

(1987) 02 DEL CK 0054
In the Delhi High Court
Case No : C.W.P. No. 2600 of 1986

Uday Kaushisk

APPELLANT

Vs

The Land Acquisition Collector and others

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Citation : AIR 1988 Delhi 101

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

Bench : Division Bench

Advocate : Ramesh Chandra and N.S. Vashisht, for the Appellant; Rajinder Dutt, for the Respondent

Final Decision : Allowed

Judgement

S. Ranganathan, J.—The petitioner is aggrieved by the proposed acquisition of about 3 bighas and 13 biswas 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 samalkha Tehsil Mehrauli, Delhi. Initially this land and others were notified under S. 4 of the Land Acquisition Act on 12th February, 1986. There was also a declaration under S. 6 read with S. 17 of the Land Acquisition Act in respect of the land in dispute on 12th February, 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 CW 948/86 raising various objections to the proposed acquisition. This writ petition was disposed of on 23rd October, 1986. The notifications dated 12th February, 1986 issued under Ss. 4 and 6 read with S. 17(4) of the Land Acquisition Act were quashed by the judgment dated 23rd October, 1986. The writ petition was allowed on a very short ground, namely, that the notification under S. 4 as well as the declaration under S. 6 read with S. 17(4) of the Land Acquisition Act had been made on the same date. This was contrary to the provisions of S. 17(4) of the Land Acquisition Act which require that the declaration under S. 6 should be made after the date of publication of the notification under S. 4 of the Land Acquisition

Act.

2. Subsequently the respondents have issued a notification under S. 4 of the Land Acquisition Act. This notification was dated 10th November, 1986 on which date it was published in the Delhi Gazette. It is, however, common ground that the notification under S. 4 was published in the daily issue of the Patriot on 21st November, 1986 and in the daily issue of the Indian Express on 20th December, 1986. The notification dated 10th November, 1986 also contained a statement that the Lt. Governor, being of the opinion that the provisions of sub-sec. (1) of S. 17 of the Act were applicable to this land, was pleased under S. 17(4) of the Act to direct that the provisions of S. 5A shall not apply. This was followed by a declaration under S. 6 of the Land Acquisition Act dated 11th November, 1986. This was also gazetted on 11th November, 1986 and was also followed by another notification of the same date by which the Lt. Governor in exercise of his powers conferred under 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 under 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 filed praying that the notifications dated 10th and 11th November, 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 under S. 4 and the declaration under 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 under 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 newspapers. "As already pointed out in this case the notification was published in the Indian Express on 20th December, 1986. Hence on the language of S. 4 of Land Acquisition Act, the date of publication of the notification under S. 4 is 20th December, 1986. On the other hand the language of S. 6 of the Act is clearly different. The declaration under 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 S. 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, S. 17(4) of the Act lays down that the declaration under S. 6 may be made in respect of the land at any time after the date of the publication of the notification under 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 under S. 6 and stipulates that that date should be subsequent to the date of the publication of the notification. Unfortunately due to some over-sight or other S. 17(4) does not refer to the date of the publication of the declaration (which has been defined in S. 6 on terms similar to those

contained in S. 4). It only refers to the date on which the declaration is made under S. 6 and provides that this date should be subsequent to the date of publication of the notification under S. 4 of the Land Acquisition Act. The result is that for purposes of S. 17(4) one has to take into account the date of publication of the notification under S. 4(1) and the date of the making of the declaration under S. 6 of the Land Acquisition Act. In the present case the date of publication of the notification under S. 4, as already stated was 20th December, 1986. Though the date of publication of the declaration was also the same, the date of making of the declaration under S. 6 of the Act is the date on which the Lt. Governor signed the declaration. This has to be so because S. 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 under S. 4 of the Land Acquisition Act. This is contrary to the provisions of sub sec. 4 of S. 17 of the Act. In other words, the notification under S. 6 suffers from the same defect or irregularity that vitiated the declaration under S. 6 which had been issued earlier in February, 1986. In fact 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 under S. 4(1) as required by S. 17(4) of the Act. The result is that the declaration under 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 under S. 6 but also the notification under S. 4 as well as the declaration of urgency within the meaning of S. 17(1) of the Act contained in the notification under 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 under S. 6 of the Act which debarred the petitioner from making any objections under S. 5 A of the Act is involved we have no option but to quash not only the notification under S. 6 read with S. 17(4) of the Act but also the notification of the same date issued under S. 4 of the Act."

Counsel urges that on the same lines we should also direct that both the notifications under S. 4 as well as the declaration under S. 6 should be quashed. This prayer is opposed by the counsel for the respondents. While, as already stated, he concedes that the declaration under S. 6 has to be quashed for non-compliance with the provisions of S. 17(4) of the Act he contends that the notification under 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 under S. 4 of the Act. The defect or irregularity, if at all is only in making the declaration under S. 6 earlier than the publication of notification under S. 4 of the Land

Acquisition Act. The two notifications are independent and we do not see any reason for quashing the notification under S. 4 because of the irregularity or defect in the declaration made under 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 under S. 6 of the Act which had debarred the petitioner from making any objection under S. 5A of the Act. The Court held that since the declaration under S. 6 had been held to be invalid, this bar should also go and therefore, the notification under S. 4 should also go in order that the petitioner among others might be able to put forward their objections under S. 5A of the Act. But as we have already pointed out the direction given by the Lt. Governor under S. 17(1) read with S. 17(4) of the Act that this was a case of urgency and that the provisions of S. 5A should not apply was not made in the declaration under 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 S. 5A being taken simultaneously with and being expressed in the notification under S. 4(1) of the Act itself. On the other hand, the scheme of the Act envisages that either contemporaneously with the notification under S. 4 or immediately thereafter the Government should take a decision whether it is a case of urgency in which the provisions of S. 5A should be dispensed with and possession of the land must be taken within 15 days from the publication of the notice under S. 9(1) of the Act. If the decision is taken to apply the provisions of S. 17(1) read with S. 17(4) then the declaration under S. 6 may be made at any time after the date of the publication of the notification under S. 4 of the Land Acquisition Act. If, on the other hand, no such declaration is made then the provisions of S. 6 can become operative only after the objections made under S. 5A are considered and a report therein is submitted. Thus in our opinion the declaration under S. 6 of the Act is independent of the notification under S. 4 and the decision to be taken under S. 17(1) read with S. 17(4). The decision to treat it as a case of urgency and to dispense with the proceedings under S. 5A is not and need not be incorporated in the declaration under S. 6 of the Act. There is, therefore, no element vitiating the notification under S. 4 of the Land Acquisition Act. If the declaration under S. 6 had contained the reference to S. 17(1) and S. 17(4), as the earlier Bench found, then certainly there was every reason to quash the notification under S. 4 also because the petitioner would have lost his valuable opportunity of making representations against the notification under S. 4 by reason of the recital contained in the invalid declaration under S. 6 of the Act. But this is not the position and we are unable to see any ground for setting aside the notification under S. 4, merely because the declaration under 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 S. 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 under S. 5A to enable 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 justiciable 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 11th November, 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 considerable 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 S. 17(1) read with S. 17(4) of the Act.

8. The notification under S. 4 itself makes 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 Highway and enable traffic on the National Highway 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 v various alterations and modifications have been made tortoise 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 case 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 Ss. 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 under S. 5A should be taken under 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 under S. 6 on 11th November, 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 under S. 4 and the declaration under 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 under S. 4 and declaration under 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 reissued. The mere fact that the Lt. Governor has not reiterated his earlier satisfaction or specifically recorded his satisfaction again in terms of S. 17(1) and S. 17(4) will not in our opinion "vitiating the direction under S. 17(1) contained in. the notification reissued 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 the 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 petitioner then sought to urge some vague allegations of mala fides against the Government. He submitted that the proposed road earlier was of smaller width. He submitted 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 respondents' 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 was 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 there alignment of 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, at most 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.