notification was issued. The same was challenged by other writ petitioners. This court quashed this notification in the said writ petition No-2385 on 4th February, 1991. In view of these facts, it cannot be said that petitioner was negligent in pursuing his remedies or that he was indifferent towards the act proposed by the &respondent. Even otherwise, it is well settled

principle of law that a party who delays in pursuing his remedies must suffer particularly when a right has accrued in favor of third party by reason of such delay. Reference can be had in this regard to the decision of the Supreme Court in *M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others*, . In almost similar circumstances as in this case, the Rajasthan High Court in *Mohd. Usman Vs. Union of India (UOI) and Others*, held that if no vested right accrue in favor of "the third party, the petition cannot be thrown out on the ground of laches. To the same effect are the decision reported in *P. Appalamurthy and Others Vs. State of Andhra Pradesh and Others*, . If is not the case of Mr. Mahajan that any right in this case accrued in favor of. any other person. Therefore, relying on the decisions quoted above, this writ petition cannot be thrown out simply on the ground of delay, particularly, when it is a fact on record that petitioner had been pursuing his remedies in the court of law against the proposed action of respondent.

(9) Now reverting to Mr. Mahajan's objection that possession of this property cannot be delivered to the petitioner because the entire property was let out to the Administration by means of rent deed dated 6th January, 1985 on monthly rent of Rs.3,300.00 . By a requisitioning order dated 16th October,1970 back portion of the property comprising of four flats (2 on the first floor and 2 on the second floor) and four servant quarters were requisitioned under the Requisitioning and Acquisition of Immovable Property Act 1952. The front portion of the property comprises of two flats continue to be with the respondent as a tenant. It was only the back portion which was requisitioned. Therefore, if this Court quashes the notification, the parties will revert to status qua entire position i.e. the Administration will continue to be a tenant in respect of front portion of this property. Qua tenanted portion, the Administration would be protected u/s 6 of the Requisitioning and Acquisition of Immovable Property Act. Section 6 of the said Act provides that when the property releases from Requisitioning, possession of the same shall revert to the person from whom the possession was taken. Since the possession of the front portion of this property was with the Administration as tenant hence it has to revert back to Administration as tenant if the Court quashes the notification. To support his arguments reference was made to the decision of this Court in *Mushtaq Ahmed Vs. Union of India and Others*, .

(10) This contention raised by Mr. Mahajan has been taken for the first time in his written submission. These were neither taken in the counter affidavit nor at the time of arguments. Ordinarily this contention raised in the written submission could have been ignored, but since it raises legal plea, Therefore, petitioner submitted his reply. From the perusal of the record it cannot be inferred that possession was taken by the Land Acquisition Collector from the Administration. Perusal of the counter affidavit show that the Land Acquisition Collector took possession of the rear portion of property u/s 17(1) of the Act. Hence, the property could not have been acquired u/s 17(1) of the Act without first derequisitioning. Petitioner rightly contended that the property deemed to have

been derequisitioned on 10th March,1987 when the possession was taken by the Land Acquisition Collector. Hence, the Administration is holding the property on the basis of the impugned notification dated 10th March,1987. In the event the impugned notification and declaration are quashed as bad in law and invalid, the possession has to be restored to its owner. The respondent cannot rely on Section 6 of the Requisitioning Act because once the property stood derequisitioned, the question of delivering it back to the Delhi Administration does not arise. The Administration has set up the defense that it is in possession of this property because of the impugned notification and the declaration issued on 10th March,1987. By written submission. Administration cannot be allowed to plead contrary stand. Once this Court hold that the said notification and the declaration are bad then question of invoking the provision of Section 6 of the Requisitioning Act will not apply nor the decision of this Court relied by the respondent will be of any help to him. According to petitioner the possession was taken from him. Attention of this Court was drawn to the letter, issued by the Director of Education, Delhi (NCC Section), dated 16th April,1970. It indicates that the lease was terminated by the said-Department in April,1970 because the house in question was no more required by the Delhi Administration. The Administration wanted to vacate it shortly. The Administrative Officer, N.C.C. forwarded the copy to Director, N.C.C. requesting him to make arrangement for handing over the charge of the building to the owner within one "month. Therefore, once the lease was terminated and the owner was asked to take possession, the question of the property being with respondent does not arise. On paper it stood in the possession of the petitioner only physical act of delivery of this property was to be performed. But non-delivery will not make the Administration a tenant. The tenancy was terminated by the Administration itself. Hence, now respondent cannot be allowed to urge that it was tenant on the day the notification was issued. In fact the lease of this property inclusive of the front portion stood terminated that is why after the termination of the lease no rent was paid for the front portion. It remained under unauthorised occupation of the Administration. For these reasons, I do not find any force in the submissions of Mr. Mahajan that if the impugned notification is quashed then possession should be handed over to the Delhi Administration.

(11) So far as the impugned notification and declaration are concerned, from the reading of the same it can be inferred that there was no urgency to clamp this notification on the coming to an end of the Requisitioning and Acquisition of Immovable Property Act,1952. In fact the Delhi Administration had sufficient time to make alternative arrangement for shifting its offices. Therefore, to my mind, there was no urgency whatsoever for invoking the provisions of Section 17(1) of the Act. The contention of Mr. Mahajan that in the file of the Department, urgency has been expressed, to my mind, has no relevancy. The notification does not indicate expressly any urgency whatsoever for acquiring this property. It must be remembered that Government orders which are publicly made, cannot be allowed to be added, amended detracted or clarified

subsequently. In other words, order must stand as it is and cannot be explained at a later date even if the Explanation be in regard to the reasons that activated the Government to pass that order. Reference can be placed to the decision of the Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, . In this view of the matter, it is not open to the respondent now to supply the reasons of urgency in "invoking the provisions of Section 17(1) of the Act, particularly, when the impugned notification remains totally mute regarding the same. If the respondent is now allowed to state the reasons which prompted it to invoke Section 17(1) it would be a travesty of justice. The Court cannot accept such an Explanation offered subsequently particularly when the notification itself does not reveal or disclose any such urgency. Subsequent Explanation in defense of the notification has to be discarded. It is only through the notification u/s 4 read with Section 17(1) that the people become aware of the intention of the acquiring authority to acquire the land for a public purpose. The impugned notification for having not disclosed the grounds of urgency has since been quashed in Civil Writ No-2385/92. The said judgment has been Upheld by the Supreme Court. The contention of the respondent that the said judgment in C.W.P. No-2385/92 was a judgment in persona and not in rem and, Therefore, has no bearing on this case, to my mind, is without force. Legal position in this case and in the case in C.W.P. No-2385/92 is the same. The impugned notification in the said case was set aside because it did not disclose the reasons of urgency. Same is the case in this case. Therefore, the decision of that case has a bearing on the present case.

(12) Property in question is a residential property, however, this is to be used for commercial purposes, which is against the provisions of the lease deed as well as of the Master Plan. The property which was earlier requisitioned under the Requisitioning and Acquisition of Immovable Property Act, on the lapse of the said Act on 10th March, 1987 could not have been acquired by clamping the impugned notification which is nothing but a fraud on the power of the Administration. Instead of following the provisions of law as stipulated under the Act, the Administration exercised the power mala fide by resorting to the provision of Section 17(1) of the Act. Reliance by Mr. Mahajan on the decision of this Court in the case of *Shakuntala B. Moda Vs. Union of India and Others*, is of no help. In that case the word "urgency" was not used in the notification, hence the attack. The Court after considering the facts and provisions of law observed that mere non mentioning of the word "urgency" would not render the notification illegal or invalid provided the urgency can be shown otherwise by the words "used in the notification. In that case the land was acquired for the purpose of rehabilitation of the persons displaced or effected due to the expansion/ development of the Palam Air Port. This purpose was considered urgent as the displaced persons had to be rehabilitated. The court in view of those facts held that it was a case of urgency because displaced persons had to "have a roof over their head. The need of urgency to rehabilitate the persons displaced or effected due to expansion and development of a particular project

can hardly be over- emphasised. But that is not the case in hand. Therefore, the observations in Smt. Shankutala's case (supra) are of no help to Mr.Mahajan.

(13) Similarly, in Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others, , the Supreme Court was considering the invoking of urgency clause u/s 17(4) and dispensing with the enquiry u/s 5A ipso facto after considerable length of time spent on inter- departmental discussion before the notification for acquisition u/s 4(1) was published. It was observed that very often person interested in the land proposed to be acquired make various representations to the concerned authorities against the proposed acquisition. This is bound to result in a multiplicity of enquiries, communications and discussion leading invariably to delay in the execution of even urgent projects, Therefore, the urgency and the necessity for acquisition. These observations of the Supreme Court do not apply to the facts of this case. The delay cannot be attributed to the petitioners rather from the additional affidavit filed by the respondent it is clear that as far back as in 1980, respondent was aware of the fact that the Requisitioning and Acquisition of Immovable Property Act would lapse on 10th March,1987. But inspire of being aware of this fact, no action was taken either to shift the offices or issue the impugned notification thereby enabling the petitioners to file objections u/s 5A of the Act. Rather the respondent allowed the time to lapse and then clamped the impugned notification on the eve when Requisitioning and Acquisition of Immovable Property Act was going to lapse. Hence, no support can be derived by the respondent from the observation in Deepak Pahwa's case.

(14) I also find no merits in the contention that urgency is subjective satisfaction of the Administration and this Court in writ petition cannot go into the same. The facts which have come on record do not support this subjective satisfaction theory. The subjective satisfaction at least ought to have been made known through the impugned notification. But the Administration has failed to indicate the same. Subjective satisfaction cannot be arbitrary. It has to be fair and just. From the material and the facts which are placed on record it is not possible for this Court to hold that there was any urgency or bonafide need for invoking the provision of Section 17(1) of the Act. I have no hesitation to hold that the impugned notification does not expressly or otherwise indicate any urgency. Accordingly the impugned notification u/s 4 and Section 17(1) stands vitiated, and hence quashed.

(15) The Delhi Administration is directed to handover vacant and peaceful possession of the entire premises in question to the petitioner within one month from today. The possession of the petitioner's property by Delhi Administration through its office is illegal and is in the nature of tress pass on the property of the petitioner. Petitioner has submitted the market value of the property based on Government rates of Rs.14,000.00 per sq.mtr. calculating on that basis the price of the property would come to Rs.14 crores. To this amount if solarium at the rate of 30% under the Land Acquisition Act and interest w.e.f. 1987 are

added the total amount payable under the Act would be over Rs.21 crores. If the calculation are to be based on the market value as of today the amount would be more than Rs.45 crores. Without further devolving on this aspect, suffice it to say, that the petitioner is entitled to damages from 10th March,1987 till payment is made. What would be the damages has to be determined by an Arbitrator. In similar circumstances in Banwari Lal's case (Supra), this Court appointed Arbitrator to determine the damages payable by the Delhi Administration instead of making the petitioners run to the Civil Court for that purpose. Applying the principle laid in that case, I appoint Justice S.S. Chadha, retired Judge of this Court as the Arbitrator. He will enter upon the reference within four weeks of the communication of this order to him. He may make the award within four months thereafter. The arbitrator will not be obliged to give reasons for his conclusions. The parties will be at liberty to produce their evidence before the Arbitrator for the assessment of damages, if they so desire. The petitioner as well as the Delhi Administration respectively shall pay a sum of Rs.10,000.00 each to the Arbitrator as initial payment towards his fees. A cop of this order be sent to the Learned Arbitrator by the Registry.

(16) The writ petition is allowed and disposed of with the above terms. Rule is made absolute.