
(1982) 05 DEL CK 0042

In the Delhi High Court

Case No : Letter Patent Appeal No. 126 of 1976

Union of India and Others

APPELLANT

Vs

Nand Kishore

RESPONDENT

Date of Decision : 21-05-1982

Acts Referred:

Citation : AIR 1982 Delhi 462 : (1982) 22 DLT 251 : (1982) 2 ILR Delhi 741

Hon'ble Judges : Leila Seth, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : Ravinder Sethi, L.M. Sanghvi, B.S. Chauhan and N.P. Paliwal, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) In this letters patent appeal an application was made to us on 21st January, 1982 for an early hearing of the appeal. It was stated that the land in question is required for widening the road in connection with the Asiads" 82 and was immediately needed for a public purpose. We agreed to hear the appeal, as we generally do in such cases. We have now heard counsel for the parties. We give our decision immediately.

(2) The short question in this appeal is whether the Government can change the purpose of acquisition of the land and acquire it for a purpose other than that declared by it u/s 6(2) of the Land Acquisition Act, 1894 (the Act).

(3) These are the facts. On 4th May, 1960 the appellant, Union of India, issued a notification under sections 4, 6 and 17 of the Act in respect of a plot of land measuring 12 bighas 2 bids was in Khasra No. 68 situated in village Kilokari. The notification stated that the land was required for a public purpose, namely, the construction of a fire station pursuant to the request made by the Municipal Corporation of Delhi u/s 199 of the Delhi Municipal Corporation Act, 1957. By this notification the provision of sub-section I of section 17 was invoked and it was declared that the provision of section 5A shall not apply.

(4) On November 7, 1960 the respondent's father, Brij Bhushan, brought a petition under Article 226 of the Constitution challenging the notification dated 4th May, 1960. This writ petition was dismissed on 26th November, 1969. The only ground taken in that case was that the notification under sections 4, 6 and 17 was invalid on the ground that the Municipal Corporation of Delhi had not approached the owner for the purpose of a private purchase from him and unless the Commissioner negotiates with the owner for the sale of land to him acquisition proceedings cannot be taken. This argument was repelled. It was held that there is nothing in section 199 of the Municipal Corporation Act which makes it compulsive for the Commissioner to start negotiations for purchase by private treaty or to suggest that without this he cannot ask the Central Government to acquire the land for the Corporation.

(5) On 7th May, 1971 the Government issued notices under sections 9 and 10 of the Act. In these notices it was stated that the land was required for the public purpose, namely, "planned development of Delhi". On receipt of this notice the owner Brij Bhushan brought a petition on 10th June, 1971 under Article 226 of the Constitution. The owner now challenged the validity of the notices issued under sections 9 and 10 of the Act. In their counter-affidavit the Government abandoned the purpose of planned development and came out with the case that the land is now required for "construction of staff quarters of Delhi Administration". The learned single judge by order dated 8th October, 1976 allowed the writ petition. He held that it was not open to the Government to change the original purpose of acquisition. From his order the Union of India appeals to this court.

(6) The single point for our decision is whether the land required for a fire station can be acquired now for a different purpose. It is admitted before us, as was admitted before the learned judge, that the original purpose of acquisition was to build a fire station and that as the court issued an order of stay against dispossession from the land in question in the earlier writ petition another piece of land was acquired and a fire station was constructed on it.

(7) This is also admitted that notices under sections 9 and 10 dated 7th May, 1971 had been wrongly issued and that they had been withdrawn. The admitted position of the Government today is that notices under sections 9 and 10 of the Act dated 16th November, 1971 were issued to the owner mentioning therein the purpose of acquisition as "construction of staff quarters for Delhi Administration". The owner Shri Nand Kishore, the present respondent who was substituted on the death of his father, denies the service of these notices on him. But that will not make any difference to the main question that arises for our decision. That question shortly stated is, whether the Government can change the purpose from a fire station to the construction of staff quarters for Delhi Administration.

(8) It is not ill dispute that the original purpose of building a fire station for which the notification under sections 4, 6 and 17, was issued on 4th May, 1960, no longer exists today. That purpose has been fulfilled. Now the Government wants

to acquire the land for the construction of staff quarters for Delhi Administration. Will this change of purpose invalidate the acquisition proceedings or not? This is the question at issue.

(9) It appears to me that the Government has no right to change the public purpose in midstream. The acquisition proceedings are in progress. They have not been completed. Before the land vests in the Government, the Government at the time of issuing notices under sections 9 and 10 has changed the public purpose from fire station to the construction of staff quarters. This is not sanctioned by the Act. The Government must adhere to the original purpose. If they want to depart from the original purpose the only course is to start fresh acquisition proceedings. As it appears to me from the decided cases the principle of law is this. The Government cannot change the original public purpose till the acquisition is complete. After the land has vested in it the Government has a right to change the use to which it will put the land. In this case the land has not so far vested in the Government. This will be clear from section 17 of the Act. In so far as it is material section 17(1) says :

" In cases of urgency, whenever the (appropriate Government) so directs, the Collector though no such award has been made, may, on the expiration of fifteen days, from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances."

(10) Section 17(1) is a special power conferred on the Government for the acquisition of land in cases of urgency. Without giving a right of hearing to the owner u/s 5A and without publishing the award u/s 11 the Government in cases of urgency may on the expiry of 15 days from the publication of the notice u/s 9(1) take possession of any waste or arable land. Such land thereupon vests absolutely in the Government free from all encumbrances. The word "thereupon" is the key word in the sub-section.

(11) The dispute has arisen in the present case at the stage of notice u/s 9(1). In the notification u/s 6 the Government stated that the public purpose for which the land was needed was a fire station. Now in the notice under section 9(1) the Government states that the public purpose is the construction of staff quarters for Delhi Administration. The original purpose has been abandoned. A new purpose is being pleaded. The land has not vested in the Government so far. Therefore the Government cannot change the purpose and issue notices under sections 9 and 10 for the construction of staff quarters for Delhi Administration. Section 6(2) requires that

" EVERY declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected."

(12) It is clear from the sub-section that the purpose for which the land is needed has to be stated in the declaration in so many words. For a designated public purpose the land can be acquired. Once this has been done the Government must stick to the original purpose. It cannot change the public purpose from one to another at its will or fancy, as is the case here. To begin with it was stated that the public purpose is the building of the fire station. In the notices under sections 9 and 10 issued on 7th May, 1971 it was stated that the public purpose was "planned development of Delhi". In the counter-affidavit the Government stated that these had been erroneously issued and had been withdrawn. Fresh notices dated 16th November, 1971 were issued for a third public purpose, namely, the construction of staff quarters for Delhi Administration. In the application for early hearing made to us on 21st January, 1982 it was said that the land was required for widening the road in connection with Asiad" 1982.

(13) In the proceedings under the Act there must be constancy of purpose. In *Gadadhar Ghosh Vs. State of West Bengal*, Banerjee J. said :

" THERE must be a fixity of purpose in the mind of the Government because, it is in relation to that purpose that the Government explores and arrives at its satisfaction, under s. 17 of the act."

(14) In other words the purpose must remain the same throughout, namely, the purpose which was notified and declared u/s 6(2) of the Act. For the unnotified and undeclared purpose the Government cannot acquire the land.

(15) In *State of Bihar and Another Vs. Tulsi Ram Tibriwala and Others*, a division bench adopted the words of Banerjee J. and said :

" NOW upon s. 6 and upon the scheme of the Act as appearing from its preceding sections it appears to me to be clear that in arriving at the satisfaction that private property must be compulsorily acquired for a public purpose, there must be fixity of purpose in the mind of the Government, because it is obvious that in relation to that purpose that the Government explores and arrives at its satisfaction."

(16) Directly on the point there is a recent decision of the division bench of Punjab High Court in *Jaipal Singh v. State of Haryana*, 1981 P L J 392. In that case the notification u/s 6 of the Act was published in January, 1979. The Government invoked the emergency powers u/s 17 of the Act. In the notification u/s 6 it was stated that the land was required for the establishment of new and independent campus of the Maharishi Dayanand University, Rohtak. Possession was taken by the Government on 12th September, 1980. But before possession was taken the Government decided that the university building will be constructed on the existing site near the medical college and not on Rohtak Gohana Road where land was acquired for this purpose. The Government then decided that the land in question be handed over to the Haryana Urban Development Authority, Housing Board and Department of Civil Aviation for

construction of an air strip.

(17) The owner challenged the acquisition proceedings on the ground that the Government had no right to change the original purpose of the land and as the Government had changed the purpose before taking possession of the land he had a cause of action to challenge it on that ground. The Government took decision on 20th June, 1980 to construct the University campus elsewhere. Possession was taken on September 12, 1980. The division bench quashed the acquisition proceedings. The court held that till 20th June, 1980 no fault could be found with the acquisition proceedings. But after that date emergency had ceased to exist. They said "the respondents could not on that date abandon the first purpose of the acquisition for diverting the land for another purpose which may not have had that sufficient urgency, at that time, for the utilisation of the urgency powers to dispense with the rights of the landowners to file objections u/s 5A of the Act. The Government in the matter of acquisition proceedings has to stick to the same purpose of acquisition till the proceedings attain finality and cannot change the purpose amidst the proceedings to divert the land to another purpose." The court came to the conclusion that it was a case where the public purpose had changed before the vesting of the land in the Government. The acquisition was accordingly quashed.

(18) One thing is quite clear. The land vests in the Government only after taking possession. Possession u/s 17(1) can be taken on the expiry of 15 days after the publication of the notice u/s 9(1) of the Act. At the stage of section 9(1) notice the Government has changed its mind in this case. From that stage we must hold that the acquisition proceedings are invalid. The purpose was changed on 16-11-1971, as is admitted in the counter of the Government.

(19) As I have stated the principle is that after the land has vested in it the Government has a right to put the land to such use as it thinks proper. In *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, Krishna Iyer J. Said: "once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to 14 HCD/82 2 a public purpose other than the one stated in the s. 5(3) declaration" of the Hyderabad Land Acquisition Act which is the same in terms as s. 6(3) of the Central Act.

(20) In *Suresh Verma v. State of Punjab*, Air 1971 P a H 406 a learned single judge held that "vesting" implies the passing of the ownership of the land to the Government by virtue of section 17 and does not depend on the making of the award. The Government thus becomes owner of the property and it is "open to it subsequently to use it for any purpose it likes so long as it could not be shown that all this was being done for extraneous reasons or that the resort to the urgency provisions and the abrogation of normal procedure was mala fide.

(21) There is a more fundamental reason why in my opinion public purpose cannot be changed from a fire station to the construction of staff quarters. Section 17 confers emergency powers on the Government. The statutory hypothesis of this section is an emergency. The section contemplates emergency of two kinds. In sub-section (1) of section 17 which was invoked in this case. the legislature contemplates an emergency which can be anticipated by the Government. We may call it a foreseeable emergency. But nevertheless it is an emergency calling for immediate action. The statute empowers the state government to dispossess the owner after the expiry of 15 days from the publication of the notice u/s 9(1). Sub-section (2) envisages what it calls "unforeseen emergency". In such a case there can be "sudden dispossession" as stated in sub-section (3). The collector is empowered to deprive a man suddenly of his land. In the case of "sudden dispossession" the Government has a right to take possession after giving to the occupier a notice of 48 hours. Here also on taking possession the land vests absolutely in the government free from all encumbrances.

(22) Now emergency, whether foreseeable or unforeseen, must exist before action can be taken by the Government u/s 17. On this there has to be satisfaction of the Government. If the Government is satisfied that a sudden situation has arisen which calls for immediate action only then section 17 can be invoked. This satisfaction can be reached on the circumstances existing at the time the notification u/s 17 is issued. If at the time of the notification u/s 17 the public purpose was the building of the fire station it cannot be changed later to the construction of staff quarters for the simple reason that the satisfaction arrived at on 4th May, 1960 was not arrived at when the purpose was changed to staff quarters on 16th November, 1971. There is an interval of 11 years between the first public purpose and the second public purpose. Section 17 Therefore cannot be invoked by the Government now for the purpose of construction of staff quarters because this new purpose may not have the same urgency for the acquisition of land which animated the action of the Government when they were faced with the pressing need of building a fire station in 1961.

(23) Section 17 confers extraordinary power. The statutory powers must be exercised subject to the conditions and limitations laid down by the statute. The major condition is that the Government must be satisfied that there is a situation, grave and sudden, which calls for an immediate action. If that situation existed on 4th May, 1960 it cannot be said that the same emergency continued when notices under sections 9 and 10 were issued for a different public purpose, namely, construction of staff quarters on 16th November, 1971. In 1971 the entire landscape changed. Emergency was long over. No longer was there need to resort to an- extraordinary power and an abridged statutory procedure.

(24) What is the theory of section 17 ? The taker of the land has to be satisfied that there is an emergency, an unforeseen combination of circumstances, that calls for immediate action. Unless it is shown that there was an emergency

created by a special situation the Government cannot resort to the extraordinary power conferred by section 17. The Government must strictly adhere to the purpose for which the emergency powers were invoked. There must be "fixity of purpose", as Banerjee J. said. In law as in life there must be steadfastness of purpose. The purpose cannot be ambulatory. The statute does not contemplate a wandering purpose. It would lead to an astonishing result if the Government were to seize and use the property of its subjects for a purpose other than that which it notified under sections 6 and 17.

(25) The right to seize, take and use the property of the subject is exercisable on publication of notice u/s 9(1). On taking possession, whether it is foreseeable emergency under sub-section (1) or "unforeseen emergency" under sub-section (2) section 17 provides that the land shall "vest absolutely in the Government free from all encumbrances." So the property acquired becomes the property of the Government without any conditions or limitations either as to title or possession. The legislature makes it clear that the vesting of the property is not for any limited period of limited duration. (Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust,).

(26) Section 17(2) vividly illustrates the principle of the section. "Unforeseen emergency" cannot be anticipated. There is a concurrence of circumstances which no one can for see .No one can be prepared for a sudden happening. For example, there is a sudden change in the channel of a navigable river or other unforeseen emergency which makes it necessary for the railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside of ghat station or of providing convenient connection with or access to any such station. There may be a storm or tempest. There may be violence of winds or waves. Suppose an unforeseen emergency overtakes the railway administration which calls for immediate action. There is a total dislocation of traffic. The emergency crews of the Railway are working for the maintenance of traffic day and night to cope with the sudden and grave emergency caused by the great forces of nature. Engaged in a struggle with the elemental force scourging the earth wrathfully, they "like Him that keepth Israel, neither slumber nor steep." (O. T. 121 : 4 RSV). They work round the clock. There is no night for sleep. While racing against some elemental catastrophe the statutory powers authorising the Government to acquire private property of the citizen for public good can be exercised with utmost expedition.

(27) The question in this case is narrowed to one point and one point only. Can emergency powers be exercised for taking the land of the subject by changing the purpose from one to the other ? How will satisfaction be reached by the executive when the purpose is changed from the fire station to staff quarters ? Satisfaction was arrived at in 1960 when it was felt that a fire station in the locality is an urgent need. In 1960 the necessity was urgent. It did not admit of delay. But the same cannot be predicated of the other public purpose, namely,

the construction of staff quarters in 1971.

(28) The right to take the property of the subject in times of necessity for public need is exercisable only on the existence of an emergency u/s 17. But if the emergency no longer exists at the time of the publication of the notice u/s 9(1) the taking of the land will not be in the exercise of the statutory powers but wholly arbitrary. The taking is not under the Act then it will be taking by the government outside the Act. That will be a wrongful Act. The taking in itself will be illegal. The dispossessed owner is left in position but that of the sufferer of a wrong.

(29) Now, we in this court have held in *S.K. Gupta Vs. The Union of India and Others*, that an urgency justifying resort to section 17 is justiciable. I had the honour to deliver a concurring judgment in that full bench case. So, the urgency will have to be seen at the time of the publication of the notice u/s 17(1) or (2), as the case may be. It must be shown to exist at the time of taking possession of the desired lands. It is the convergence of events at the time when the executive resorts to emergency powers u/s 17 that will be the focal point of time to determine whether the Government action is justified in resuming possession of the property of the subject. The dispossessed owner can show that the exercise of the extraordinary power of acquisition was a colourable exercise of power because the emergency did not exist in point of fact. Such was the case of *S. K. Gupta (supra)*. The court found that there was no emergency justifying the invocation of section 17 at the very beginning. The present case takes us beyond *S. K. Gupta*. Here the vice has entered in the middle, at the stage of taking possession of the land, because the taker of the land has changed his mind.

(30) The object of section 17 is to regulate the rights of the subject and the obligations of the executive when lands are taken on the occasion of a public exigency. If there is no emergency, the Government has no power to dispense with the formalities of the normal statutory procedure prescribed by the Act. It is only in sudden and grave emergency that the Government can take possession of the land by abridging and curtailing the ordinary procedure.

(31) The doctrine of eminent domain is an aspect of sovereignty. Eminent domain is the highest and the most exact idea of property remaining in the Government or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the Constitution or the laws of the state, whenever the public interest requires it. In India the right is regulated by the Act of 1894. The statute has imposed restrictions and limitations and has attached certain conditions to the exercise of extraordinary power. The Government cannot disregard all these provisions and say that though originally the land was needed for a fire station yet construction of staff quarters is as good a public purpose as any other and so the Government can take the land of the owner u/s 17. For such a course there is no statutory sanction. The right to take private property for public use is a statutory power which the Government can exercise on certain conditions.

(32) The seizure and appropriation of private property in a case either where the emergency did not exist or the emergency had ceased to exist before the publication of notice u/s 9 will be wholly illegal and a colourable exercise of power. The learned judge described it as a "fraud on the statute". Because what was sought to be done in the wake of emergency was continued even after there was no emergency. The fire station had been built on another piece of land. Emergency had ceased. The acquisition proceedings Therefore became invalid.

(33) Satisfaction of the Government, however subjective it may be, cannot be transferred from one public purpose to another public purpose. There can be no transferred satisfaction. If the named purpose declared in section 6(2) is not adhered to for any reason the lands must go out of the grasping hands of the taker. The reason for non-adherence may be change of mind, fulfillment of purpose, abandonment or frustration. There is power in the eminent domain to inflict injury on the citizen as being necessary for the general good in a grave and sudden emergency. But if there is no emergency, the power cannot be exercised. The Government cannot enrich itself and impoverished the subject by disregarding all these provisions which have been enacted as a safeguard against arbitrary exercise of statutory powers. So my conclusion on the whole case is that this acquisition is not in accordance with the statutory provisions.

(34) Mr. R. K. Mehra, counsel for the appellant, raised three arguments before us. In the first place he said that there was a stay order against the Government staying dispossession of the owner in the first writ petition which was filed in 1960 and dismissed in 1969. Expressing his inability to take possession during this period of 9 years by reason of stay, counsel contended that the Government could not be precluded from changing the purpose in view of the fact that the fire station had been built in the meanwhile on another piece of land. We cannot accept this argument. The law cannot be changed by stay orders. The law requires that for the exercise of emergency powers u/s 17 there must exist satisfaction of the Government at the time of the issue of the notification. It did exist on the Government's own showing on 4th May, 1960. On their own showing it disappeared on 16th November, 1971 when a less urgent purpose namely, building of staff quarters, was pleaded for the "acquisition of the land. In my opinion the stay order made by this court is not a sufficient ground to allow the Government to continue the proceedings u/s 17(1) which were started with the avowed public purpose of a fire station and which purpose is now non-existent. It is an abuse of power to declare one purpose at the beginning and to take land at the end for another purpose.

(35) Secondly, counsel argued that the second petition is barred by reason of the principle of res-judicata. Explanation 4 of section 11 of the CPC was cited as a bar. This argument was raised before the learned single judge and before us. He took the view that the owner was precluded from challenging the validity of the notification dated 4th May, 1960 issued under sections 4, 6 and 17 by reason of the first petition. But he held that fresh notices under sections 9 and 10 of the

Act which were issued turn a new public purpose, namely, construction of staff quarters for Delhi Administration, did furnish a cause of action to the owner for bringing a separate petition. These notices were issued on 16th November, 1971. On 16th November, 1971 the owner had a cause of action to complain against the change of purpose from a fire station to staff quarters. We, Therefore, reject this argument.

(36) Thirdly, counsel argued that public purpose is a very wide term and the Government is entitled to change one purpose to another. We cannot accept this submission. Public purpose is the foundation of compulsory acquisition of land. Compulsory acquisition is the taking of land from the owner without his agreement. This can be done for a stated public purpose. Section 6(2) says that the Government has to declare the public purpose. The proceedings can be continued for that given public purpose. If the Government wants to change the public purpose the only course open to it is to start fresh acquisition proceedings. This was the view which the Punjab division bench took. I am in respectful agreement with this view.

(37) Counsel referred us to *Lajya Ram Kapur and Others Vs. Delhi Administration and Others*, turn the proposition that it is open to the Government to change the purpose at any time it liked. I do not agree. In *Lajya Ram Kapur Rangarajan J. relied on Baldeo Singh and Others Vs. State of Uttar Pradesh and Others*, and *Secv. of State v. Amulya Charan Banerjee* Am 1927 Calcutta 874(10). These are cases where the land had vested in the Government. The courts" held that after vesting the Government can put the land to such purpose as it likes. From the Delhi decision it is not clear whether the land had vested in the Government in that case or not. The principle of law is, as I have said, this. There is a clear line of demarcation. On one side of the line are cases where the land had not vested in the Government. The courts held that the Government cannot change the purpose and the acquisition invalid. *Jaipal Singh (supra)* decided by the Punjab division bench vividly exemplifies it. On the other side of the line are cases where the land had vested in the Government. The courts held that the owner cannot come to court for reconveyance of the land on the ground that" the Government is using his land for a purpose other than that for which it was acquired. The Supreme Court decision in *Gulam Mustafa (supra)* is an illustration of this class of cases.

(38) The words of S.I? postulate the continued existence of emergency. The acquiring authority has to be satisfied about it. On reaching this satisfaction private property can be taken for public purpose under special powers. On taking possession private ownership will end and public ownership will begin. Long after the transference of property from private ownership to public ownership the acquiring authority can use it for any other purpose if the motive of the acquiring authority at the time of compulsory acquisition was pure.

(39) For these reasons the appeal is dismissed. The order of the learned judge dated 8th October, 1976 is affirmed. The parties are, however, left to bear their

own costs.