

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 908/2008**

Date of Decision: 11th April, 2008

K.N.CHHIBBAR & ANR Petitioners
Through : Mr. N.K. Kaul, Sr. Adv. with Mr.
Chinmoy Pradip Sharma, Adv.
versus

DELHI METRO RAIL CORPORATION LTD. & ORS.
..... Respondents
Through : Mr. V.K. Shali, Adv. for R-1/DMRC
Mr. Sanjay Poddar, Adv. for UOI

+ **W.P.(C) 992/2008**

RITAL IMPEX LTD. Petitioner
Through Mr. Rakesh U. Upadhyay, adv.
versus

GOVT. OF N.C.T. OF DELHI & ORS. Respondents
Through Mr. V.K. Shali, adv. for DMRC
Mr. Sanjay Poddar, adv. for LAC

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

T.S. Thakur, J

The petitioner in these two petitions assail the legality of a preliminary notification under Section 4(1) read with Section 17(1) and 17(4) of the Land Acquisition Act dated 17.01.2008 issued in respect of properties bearing No. A-17, Kailash Colony and E-19 of East of Kailash, New Delhi. The said two parcels of land which do not have any built-up structure over the same are required for the public purpose of construction of the proposed East of Kailash Metro Station as a part of the "Delhi Metro Rail Project".

2. When W.P.(C)908/2008 first came up for admission on 4th February, 2008 the only ground that was urged on behalf of the

petitioner in that petition was that the acquisition of the petitioner's land could be avoided if the respondent/DMRC could shift the proposed Metro Station to an alternative site suggested by the petitioner in terms of a plan, a copy whereof has been placed on record with the writ petition. Mr. Poddar, counsel appearing for the Collector and the representative appearing for the DMRC, however, submitted that the alternative sites suggested by the petitioner in the said plan had been examined but was not found to be technically feasible. It was also pointed out that Mr. E. Sreedharan, Managing Director, DMRC had personally visited the site to examine whether it was possible to shift the station to the alternative site suggested by the petitioner. The site inspection had, however, revealed that the proposed alternatives given by the petitioner were not feasible for several reasons which were then indicated to the petitioner in the said petition. Since there was nothing on record before us to support that version, the respondents were directed to place on affidavit the version of the DMRC as to the feasibility of the station being shifted to the alternative site proposed by the petitioners. Mr. Shali, counsel for the respondent-DMRC has accordingly filed an affidavit sworn by the Chief Project Manager of the DMRC. A perusal of the said affidavit shows that property bearing No. A-17, Kailash Colony measures 1092.69 sq. mt. out of which the DMRC has acquired only 774 sq. mt. of vacant site for construction of the proposed metro station. The affidavit further goes on to state that the petitioners had been constantly making representations at different levels against the proposed station in connection with which they were given personal hearing at different levels but since none of the three alternative proposals submitted by them were found to be technically feasible, the same were rejected. An intimation to that effect was sent even to the petitioners by the Managing Director of the Corporation by

his letter dated 21st September, 2007 wherein it was pointed out that the three locations at i) Amar Colony Crossing, ii) Park near LSR & iii) Park near Zamrudpur commercial complex on the Lal Lajpat Rai Path were not either technically feasible due to the alignment in sharp curvature or on account of proposed alternative location having been heavily built up by the private property owners. The affidavit further goes on to state that the alternative proposal which the petitioner has made in the writ petition is not technically feasible for the following three reasons:

- i) There is no vacant land on the opposite side of the track through which entry and exit to the Station could be provided.
- ii) That shifting of the station to the proposed alternative site would require acquisition of properties across the road/track which are built-up.
- iii) The draft alternative plan given by the architects of the petitioner is not acceptable as the said architects are not conversant with the requirement of the respondent-DMRC.

3. Appearing for the petitioner in W.P.(C)908/2008, Mr. Kaul strenuously argued that the alternative plan given by the petitioners was technically feasible and that the reasons given by the respondents for rejecting the same were not sound and acceptable. He contended that one of the reasons which the Corporation had given for rejecting the alternative proposal was that there was no vacant land across the road at the alternative site as was the position at the site chosen by the corporation. It was urged that the requirement of the Corporation for land on both sides of the track was not an essential requirement and that the construction of a ticketing center on the opposite side of the petitioners land could be dispensed with by providing such a center on only one side of the track. All that was, for that purpose, required,

according to learned counsel, was a staircase to provide access to passengers to cross over to this side of the station to buy the tickets and go back to board the train from the other side. This suggestion was not, according to the learned counsel, seriously considered by the respondent-corporation which could be directed to re-examine the matter to save the petitioners' land from acquisition.

4. On behalf of the respondents, it was on the other hand, argued by Mr. Shali that the requirement of the Corporation was for land on both the sides of the track and that the petitioner's suggestion that acquisition on only one side should suffice was unacceptable especially when the same would cause serious hardships and inconvenience to passengers making use of the station in large numbers. It was also argued that the DMRC have examined all the three proposals given by the petitioners including the one enclosed with the writ petition, and that there was nothing further which the petitioner could ask for especially when the petitioner had saved a substantial part of his land which the DMRC had released from acquisition.

5. We have given our careful consideration to the submissions made at the bar and perused the record. The petitioner has not pointed out any illegality or procedural irregularity in the process of acquisition initiated by the respondents. That the purpose for which the land in question is being acquired constitutes a public purpose was not disputed by Mr.Kaul appearing for the petitioner in CWP No. 908/2008, nor was it contended that the notification suffered from any other illegality or irregularity. The only aspect that was argued right through these proceedings was whether the respondent Corporation could avoid the proposed acquisition by shifting the metro station to another location. Three proposals were, it appears, in that connection given by the petitioner to the Corporation each one of which was

evaluated by the Corporation but found unsuitable. This is evident not only from the affidavit filed by the Chief Project Manager of the Corporation but also letter dated 21st September, 2007 addressed by Shri E. Shreedharan, Chairman of the Corporation to the petitioners in which he has observed :

“In reference to your representation and meeting with the undersigned, it is informed that the location of East of Kailash Station has again been reviewed, in particular, the locations suggested by you. I also had a personal inspection of the station location.

- (i) Amar Colony Crossing
- (ii) Park near LSR
- (iii) Park near Zamrudpur commercial complex on the Lal Lajpat Rai Path.

At these locations construction of station is either technically not possible due to alignment in sharp; curvature or it requires acquisition of heavily built up private properties. As a result of the review we are of the firm view that the location selected for East of Kailash station is the most suitable.”

6. It is, therefore, futile for the petitioners to argue that the proposals given by them have not been examined or evaluated. Equally untenable is the contention that the Corporation does not require land on either side of the metro station and that all the facilities including booking centre etc. could be provided only on one side by making a provision for a staircase to access the booking centre from the other side of the track. The Corporation cannot, in our opinion, be forced to compromise the standards which it has set for the construction and completion of the project including the stations to be constructed at different places and the facilities to be provided for the convenience of the public in the same. The owner of any private property is entitled to question the validity of the acquisition proceedings on the ground that the acquisition is not in accordance with the procedure established by law or that the purpose for which the land is being acquired is not a public purpose but once it is admitted that the purpose is a public

purpose and the acquisition proceedings have been conducted in the manner prescribed by law, the owner cannot challenge the proceedings on the ground that the purpose can be satisfied by acquiring a lesser area or by compromising the standards fixed for the satisfaction thereof. As to how much land is required for the satisfaction of the public purpose, what kind of facilities are envisaged, what should be the design according to which the project should be executed, are matters which are exclusively within executive domain. Interference with the acquisition proceedings by a writ court in exercise of its powers of judicial review on those aspects would be really uncalled for. Even so, since the petitioners had suggested non-application of mind on the part of the authorities, we had issued notices to the respondents to verify that position. In response to the same, the Corporation has on affidavit and by reference to the record satisfactorily demonstrated that the issue regarding the location of the metro stations has engaged its attention and that the decision to build station at a given location is a conscious decision taken on a comparative study of the advantages and disadvantages of building the same at any other location. There is, in the circumstances, no room for holding the said decision to be mechanical or insensitive to the competing needs of the project on the one hand and the owners' reluctance to part with their property on the other.

7. That brings us to WP(C) 992/2008 in which the very same notification has been assailed by the petitioner who is the owner of a vacant plot of land located across the road on the opposite side of the property owned by the petitioner in WP(C) 908/2008. Appearing for the petitioner, Mr. Upadhyay argued that the impugned notification was unsupported by any public purpose inasmuch as the notification did not use the expression "public purpose" for the proposed

acquisition. He submitted that the notification had used the word “public expenses” which was not the same as “public purpose” defined in Section 3(f) of the Land Acquisition Act, 1894. There is in our opinion no merit in that contention.

8. The expression “public purpose” has been the subject matter of a long line of decisions by the Supreme Court. In *Somwanti v. State of Punjab* **AIR 1963 SC 151**, the Court observed :

“Broadly speaking, the expression 'public purpose' would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. (*para 24*)

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As already stated no attempt has been made in the Act to define public purpose in a compendious way. Public purpose is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.” (*para 31*)

9. A seven judges bench of Supreme Court in *State of Karnataka v. Ranganatha Reddy* **1977 4 SCC 471** explained the expression “public purpose” in the following words :

“The concept of 'public purpose' has been considered in some academic writings and judicial rulings and a glance at them may give theoretical nourishment to juridical ideas. We have to remember that neither socialist jurisprudence nor capitalist legal culture can govern the concept of public purpose in India's mixed economy and expanding public sector, in the context of progressive developmental programmes. Even the Privy Council, way back in 1914, in *Framjee Petit* approved of the wide definition of 'public purpose'. This Court has also taken a liberal view of 'public purpose'. In a host of cases beginning with *Kameshwar Agrarian* reform, slum clearance to house the homeless, procuring a house for a diplomat or an office for the State Trading Corporation, acquisition

of land to construct a dharmashala, houses for members of a cooperative society housing scheme, houses for workmen or for a Mahatma Gandhi Memorial, as pointed out by an Indian Jurist [Rajeev Dhavan, in his study of 'The Supreme Court of India' (Tripathi)] have been regarded in decided cases as 'public purposes'. (para 59)

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When we ascertain the content of 'public purpose', we have to bear the above factors in mind which mean that acquisition of road transport undertakings by the State will undoubtedly be a public purpose. Indeed, even in England, 'public purposes' have been defined to mean such 'purposes' of the administration of the government of the country (p.228, Words and Phrases Legally Defined, II Edn.). Theoretically, or even otherwise, there is no warrant for linking up public purpose with State necessity, or in the court throwing off the State's declaration of public purposes to make an economic research on its own. It is indeed significant that in Section 40(b) of the Land Acquisition Act, 1894, the concept of 'public use' took in acquisition for the construction of some work even for the benefit of a company, provided such work as likely to prove useful to the public." (para 61)

10. In a recent decision delivered by the Supreme Court in *Daulat Singh Surana v. First Land Acquisition Collector* **2007 1 SCC 641**, their lordships reviewed the entire case law on the subject and observed :

"74. The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.

75. The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual."

11. It is true that the notification uses the expression "land is likely to be required to be taken by Government at the public expenses"

but the purpose for which the said acquisition is being made has also been clearly described in the same. The notification states that the land is required for “construction of Entry/Exit structure, Operational and ancillary structures of East of Kailash MRTS Station of Central Secretariat – Badarpur Corridor of Delhi MRTS Project Phase-II”. There is no gainsaying that even if the notification did not use the word “public purpose” but the purpose for which the land was being acquired is disclosed in notification and the same constitutes a public purpose within the meaning of Section 2(f) of the Act, the notification would be legally valid. That is precisely the position in the instant case also. No matter the notification does not use the expression “public purpose”, it clearly sets out the purpose for which the land is being acquired and that purpose is undoubtedly a public purpose within the meaning of Section 2(f) of the Land Acquisition Act which gives an inclusive definition of the said expression.

12. It was next contended by Mr.Upadhyay that since the respondent is a company, any acquisition in its favour was legally permissible only under Chapter 7 of the Land Acquisition Act. There is no merit even in that contention of the learned counsel. Chapter 7 of the Land Acquisition Act applies to acquisitions for companies. The expression “company” has been defined in Section 2(e) of the Act to mean a company defined in Section 3 of the Companies Act other than a Government company referred to in Clause (cc) of Section 3 of the Act. A society registered under the Societies Registration Act, 1860, a cooperative society within the meaning of any law relating to cooperative societies other than a cooperative society referred to in clause 3(cc) is also deemed to be a company. What is significant is that a government company referred to in Clause (cc) of the Act is not a company within the meaning of that expression appearing in the Act. A

reference to Section 3(cc) of the Act would show that a corporation owned or controlled by the State means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in Section 617 of the Companies Act, 1956. A Government company as defined under Section 617 of the Companies Act, 1956, on the other hand, is a company in which not less than 51% of the paid-up capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments. The respondent Corporation is, by that standard, a Government company within the meaning of Section 617 of the Companies Act, 1956 as 50% of its share holding is held by the Central Government while the remaining 50% is with the State Government. That being so, it is a corporation owned and controlled by the Government within the meaning of Section 3(f)(iv) of the Act. Any acquisition of land for such a Corporation would therefore constitute a public purpose. The respondents need not therefore take resort to Chapter VII of the Act for satisfying any such purpose as acquisition proceedings meant to satisfy any such requirement would be permissible otherwise than by resort to Part VII.

13. It was lastly contended by Mr. Upadhyay that there would be a disparity in terms of compensation payable to an owner who loses land as a result of acquisition under Part VII and another who is expropriated pursuant to acquisition under Chapter II. It was argued that to prevent any such disparity, the Court ought to lean in favour of the owner getting a better deal which is possible only when the acquisition for the respondent is made referable to Part VII instead of Part II. That argument is equally fallacious in our opinion. It proceeds on an assumption made without any real basis that an owner rightfully

entitled to claim fair compensation representing the market value of the land on the date of the publication of the preliminary notification and other statutory benefits under the Act would not get what is lawfully due and payable to him. There is, and can be, no denial of those rights to the petitioner in the instant case. The determination of the market value of the land and the sum total of the benefits available to an expropriated owner have yet to be quantified. The Act provides for a machinery for determination of any dispute regarding the quantum of compensation assessed by the Collector by providing for a reference to the civil court. There is therefore no real possibility of any disparity or injustice being caused to an owner who loses land in consequence of acquisition proceedings under Chapter II on the one hand and another who loses his land to such proceedings under Chapter VII. Even assuming that a disparity can at times arise in the determination and payment of the amount for any reason, the same would not invalidate the acquisition proceedings so long as the procedure prescribed for the same is strictly followed by the acquiring authority. We have therefore no hesitation in rejecting the contention urged by Mr. Upadhyay that the acquisition proceedings are rendered illegal on account of any assumed or anticipated disparity in the amount of compensation that may be held payable to the petitioner.

In the result, these petitions fail and are hereby dismissed but in the circumstances without any order as to costs.

T.S.THAKUR,J

ARUNA SURESH, J

APRIL 11, 2008
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