

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 1524/2008

Date of Decision: 11th April, 2008

DEEPAK RESORTS & HOTELS P. LTD
& ANR. Petitioners

! Through : Mr.P.N. Lekhi, Sr. Adv. with
Mr. Pankaj Vivek, Adv.

versus

\$ UOI & ORS. Respondents

^ Through : Mr. Sanjay Poddar, Adv. for LAC
Mr. Sandeep Aggarwal, Mr. K.A.
Mr. K.A. Singh, Adv. for R-4

+ W.P.(C) No. 1537/2008

MADU SINGH & ORS. Petitioners

! Through : Mr. Sanjay Jain, Sr. Adv. with
Mr. Arjun Mitra, Mr. Pankaj Vivek, Adv.

versus

\$ UOI & ORS. Respondents

^ Through : Mr. Sanjay Poddar, Adv. for LAC
Mr. Sandeep Aggarwal, Mr. K.A.
Mr. K.A. Singh, Adv. for R-4

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CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. 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.**

Undeterred by the dismissal of two earlier petitions aimed at stalling the construction of a Sewerage Treatment Plant in village Kapashera of Delhi, the petitioners

have filed the present writ petitions assailing the acquisition proceedings mainly on the ground that no public notice in terms of Section 9(1) of the Land Acquisition Act was issued nor was the compensation payable to the petitioners in terms of Section 17(3-A) tendered to them. This according to the petitioners not only renders their dispossession illegal but vitiates the acquisition proceedings in toto. The writ petitions accordingly pray for a declaration to the effect that issue of a notice under Section 9(3) of the Act is a sine qua non for taking actual physical possession of the land and so is payment of 80% of the compensation assessed under Section 17(3-A) thereof. A mandamus directing the respondents not to interfere with the possession of the petitioners over the lands under acquisition has also been prayed for. The controversy arises in the following circumstances :

2. By a notification dated 1st September, 2007 issued under Section 4(17)(1)(4) of the Land Acquisition Act, an area measuring 19 bigha and 4 biswas situate in different survey numbers of village Kapashera mentioned in the said notification was notified for acquisition for the public purpose of setting up of a Sewerage Treatment Plant. A declaration under Section 6 of the Act was issued on 31st October, 2007 and so was an order dated 31st October, 2007 under Section 17(1) of the Act authorising taking over of possession of the said land. Aggrieved by the said notifications, the petitioners preferred writ petition No. 9005/2007 which was heard and eventually dismissed by an order of this Court dated 8th February, 2008. Repelling the contentions urged on behalf of the petitioners, this court held that the acquisition proceedings were for a public purpose and that the same were being conducted in accordance with the procedure established by law. The court also repelled the contention that the location of the proposed Sewerage

Treatment Plant was not conducive to the environment for the inhabitants of village Kapashera. Another petition No. 6526/2007 filed in public interest in that regard was also dismissed by a separate order passed by this court on 8th February, 2008. The Court declared that the location of the proposed Sewerage Treatment Plant was a matter which was in the discretion of the executive authorities and that interference with any decision taken by them would be justified only if the same was outrageously irrational or perverse. That apart, the Court noticed that the concerns expressed by the villagers regarding the suitability of the location of the sewerage treatment plant had been examined by the Monitoring Committee headed by the Chief Secretary of the State and the apprehensions expressed found to be without any basis. The dismissal of the earlier petitions notwithstanding, the petitioners are back in the Court with the present two writ petitions in which they have, as already noticed earlier, assailed the validity of the proceedings on the ground that no notice in terms of Section 9(1) and Section 9(3) of the Act had been issued to them nor was a compensation referred to in Section 17(3-A) ever tendered. The failure of the respondents to strictly observe the said statutory requirements has, according to the petitioners, the effect of vitiating the acquisition proceedings in toto.

3. Appearing for the petitioners, Messrs P.N. Lekhi and Sanjay Jain argued that taking over of possession even when authorised in terms of an order passed under Section 17(1) was possible only if the requirements of Section 9 of the Act were strictly complied with. The failure of the respondents to do so, argued the learned counsel, had the effect of rendering the entire process illegal including the notifications issued earlier, no matter the same may have been upheld by this Court in the previous round of litigation. Reliance in support of that submission was placed upon the decisions of the Supreme

Court in *Ramana Dayaram Shetty v. International Airport Authority of India & Ors.* (1979) 3 SCC 489, *Pratibha Nema and Ors. v. State of MP & Ors.* (2003) 10 SCC 626, *M/s G.J. Fernandez v. State of Karnataka and Ors.* (1990) 2 SCC 488, *Pramod Jha & Ors. v. State of Bihar and Ors.* (2003) 4 SCC 619.

4. Section 17 of the Land Acquisition Act inter alia provides that in cases of urgency, whenever the appropriate Government so directs, the Collector may even in the absence of an award, take possession of any land needed for any public purpose upon expiration of 15 days from the publication of the notice mentioned in Section 9(1). Sub-section 3 of Section 17 further provides that the Collector shall, at the time of taking possession, offer to the persons interested compensation for standing crops and trees, if any, on such land and for any other damages sustained by them caused by such sudden dispossession and not excepted in Section 24. In terms of sub-section 3A of Section 17, the Collector is under an obligation to tender payment of 80% of the compensation for such land as estimated by him to the persons interested and entitled thereto and pay the same to them unless prevented by someone or more of the contingencies mentioned in Section 31(2). Sub-section 3B of Section 17 provides that the amount paid or deposited under sub-section 3A of Section 17 shall be taken into account for determining the amount of compensation required to be tendered under Section 31 and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess made unless refunded within three months be recovered as an arrear of land revenue. For facility of easy reference, we may extract the provisions of Section 17(1), 17(3), 17(3A) and 17(3B) which alone are relevant for our purposes :

"17. Special powers in cases of urgency.-

(1) 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 a public purpose]. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

17(2) XXXX

17(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

Section 17(3A) - Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

Section 17 (3-B) - The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue."

5. A careful reading of Section 17(1) would show that the same empowers the appropriate Government to direct the Collector to take possession. What is important is that such direction can authorise the Collector to take possession of the land under acquisition even when no award has been made by him in respect of the land in question.

The only limitation on the power to take possession is that the same can be done upon

expiration of 15 days from the publication of the notice mentioned in Section 9(1). Section 9(1) of the Act envisages the issue of a public notice at convenient places on or near the land to be taken stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. It reads as under :

"9. Notice to persons interested.- (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him."

6. A conjoint reading of Section 9(1) and Section 17(1) supra would leave no manner of doubt that the very purpose underlying the issue of a public notice is to invite claims for payment of compensation to all those interested in the same. The purpose behind the issue of such a public notice is not to hear objections as to whether possession of the land should or should not be taken over by the Collector. The purpose simply is to invite claims for payment of compensation for all interests held in the land under acquisition. Mr. Lekhi however argued that not only should a notice be issued under Section 9(1) before possession can be taken over by the Collector, but a notice under Section 9(3) to the occupier of the land and on all such persons known or believed to be interested therein is also a mandatory condition precedent. He urged that the failure of the Collector to issue notice in terms of Section 9(3) was tantamount to a fatal procedural infirmity which would vitiate the entire acquisition proceedings. There is, in our opinion, no merit in that contention whatsoever. Section 17(1) of the Act is specific and refers only to notice under Section 9(1) of the Act as a requirement before possession can be taken by the Collector in exercise of the special powers vested in the Government.

Section 17(1) does not in terms or by implication howsoever far fetched require the Collector to wait till a notice is served by him upon the occupier of the land or persons interested in the same within the comprehension of Section 9(3) of the Act. Accepting the submissions made by Mr. Lekhi that a notice under Section 9(3) is also essential for taking possession under Section 17(1) would amount to re-writing the Statute. There is, in our view, no juristic or any other rational basis for the interpretation suggested by learned counsel for the petitioners. The prayer for a declaration made by the petitioners that a notice under sub-section 3 of Section 9 of the Act is a sine qua non for taking over actual physical possession must therefore fail and is accordingly rejected.

7. It was next argued by learned counsel for the petitioners that even a notice under Section 9(1) of the Act had not been issued. This according to them has the effect of vitiating the acquisition proceedings. We do not think so for two precise reasons. Firstly because the official record produced by Mr. Poddar shows that a notice under Section 9(1) was in fact issued by the Collector 15 days before the possession of the land was taken by him on the 5th December, 2007. Secondly because the failure of a notice under Section 9(1) does not have the effect of vitiating the acquisition proceedings themselves as was argued on behalf of the petitioners. That is because the purpose underlying the issue of the notice is simply to invite claims for payment of compensation for the land under acquisition. The non-issue of a public notice in terms of Section 9(1) of the Act may be an irregularity but the same does not have the effect of nullifying the acquisition proceedings themselves. The purpose underlying that notice is as well served by a notice to the occupier and the persons interested under Section 9(3) of the Act. It is not the case of the petitioners that the Collector has made an award without inviting claims as

required under Section 9(3). The argument on the contrary was that no award has been made by the Collector hence, there was no occasion for him to tender 80% of the compensation payable for the land in question. We shall presently deal with the later limb of the argument. Suffice it to say that so long as the occupier or the owner of the land or any person interested in the land is given a notice under Section 9(3) before the making of the award and so long as any such owner, occupier or person interested has an opportunity to make a claim for payment of compensation before the making of the award, the absence of a public notice under Section 9(1) would not invalidate the proceedings. We are supported in that view by a Division Bench decision of this Court in Shyam Lal CWP No. 4260/1998 decided on 10th February, 2003, where the Court observed:-

"By notice under Section (1) the Government did authorize the Collector Land Acquisition to take over possession and obviously mandate was to take possession after expiration of period of 15 days on publication of notice under sub-section (1) of Section 9 but non-compliance of this requirement of issuing notice under sub-section (1) of Section 9 will not vitiate the act of taking over possession by the Collector. It is merely an irregularity and will not make the action of the Collector as void or non-est since he had authorisation of the Government to take over possession of the land sought to be acquired, which pre-supposed the satisfaction of the Government of the urgency. It is not shown that any prejudice has been caused to the petitioner due to non-compliance, since compensation has yet to be paid and the petitioner has already laid a claim, may be by this very petition."

8. Reference may also be made to a Full Bench decision of this court in ***Roshnara***

Begum v. Union of India 61 (1996) DLT 206 where the Court has observed :

"In some of the cases, the plea taken was that notices under Sections 9 & 10 have not been served and thus the acquisition proceedings have become void. In the case of Jatan Singh (supra) the Supreme Court has held that even if there has been no service of notices under Sections 9 & 10 which are meant only for taking proceeding for determining compensation even then the same would not affect the acquisition proceedings. (*para 113*)

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.....A large number of judgments lay down that non-service of notices under Sections 9, 10 or under Section 12 of the Act do not vitiate the acquisition proceedings. (See Ezra Vs Secretary of State (supra), Kasturi Pillai Vs Municipal Council, AIR 1920 Madras 417, Shivdev Singh Vs Stale of Bihar & Others, AIR 1963 Patna 201, Prasanna Kumar Dass & Others Vs State of Orissa, 1956 Orissa 114, Yousuf Begam Vs State of Andhra Pradesh & Others, AIR 1969 AP 10, P.KShaikh Vs Stale of West Bengal & Others, AIR 1976 Calcutta 149, Lakhbir Chand Vs Land Acquisition Collector, Delhi & Others, AIR 1979 Delhi 53, Slate of Punjab Vs Gurdial Singh & Another, AIR 1984 P&H 1, Manakchand Sarupchand Lunavat & Others Vs Stale of Maharashtra & Others, AIR 1989 Bombay 339 and Dr.G.H.Grant Vs State of Bihar, AIR 1966 SC 237." (Para 121)

9. It was next argued by Mr. Lekhi that tender of 80% of the compensation payable for the land in terms of Section 17(3A) was a mandatory requirement, the failure whereof would render the taking over of possession as also the acquisition proceedings legally bad. It was contended that even when the term 'compensation' used in the Act has not been defined, the term must be given the same meaning wherever it appears in the entire enactment. Viewed thus, the payment of compensation referred to in Section 17(3A), argued Mr. Lekhi, must necessarily mean compensation which is found to be payable upon the making of an award by the Collector under Section 11 of the Act. This, according to Mr. Lekhi, would lead us to the conclusion that possession under Section 17(1) cannot be taken over by the Collector so long as the Collector has not made an award under Section 11 of the Act, 80% whereof must then be offered to the land owner before the possession can be taken over from him. That contention appears to us to be totally fallacious and is based on a complete misreading of the provisions contained in Section 17. We say so for three distinct reasons. Firstly because Section 17(1) itself provides that the appropriate Government may direct the Collector to take over

possession of the land in question even though no award has been made by him. The words “though no such award has been made” are significant and imply that taking over of possession by the Collector is a process that is not in the least dependent upon the making of an award. Secondly because compensation referred to in sub-section 3A of Section 17 is the estimated amount of compensation and not the amount eventually determined as payable under the Award. This is evident from the use of the words “tender payment of 80% of the compensation for such land as estimated by him”. The difference between compensation payable in terms of the award and that payable under Section 17(3A) is that while compensation determined by the award attains finality qua the Collector in view of the provisions of Section 12, compensation payable under Section 3A is only an estimate which the Collector makes, out of which 80% has to be tendered to the owner before taking possession. Indeed if the interpretation offered by Mr. Lekhi were to be accepted and making of a final award taken as a condition precedent for dispossession of the owner, there would be no rationale behind withholding 20% compensation from him once the said compensation has been determined. That is particularly so when Section 31 of the Act obliges the Collector to tender the payment of compensation awarded by him to the persons interested thereto according to the award and to pay it to them unless prevented by someone or more of the contingencies mentioned in sub-section 2 thereof. Suffice it to say that payment of only 80% of the compensation is provided for by the Act only because what is being paid is only an estimate made at a point of time when the award has yet to be made and published by the Collector.

10. Thirdly because in terms of sub-section 3B of Section 17, the amount paid or

deposited under Section 3A has to be taken into account for determining the amount of compensation required to be tendered under Section 31. The provision clearly envisages recovery of the excess, if any, paid as arrears of land revenue unless the same is refunded by the person who has received the same . The question of receiving excess or refunding would not arise if the payment under Section 17 (3A) is a payment strictly in accordance with the award made under Section 11. The scheme of the Act and in particular Section 17 is that payment of 80% estimated compensation is what is required as a condition precedent for taking of possession and not the compensation finally held payable under the award.

11. In the instant cases, the Collector appears to have estimated the amount of compensation payable to the owners on the basis of the minimum value of agricultural land fixed by the Government. The official record produced by Mr. Poddar shows that the Collector had estimated the value of the land at Rs.73,14,944/- by taking the market value of the land to be Rs.17,58,400/- per acre as fixed by the Government in terms of the notification issued by it. There was therefore a good basis for the estimate made by the Collector. At any rate, the petitioners have not assailed the validity of the estimate before us.

12. The next question then is whether the amount mentioned above was offered to the petitioners and in the event of a default, whether the same would render the acquisition proceedings illegal. Mr. Poddar placed reliance upon the official record in this connection and argued that the amount of compensation was tendered to the land owners in terms of a letter dated 25th February, 2008. The letter reads :

**"OFFICE OF THE ADDL. DISTRICT MAGISTRATE/LAC
(SOUTH WEST), ROOM NO. 12, OLD TERMINAL**

TAX BUILDING, KAPASHERA, NEW DELHI

No. ADM/LAC/SW07-08/1527
25/02/08

Dated

To,

M/s Deepak Resorts & Hotels,
C-41, Anand Niketan,
New Delhi.

Sub : CWP No. 9005/2007 titled Deepak Resorts Vs/ UOI
village Kapashera, Khasra No. 23/6/1 (1-00); 6/2 (1-
00), 15/1(1-02), 15/3(2-08), 24/11(2-06)

Sir,

It is to inform you that the 80% estimated payment has already been received by the requisitioning agency/L&B. The Hon'ble Court of Delhi vide order dated 08/02/06 has decided the matter in favour of govt. It is therefore requested to collect the amount of 80% compensation on any working day from the office of undersigned and also follow the codal formalities like submitting of surety bonds along with affidavits regarding ownership.

Please expedite the formalities at your end as the cheque is ready for dispersal.

Yours faithfully,

sd/-
Y.V.V.J. RAJASHEKHAR
ADM/LAC/SW"

13. Although Mr. Lekhi denied the receipt of any such letter, the same need not halt us in answering the question raised by Mr. Lekhi on the legal principles that now stand settled by the decision of the Supreme Court in *Satendra Prasad Jain v. State of U.P.* **(1993) 4 SCC 369**. One of the issues that fell for consideration in that case was whether failure on the part of the authorities to tender 80% of the estimated compensation for the land would vitiate the acquisition proceedings or render illegal the process of taking over of possession. Answering the question in the negative, their Lordships observed:

"16. Further, Section [17\(3-A\)](#) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section [17\(1\)](#). Section [11-A](#) cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award

and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.

17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section [17\(3-A\)](#) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the 1st respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."

14. It is, in the light of the above authoritative pronouncement, futile for the petitioners to argue that the alleged failure of the Collector to tender the amount of compensation render illegal either the taking over of possession of the land or the acquisition proceedings themselves. We may in this regard also refer to Section 34 of the Act which provides for payment of interest when amount of compensation is not paid or deposited on or before taking possession of the land. Section 34 reads :

34. Payment of interest.- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

15. From the above, it is evident that if the amount of compensation is not paid or deposited on or before taking possession of the land, the consequence that follows is in the nature of a liability to pay interest. That consequence cannot, in our opinion, be enlarged on any juristic principles to render the taking of possession itself to be illegal especially in a case like the present where the validity of the acquisition proceedings has been examined by this Court and upheld.

16. In the light of the above discussions, we have no hesitation in saying that these writ petitions are nothing but an abuse of the process of this Court. The same are therefore dismissed with costs assessed at Rs.25,000/- in each case.

T.S. THAKUR, J.

ARUNA SURESH, J.

April 11, 2008

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