

(1986) 02 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 2600 of 1987

Uday Kaushish

APPELLANT

Vs

Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 24-02-1986

Acts Referred:

Citation : (1987) 12 DRJ 308

Hon'ble Judges : S. Ranganathan, J;H.C. Goel, J

Bench : Division Bench

Advocate : Ramesh Chandra, N.S. Vashisth and Rajender Dutt, for the Appellant;

Judgement

S. Ranganathan, J.

(1) The petitioner is aggrieved by the proposed acquisition of about 3 bighas and 13 bids was of land belonging to him comprised in field Nos. 28.25.2, 40.5.2 and 6.1.1. situate in the Revenue Estate of Village Samikha, Tehsil Mehrauli, Delhi. Initially this land and others were notified u/s 4 of the Land Acquisition Act. on 12/2/1986. There was also a declaration u/s 6 read with Section 17 of the Land Acquisition Act, in respect of the land in dispute on 12/2/1986. In Pursuance of the above notifications, the land in question was sought to be taken possession of by the respondents. The petitioner thereupon approached this court with writ petition C.W. 948/86 raising various objections to the proposed acquisition. This writ petition was disposed of on 23/10/1986. The notifications dated 12/2/1986 issued under Sections 4 & 6 read with Section 17(4) of the Land Acquisition Act, were quashed by the judgment dated 23/10/1986. The writ petition was allowed on a very short ground, namely, that the notification u/s 4 as well as the declaration u/s 6 read with Section 17(4) of the Land Acquisition Act had been made on the same date. This was contrary to the provisions of Section 17(4) of the Land Acquisition Act which require that the declaration u/s 6 should be made after the date of publication of the notification u/s 4 of the Land Acquisition Act.

(2) Subsequently the respondents have issued a notification u/s 4 of the Land Acquisition Act. This notification was dated 10/11/1986 on which date it was published in the Delhi Gazette. It is, however, common ground that the notification u/s 4 was published in the daily issue of the Patriot on 21/11/1986 and in the daily issue of the Indian Express on 20/12/1986. The notification dated 10/11/1986 also contained a statement that the Lt. Governor, being of the opinion that the provisions of Sub-section (1) of Section 17 of the Act were applicable to this land, was pleased u/s 17 of the Act to direct that the provisions of Section 5-A shall not apply. This was followed by a declaration u/s 6 of the Land Acquisition Act dated 11/11/1986. This was also gazetted on 11/11/1986 and was also followed by another notification of the same date by which the Lt. Governor in exercise of its powers conferred u/s 17(1) of the Act directed the Land Acquisition Collector, Delhi to take possession of the land on the expiration of 15 days from the date of the publication of the notification u/s 9(1) of the Act. The respondents claim that in pursuance of this they have taken possession of the land. Thereupon the present writ petition has been failed praying that the notifications dated 10th and 11/11/1986 should be quashed and the respondents should be restrained from taking possession of the land belonging to the petitioner or proceeding further with the acquisition of the land in pursuance of the above notifications.

(3) It is submitted on behalf of the petitioner that the notification u/s 4 and the declaration u/s 6 of the Land Acquisition Act issued in November, 1986 are again in contravention of the statutory provisions. In this regard it is pointed out that the date of publication of the notification u/s 4 of the Land Acquisition Act is not the date on which the gazette publication is made but is the last of the dates on which the notification is published in the daily news papers. As already pointed out, in this case the notification was published in the Indian Express on 20th December, 1986. Hence on the language of Section 4 of Land Acquisition Act, the date of publication of the notification u/s 4 is 20th December, 1986. On the other hand the language of Section 6 of the Act is clearly different. The declaration u/s 6 is made by publication in the official gazette. It is also true that this declaration is also to be published in two daily newspapers and Section 6(2) of the Act defines the date of the publication of the declaration as the last of the dates on which the declaration is published in the official gazette and two daily newspapers. However, Section 17(4) of the Act lays down that the declaration u/s 6 may be made in respect "of the land at any time after the date of . the publication of the notification u/s 4(1) of the Land Acquisition Act. It will be seen that this Sub-section takes into account the date of the declaration made u/s 6 and stipulates that date should be subsequent to the date of the publication of the notification. Unfortunately due to some over-sight or other Section 17(4) does not refer to the date of the publication of the declaration (which has been defined in Section 6 on terms smaller to- those contained in Section 4). It only refers to the date on which the "declaration is made u/s 6 and provides that this date should be subsequent to the date of publication of the notification u/s 4 of

the Land Acquisition Act. The result is that for purposes of Section 17(4) one has to take into account the date of publication of the notification u/s 4(1) and the date of the making of the declaration u/s 6 of the Land Acquisition Act. In the present case the date of publication of the notification u/s 4. as already stated was 20/12/1986. Though the date of publication of the declaration was also the same, the date of making of the declaration u/s 6 of the Act is the date on which the Lt. Governor signed the declaration. This has to be so because Section 6 " itself draws a distinction between making of a declaration and the date of publication of the declaration. The result is that in the present case the declaration has been made on a date anterior to the date of the publication of the notification u/s 4 of the Land Acquisition Act. This is contrary to the provisions of Sub-section (4) of Section 17 of the Act. In other words, the notification u/s 6 suffers from the same defect or irregularity that vitiated the declaration u/s 6 which had been issued earlier in February, 1986. Infact counsel for the Delhi Administration was not able to satisfy us that the declaration has been made after the date of publication of the notification u/s 4(1) as required by Section 17(4) of the Act. The result is that the declaration u/s 6 dated 11th November, 1986 has to be and is hereby quashed. In fact counsel for the respondents did not oppose this prayer by the petitioner.

(4) Counsel for the petitioner submitted that not only the declaration u/s 6 but also the notification u/s 4 as well as the declaration of urgency within the meaning of Section 17(1) of the Act contained in the notification u/s 4 should be quashed. He pointed out that this was what had been done on the earlier occasion in the case of the petitioner. On this point this Court had observed :

"IN view of the fact that the declaration issued u/s 6 of the Act which debarred the petitioner from making any objections u/s 5A of the Act is involved we have no option but to quash not only the notification u/s 6 read with Section 17(4) of the Act but also the notification of the same date issued u/s 4 of the Act."

COUNSEL urges that on the same lines we should also direct that both the notifications u/s 4 as well as the declaration u/s 6 should be quashed. This prayer is opposed by the counsel for the respondents, while, as already stated, he concedes that the declaration u/s 6 has to be quashed for non-compliance with the provisions of Section 17(4) of the Act he contends that the notification u/s 4 will stand independently and there is no vitiating circumstance which would justify our quashing the said notification.

(5) We are inclined to agree with the counsel for the respondents. No defect, error or irregularity has been pointed out before us in regard to the notification u/s 4 of the Act. The defect or irregularity, if at all, is only in making the declaration u/s 6 earlier than the publication of notification u/s 4 of the Land Acquisition Act. The two notifications are independent and we do not see any reason for quashing the notification u/s 4 because of the irregularity or defect in the declaration made u/s 6 of the Land Acquisition Act. That apart, the extract from the earlier judgment of this Court set out above would seem to indicate that

the Court had proceeded on the assumption that it was the declaration u/s 6 of the Act which had debarred the petitioner from making any objection u/s 5A of the Act. The Court held that since the declaration u/s 6 had been held to be invalid, this bar should also go and Therefore, the notification u/s 4 should also go in order that the petitioner among others might be able to put forward their objections u/s 5A of the Act. But as we have already pointed out the direction given by the Lt. Governor u/s 17(1) read with Section 17(4) of the Act that this was a case of urgency and that the provisions of Section 5A should not apply was not made in the declaration u/s 6 of the Act. There is nothing in the statute which prohibits the decision regarding urgency and the need to dispense with the provisions of Section 5A "being taken simultaneously with and being expressed in the notification u/s 4(1) of the Act itself. On the other hand, the scheme of the Act envisages that either contemporaneously with the notification u/s 4 or immediately thereafter the Government should take a decision whether it is a case of urgency in which the provisions of Section 5A should be dispensed with and possession of the land must be taken within 15 days from the publication of the notice u/s 9(1) of the Act. If the decision is taken to apply the provisions of Section, 17(1) read with Section 17(4) then the declaration u/s 6 may be made at any time after the date of the publication of the notification u/s 4 of the Land Acquisition Act. If, on the other hand, no such declaration is made then the provisions of Section 6 can become operative only after the objections made u/s 5A are considered and a report therein is submitted. Thus in our opinion the declaration u/s 6 of the Act is independent of the notification u/s 4 and the decision to be taken u/s 17(1) read with Section 17(4). The decision to treat it as a case of urgency and to dispense with the proceedings u/s 5A is not and need not be incorporate in the declaration u/s 6 of the Act. There is, Therefore, no element vitiating the notification u/s 4 of the Land Acquisition Act. If the declaration u/s 6 had contained the reference to Section 17(1) and Section 17(4), as the earlier Bench, found, then certainly there was every reason to quash the notification u/s 4 also because the petitioner would have lost their valuable opportunity of making representations against the notification u/s 4 by reason of the recital contained in the invalid declaration u/s 6 of the Act. But this is not the position and we are unable to see any ground for setting aside the notification u/s 4, merely because the declaration u/s 6 does not comply with the statutory requirements.

(6) Counsel for the petitioner sought to urge that there was no urgency in the present case to justify the Lt. Governor dispensing with the procedure of objections contained in Section 5A. The submission of the learned counsel was that the satisfaction of the appropriate Government that there is an urgency regarding the acquisition which is of such a nature that there should be no delay in the acquisition even for the short period allowed u/s 5A to on able aggrieved persons to file objections before the authorities is an objective satisfaction to be arrived at on the basis of material considered by the Appropriate Government and is also justifiable in courts of law. He relied on a number of decisions for this

proposition and he urged that there is nothing to show that the Lt. Governor while making the declaration dated 11/11/1986 had applied his mind at all to the question of urgency.

(7) We agree with the learned counsel that it is for the Appropriate Government, in the present case the Lt. Governor, to apply his mind to the facts of the case and satisfy himself that there is an urgency in the land acquisition and that the urgency is so great that the normal procedure of calling upon aggrieved persons to file objections should be dispensed with and that the declaration and further proceedings should take place with great expedition. We also agree with him that though it is not open to the Court to consider the adequacy or otherwise of the material on the basis of which the Lt. Governor reaches his satisfaction it is open to the Courts to examine whether there was material at all before the Lt. Governor to reach such satisfaction, whether the Lt. Governor applied his mind to a consideration material and whether the conclusion or satisfaction was based on relevant considerations. It is, Therefore, unnecessary to refer to the decisions cited by counsel on this point. But we are satisfied in the present case that the satisfaction of the Lt. Governor has been properly arrived at on a consideration of the material placed before him and that there are no grounds to quash the direction of the Lt. Governor to apply the provisions of Section 17(1) read with Section 17(4) of the Act.

(8) The notification u/s 4 itself make it clear that the land was likely to be required to be taken over by the Government at public expense for the purpose of construction of a road linking Palam Diversion (N.H. 8) with Gurgaon Bye-Pass. It is pointed out in the reply to the show cause notice filed on behalf of the respondent that the above scheme was an urgent and immediate one and that it was necessary to complete the scheme under a time bound programme. It has been pointed out that a portion of the road of the Haryana side is also nearing completion and the work is held up on account of the court proceedings and causing irreparable loss not only to the Government but also to the public in general. The purpose of the road as already mentioned is to create a diversion from the National High-Way and enable traffic on the National High-Way to Bye-Pass Gurgaon and thus, relieve a great amount of congestion on this important National High-Way. Counsel for the petitioner states that the scheme has been pending for a long time and that various alterations and modifications have been made to this programme. It is not denied on behalf of the respondents that a proposal for the construction of this road has been pending for a long time and it is submitted by them that after a detailed consideration the scheme has been finalised, that the alignment of the road has been drawn up in consultation with the air force authorities who have air force complex boundary adjoining, the proposed land and various other interests in the course of which the petitioner also made his representations. It is pointed out that construction on the road had started from the Haryana end and had come up near the spot with which we are not concerned. It is, Therefore, submitted that whatever delay there might have been in the scheme being finalised, there was every reason to expedite the

construction of the road once the scheme has become final and approved by all the concerned authorities. The respondents have also produced before us the relevant records. We find that when the notifications under Sections 4 and 6 were issued initially in February, 1986 the matter had been processed fully before the appropriate authorities. We have found on record a note recorded by the Lt. Governor in his own hand setting out the circumstance, and expressing his satisfaction that this was a case of urgency in which the proceedings u/s 5A should be taken u/s 17(1) of the Act expeditiously. The Lt. Governor as the administrative head of the Union Territory must certainly have been familiar with the proposal regarding the construction of the road and its progress from stage to stage. Clearly the factors referred to earlier have all been taken into account by the Lt. Governor. In his hand-written note he has expressed a conclusion that the matter was one of urgency. It is true that there is no fresh recording of satisfaction of the Lt. Governor while approving the declaration to be made u/s 6 on 11/11/1986 but in our opinion this is not a very material circumstance. One has to consider the situation in its entire context. The decision to acquire the land was taken as early as February, 1986 and at that time the Lt. Governor has considered the relevant material and recorded his satisfaction that the scheme was an urgent one and that the acquisition had to be made urgently. Thereafter the petitioner came to this Court and his writ petition was allowed on a technical ground, namely, that the notification u/s 4 and the declaration u/s 6 of the Land Acquisition Act had been published simultaneously and that this was in contravention of the statute. The matter went back to the Lt. Governor and it was only this aspect of the matter that needed re-consideration. Though, technically speaking, notification u/s 4 and declaration u/s 6 had to be issued afresh, the act of Lt. Governor has to be considered in the context in which the matter has been put up to him. Nothing has been alleged or pointed out to show or indicate any possibility that the urgency about which the Lt. Governor was satisfied in February, 1986 had disappeared for some reason or other by the time the matter was put up to him again. On the other hand, as far as one can see, the reasons which impelled the Lt. Governor to record that the matter was urgent became more forceful and relevant when the notification had to be re-issued. The mere fact that the Lt. Governor has not reiterated his earlier satisfaction or specifically recorded his satisfaction again in terms of Section 17(1) and Section 17(4) will not in our opinion vitiate the direction u/s 17(1) contained in the notification re-issued in November, 1986. The entire file, right from the earlier acquisition, was before the Lt. Governor who was fully conversant with the facts and who was only called upon to consider the question of re-issue of the notification in the light of the defect pointed out by the High Court. In these circumstances we are satisfied that the declaration recording urgency has been made after Lt. Governor was fully satisfied that such urgency existed and that it was necessary to dispense with the proposed road required to be completed at an early date. This objection on behalf of the petitioner. Therefore, fails.

(9) Learned counsel for the petition then sought to urge some vague allegations of malafides against the Government. He submitted that the proposed road earlier was of smaller width. He substituted that originally the far edge of the proposed road would have been about 60 meters away from the air force complex boundary and if that had been stuck to it would not have been necessary to acquire the petitioner's land. The difficulty arose, it is said, because subsequently it was decided to have the far edge of the road 80 meters away from the air force complex boundary. This, according to the petitioner, had been done in order to oblige certain land owners of some banjar lands lying on the border of the air force complex boundary. That apart, it is submitted that, at the spot in front of the petitioner's land which is proposed to be acquired, the distance from the air force complex boundary is even more than 80 feet and comes to about 86 feet. All these, according to the petitioner, indicate mala fides on the petitioner of the respondent's authorities. We are unable to accept this contention. No specific facts to establish mala fides are spelt out in the writ petition. It is true that originally the far edge of the road was supposed to be 60 meters away from the air force complex boundary but the respondents have stated that this had to be increased to 80 meters at the request of the air force authorities who insisted that having regard to security considerations, a minimum 80 meters should be available from the boundary. There is nothing to show that this was not the objective consideration on the basis of which the length of 60 meters was subsequently enhanced to 80 meters. The alignment of the road, according to the respondents, has been made on the grounds of security of air force complex and not at the instance of some influential land owners as alleged. There is nothing to show that this averment is incorrect. Regarding the alternate contention of the petitioner that near the petitioner's land the width is even more than 80 meters, it is pointed out on behalf of the respondents that the alignment of the road has to be considered. The proposed road is not exactly parallel to the air force, complex boundary and if a minimum, of "80 meters away from the air force complex boundary is to be kept for the far edge of the road and the alignment of the road kept straight all through, the width away from the air force complex boundary could not be a constant 80 meters at all places but a little more or less here and then alignment and the air force complex boundary. We have seen the plan drawn up and we are satisfied that the Explanation given by the respondents is not only correct but acceptable. The alignment of the road has been kept straight and distances adjusted with a view to ensure the requirement of the air force authorities that at no place should the far edge of the road" be less than 80 meters away from the air force complex boundary. In doing this, almost places the far edge of the road is only 80 meters away from the air force complex boundary but in some places this distance has to be a little more or a little less. We, Therefore, think that no mala fides have been established which will vitiate the acquisition in the manner.

(10) We are, Therefore, satisfied that there are no grounds vitiating the notification u/s 4 of the Act or the recording of satisfaction u/s 17(1) read with

Section 17(4) of the Land Acquisition Act. However, for the reasons already mentioned the declaration u/s 6 of the Land Acquisition Act cannot stand and will have to be quashed. It is, however, open to the respondents to proceed with the acquisition after issuing a fresh declaration u/s 6 of the Land Acquisition Act in accordance with law. The writ petition is disposed of accordingly. There will be no order as to costs.