

THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION : 11.04.2008

+ W.P.(C) 573/2008

SUMMIT INPORT SERVICES LTD. & ANR. Petitioners

Through Mr. Arun Jaitley, Sr. Adv. with Mr. P.D. Gupta,
Mr. Kamal Gupta, Abhishek Gupta, advs.

versus

DELHI METRO RAIL CORPORATION & ORS Respondents

Through Mr. V.K. Shali, adv. for DMRC
Mr. Sanjay Poddar, adv. with Mr. Ramesh Ray, Mr. H.P.
Sahu, advs. for LAC

+ W.P.(C) 716/2008

NEERA JAIN Petitioner

Through Mr. Arun Jaitley, Sr. Adv. with Mr. P.D. Gupta,
Mr. Kamal Gupta, Abhishek Gupta, advs.

versus

DELHI METRO RAIL CORPORATION & ORS. Respondents

Through Mr. V.K. Shali, adv. for DMRC
Mr. Sanjay Poddar, adv. with Mr. Ramesh Ray, Mr. H.P.
Sahu, advs. for LAC

+ W.P.(C) 802/2008

SULTANPUR FARMS WELFARE ASSOCIATION..... Petitioner

Through Mr. Ravinder Sethi, Sr. adv. with Mr. Rajat
Aneja, Mr. Neeraj Grover, advs.

versus

DELHI METRO RAIL CORPORATION & ORS. Respondents

Through Mr. V.K. Shali, adv. for DMRC
Mr. Sanjay Poddar, adv. with Mr. Ramesh Ray, Mr. H.P.

Sahu, advs. for LAC

**CORAM: HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE ARUNA SURESH**

1Whether reporters of local papers may be allowed to see the judgment?YES

2To be referred to the Reporter or not?YES

3Whether the judgment should be reported in the Digest?YES

Per Thakur, J.

In these petitions under Article 226 of the Constitution of India, the petitioners have assailed the validity of a notification dated 10.08.07 issued under Sections 4, 17(1) and 17(4) of the Land Acquisition Act, 1894 proposing to acquire an area measuring 16468.76 square metres comprising different survey numbers mentioned in the said notification situate in Village Sultanpur of Delhi. A declaration dated 1st November, 2007 issued under Section 6 of the Land Acquisition Act, 1894 in relation to the said land has also been assailed.

2. The petitioners are owners of different parcels of land situate in different survey numbers of village Sultanpur, Tehsil Hauz Khas, New Delhi. An area measuring 16468.76 from out of the said survey numbers was requisitioned by the Delhi Metro Rail Corporation for construction of its Depot at Ghitorni in connection with what is known as "Qutub Minar-Gurgaon Corridor Delhi MRTS Project Phase-II". Upon consideration of the said requirement of the Corporation, the Lieutenant Governor issued a notification dated 10.08.07 under

Section 4(1) read with Sections 17(1) and (4) of the Land Acquisition Act, 1894 proposing to acquire the aforementioned extent of land for the public purpose referred to above. This was followed by Declarations dated 01.11.07 under Section 6 of the Act, in respect of the aforementioned extent of the land and the residential buildings constructed over the same. By another notification of even date, the Land Acquisition Collector was directed to take the possession of the aforesaid land and residential properties belonging to the petitioners at the end of 15 days of publication of notice under Section 9(1) of the Act. Aggrieved, the petitioners have assailed the said notifications in the present writ petitions, as already indicated above.

3. Appearing for the petitioners, Mr. Arun Jaitley, learned senior counsel argued that the impugned notification, to the extent the same invoked the emergency provisions under Section 17(1) and dispensed with the hearing of objections under Section 5-A of the Act, was illegal. He urged that the proposal for acquisition of the land in question had been sent by the Corporation on 19.3.2007 but a notification based on the said proposal was issued only 5 months later, i.e., on 10.08.07. He further argued that even the declaration

under Section 6 of the Act was also delayed by nearly 3 months and issued only on 1st November, 2007. This according to Mr. Jaitley, implied that the authorities were taking their own time in proceeding with the proposed acquisition of land and there was in reality no urgency in the same so as to justify dispensing with the hearing of objections of the affected land owners. Relying upon the decision of the Supreme Court in Union of India and Others. Versus Krishan Lal Arneja and Others, **2004 (8) SCC 453**, Mr. Jaitley contended that the respondents could not take resort to emergency provisions only to cover up their own lethargy in the matter.

4. Alternatively, Mr. Jaitley argued that the proposed Depot of the DMRC could be constructed on a slightly different alignment in which event the respondents would not be required to acquire any private land. An alternative plan for construction of the Depot on an altered alignment was presented by Mr. Jaitley in the course of hearing. Relying upon an order passed by this Court in Fountainhead Motels P. Ltd. Versus UOI and Ors., **[WP(C) No. 6275/2007 Decided on 10.10.2007]**, Mr. Jaitley submitted that the respondents could even

in the present case examine the proposed modification and suitably alter the plans to avoid hardship to the petitioners. He urged that the proposed acquisition would landlock the petitioners' property left out of acquisition and thereby deprive them of its gainful use and enjoyment.

5. Mr. Sethi who also appeared for some of the petitioners, apart from adopting the submissions made by Mr. Jaitley, contended that the proposed acquisition of the land belonging to the petitioners for the benefit of the respondent DMRC was impermissible under the provisions of the Land Acquisition Act. He urged that although a similar argument had been repelled by a Division Bench of this Court in Pawan Singh & Ors. Versus Union of India & Ors., 112 (2004) DLT 420 (DB) and Ram Niwas Versus Lt. Governor and Ors., [WP(C) No. 4981/2007 Decided on 13.07.2007], yet this Court could re-examine the said question and refer the matter to a larger Bench especially because the earlier decisions referred to above had not considered the effect and purpose of Section 45 of the DMRC Act, while rejecting the contention urged on behalf of the petitioners.

6. Appearing for the respondents, Mr. Poddar, on the other hand, submitted

that the petitioners had not laid any foundation in the objections for the contention that the invocation of the emergency provisions under Section 17 of the Act was unjustified or that the authorities were lethargic in processing the case for the proposed acquisition of land in question. He distinguished the decision in Pawan Singh's Case (supra) and submitted that the fact situation in the case at hand was totally different. He urged on the basis of the official records produced by him that there was indeed no delay in processing the papers for acquisition of the land which was required by the DMRC on an urgent basis and that the period between March 2007 when the proposal was sent and August 2007 when the preliminary notification was issued had been utilized by the authorities for conducting a joint survey identifying the actual Khasra Nos. and actual area falling under each one of them as also the amount of compensation payable to the land owners. The report by the Land Acquisition Collector in that regard was received only on 8th July, 2007 which included the estimate of the compensation, etc. The matter was then put up to the Lt. Governor on 19th July, 2007 who passed an order on 3rd August, 2007

authorising the issue of a preliminary notification and invoking the emergency provisions of Section 17(1) and (4).

7. As regards the validity of the acquisition of the land under the Land Acquisition Act, for the benefit of DMRC, it was argued by Mr. Poddar that the issue stood squarely covered by the two decisions rendered by this Court which decisions having been rendered by a Bench of co-ordinate jurisdiction were binding upon this Court.

8. On behalf of DMRC, Mr. Shali, contended that the alternative plan which the petitioners had proposed was not technically feasible and would involve acquisition of private land from out of densely populated areas and farm houses situate at the periphery of the NBCC Campus in which the Depot was to be located as per the said plans. It was further submitted that the construction of the Depot on the alignment suggested by the petitioners would render the vacant area on either side of the Depot useless and hence a waste. Even so, the DMRC was ready to examine the technical feasibility of the proposed alignment in presence of the petitioners and submit its response and affidavit.

9. We have given our anxious consideration to the submissions made at the

Bar and perused the record. The invocation of emergency powers under Sections 17(1) and (4) of the Act has been questioned by the petitioners only on the ground of delay in the issue of the preliminary notification. The contention urged is that a delay of 5 months between the date on which the proposal was sent by the DMRC and the date of issue of the preliminary notification itself showed that there was no urgency in the matter so as to justify the dispensing of an enquiry under Section 5-A. Reliance as mentioned earlier was placed upon a decision of the Supreme Court in Krishan Lal Arneja's Case (Supra). A careful reading of the said decision, however, shows that the fact situation in which the same was rendered was entirely different and clearly distinguishable from the facts of the present case. In that case, the properties in question had been requisitioned for a long time before the Government decided to acquire the same in the year 1987 by invoking its emergency powers. The acquisition proceedings were in that backdrop successfully challenged before the High Court by the petitioners. The High Court inter alia took the view that there was no reference to urgency in the notification issued by the Government. In an appeal filed by the Union of India against the judgment, one of the questions

that arose for consideration was whether the invocation of the emergency provision was justified in the facts and circumstances of the case. Answering the question in the negative, the court traced the historical background in which the decision to permanently acquire the properties under acquisition was taken.

The court observed :

“In these appeals also, the properties in question had been under requisition for a very long time. It appears, the Union Works and Housing Minister on 28.3.1985 assured the Lok Sabha that the Government would return all requisitioned properties within two years or acquire it permanently after paying compensation. This announcement came at the end of the debate on the Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1985 which later became Act. From the debate, it is also clear that the National Conference Member mentioned about the difficulties faced by many people whose properties were requisitioned for one purpose or the other. The Minister informed that he had written letter to the concerned for making arrangements for vacating or permanently acquiring the properties within next two years.”

10. It is clear from the above passage that the decision to return the requisitioned properties within two years or to acquire them permanently after paying the compensation had been taken much before the date on which the emergency powers were invoked by the Government. Their lordships, therefore, recorded a finding that the authorities were aware that the properties

were to be released or to be acquired and the maximum period for doing so was extended by two years. During this period, the authorities had sufficient time to provide an opportunity to the owners to file objections and the Collector to hold an inquiry under Section 5-A of the Act thus making it necessary to invoke emergency powers vested in the Government under Section 17 of the Act. The following passage is in this regard is apposite :-

“It was, therefore, decided to extend the maximum period for which the properties could be retained under requisition by a period of two years. Thus, it is clear that the authorities were aware that the properties were to be released or acquired and the maximum period was extended upto two years for the purpose. From 1985 to 1987 they had sufficient time to acquire the properties in question in the usual course. They had enough time to provide opportunity for filing objections and holding inquiry under Section 5A of the Act. There was no need to invoke Section 17 of the Act. The Office Memorandum dated 19.7.1979 extracted above shows that the Executive Council took the decision in view of the amendment in the Requisition and Acquisition of Immovable Property Act, 1952 with all the requisitioned/leased houses which were with the Administration for more than 10 years were to be released to their owners immediately and all the occupants of requisitioned/leased houses were requested to furnish the relevant information by 16.7.1979 failing which the officer concerned will be liable for eviction from the requisitioned house without provision for alternative accommodation. Here again, it is clear that the authorities were in know of the situation in the year 1979 itself.”

11. It was in the above background that their lordships declared that for purposes of Section 17 of the Act, the urgency should be one arising naturally out of the circumstances which exist when the decision to acquire the land is taken and not such as is the result of serious lapse or gross delay on the part of the acquiring authority.

12. The ratio of the decision rendered by their lordships in Arneja' Case (supra) has to be understood in the context in which the decision in that case was delivered. The juristic principle that emerges from the said decision simply is that a serious lapse or gross delay on the part of the acquiring authority could not justify invocation of the emergency provisions. The question whether there has been any serious lapse or gross delay on the part of the acquiring body would, however, have to be seen in the fact situation of each case.

13. In the case at hand, there has been no gross delay or serious lapse of the kind referred to in Arneja's Case (supra). The proposal for acquisition of the land was sent by the DMRC in March 2007 which was incomplete in many respects in as much as the requisition was accompanied only by a simple sketch of the land without any further details. On receipt of the request, the

authorities had to carry out a survey, identify the actual khasra numbers under which the land in question fell, verify the extent of land falling under each Khasra No., prepare an estimate of the compensation payable to the land owners in order to ensure that 80% of the compensation amount is paid to the land owners at the time of taking over the possession from them. All this required an exercise which was bound to take time and was completed in a period of less than three months by the authorities culminating in a report from the Land Acquisition Collector on 8th June, 2007. The matter thereafter was examined at the Government level and placed before the Lt. Governor who passed an order dated 3.8.2007.

14. It is difficult to see how a time gap of four to five months essential for collecting the requisite information, conducting a survey, preparing estimates of compensation can be said to be tantamount to gross delay on the part of the authorities so as to invalidate the invocation of the emergency powers vested in the Government under Section 17. This is especially so when the land in question is required for a very prestigious project like the Delhi Metro Rail

Project which has to be commissioned before the Common Wealth Games scheduled to be held in 2010. In the circumstances, therefore, we have no hesitation in rejecting the first limb of the submissions made by Mr. Jaitley that the notification in question suffered from any legal infirmity on account of wrongful denial of opportunity to file objections under Section 5-A of the Act.

15. That brings us to the question whether the acquisition of land for the benefit of DMRC project is permissible under the Land Acquisition Act. As noticed earlier, a similar question was raised before a Division Bench of this Court in Pawan Singh's Case (supra). Relying upon the decision of the Supreme Court in S.S. Darshan Versus State of Karnataka & Ors., **AIR 1996 SC 671**, Savitri Cairae Versus U.P. Avas Evam Vikas Parishad & Anr., **2003 (5) SCALE 93** and Nagpur Improvement Trust Versus Vasantrao and Others, **(2002) 7 SCC 657**, the Court repelled the contention in the following words :

“Thus, however attractive may be the submission of the petitioners, it has no merit in view of the law laid down by the Supreme Court in the afore noted cases. No doubt, in view of the special scheme provided under the Metro Railways Act, it is expected that when the land, building, etc. is sought to be acquired for the purpose of metro railways, provisions of this Act should normally be resorted to. However, that is not to say that machinery under the Land

Acquisition Act cannot be resorted to at all. It may be noted that resort to the provisions of Section 17 of the Land Acquisition Act by the Government thereby invoking the urgency clause is not challenged by the petitioners. Therefore, the exercise of the respondents in invoking the provisions of the Land Acquisition Act for acquisition of land for the purpose of Prem Nagar MRTS Station, i.e., the metro railway cannot be faulted with. We are, thus, constrained to dismiss these writ petitions.”

16. To the same effect is the decision of this Court in Ram Niwas Versus Lt.

Governor and Ors., [WP(C) No. 4981/2007 Decided on 13.07.2007], where the

Court has while dealing with a similar contention observed :

“So far as not resorting to the Metro Act and instead acquiring lands via the Land Acquisition Act is concerned, the matter has been considered in great detail in the decision of the Division Bench titled as Pawan Singh and Ors. Versus UOI and Ors., **112 (2004) 420 (DB)**. Significantly, Mr. Vats also appeared in that case. The Court upheld the acquisition under the Land Acquisition Act even though an alternate method under the Metro Act was available and had not been utilized. We find no reason whatever to take a different view from this detailed and lucid judgment, and instead refer the matter to Hon’ble the Chief Justice for constitution of a Larger Bench. The argument is rejected.”

17. Both the above decisions having been rendered by Division Benches of this Court are binding upon us. In any event, the contention of Mr. Sethi that the Court has not in the said cases examined the effect of Section 45 of the Metro

Railway Construction of Works Act, 1978 does not appear to be correct. A reading of the decision in Pawan Singh's Case (supra) would clearly show that the Court was conscious of and has referred to the provisions of Section 45 of the said Act. It is common ground that the decision in Pawan Singh's Case (supra) has been assailed in the Supreme Court where the same is presently pending. In the circumstances, therefore, we see no compelling reason for us to re-examine the question and would rest content with following the ratio of the said decision which at any rate is binding upon us as a Bench of coordinate jurisdiction.

18. That leaves us with the only other question whether the alternative plan which the petitioners had suggested is technically feasible and ought to be implemented by them. As noticed earlier, the respondents DMRC has disputed the technical feasibility of the alternative plan. Since however the parties were not averse to examining the alternative suggested by petitioners more thoroughly, they were given an opportunity to do so. Based on the exercise so undertaken by the parties, they have submitted their versions on affidavits. The DMRC has in the affidavit filed on its behalf asserted that the alternative

proposal given by the petitioners is not technically feasible and would involve acquisition of private land from thickly populated areas located at the end of the Depot towards Ghitorni. This court sitting in its extraordinary writ jurisdiction is ill-equipped to sit in judgment over the view taken by the experts in whose opinion the proposed alternative plan for the Depot is not technically feasible. The choice of the location of the Depot or any other project for that matter is ordinarily within the administrative discretion of the respondents. A writ court would not in exercise of its powers of judicial review sit in judgment over the said choice or embark upon an exercise to determine the locational advantages and disadvantages of the project at one or the other place. Interference in the matter of such decisions may be called for only in cases of patent perversity or irrationality. The court may be induced to examine the validity of any such decision only in case it is shown to be so outrageously illogical that no person of ordinary prudence would countenance the same. The present is not in our opinion one such case where the decision to locate the proposed Depot at the site selected by the respondents can be said to be irrational or perverse. Simply because another site may be equally good or even better, is no reason for this

court to interfere with the decision already taken by the authorities. The third limb advanced on behalf of the petitioners must also in that view of the matter fail and is hereby rejected.

19. That brings us to the question whether the petitioners' land would get landlocked by acquisition of their front. The respondent corporation has allayed that apprehension of the petitioners and in the affidavit filed on its behalf clearly stated that the petitioners farmhouses would be given access from a 5-3 metres wide peripheral road located at the points indicated in the map enclosed with the counter affidavit. Para 9 of the counter affidavit may in this regard be extracted.

“At the periphery of the Depot, there is a road provided for the circulation of the vehicles and staff which is shown in dotted violet colour. The petitioner and the owners of Akash Jain farm will be given access from a peripheral road which will be 5-3 metres wide from portion shown more particularly in the plan at point ‘A’ wherefrom they will proceed to their respective farms from point ‘B’ and point ‘C’. Therefore, the averments made by the petitioners that their remaining land is becoming land locked, is totally incorrect and right of access is being provided by the answering respondent from the land which has been acquired by the respondent No. 2 to 4 without anything being charged from them.”

20. In the light of the above clear statement made on behalf of the respondents, we see no hardship being caused to the petitioner on account of

their property getting landlocked by reason of construction of the Depot. 21.

In the result, these writ petitions fail and are hereby dismissed but in the circumstances without any orders as to costs. We make it clear that the petitioners shall be entitled to make use of the access to their farmhouse in terms of para 9 of the counter affidavit and the site plan enclosed with the same.

T.S. THAKUR, J.

ARUNA SURESH, J.

APRIL 11, 2008

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