

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

+ W.P.(C) 2526/2007

Reserved on : 7th August, 2008

% Date of Decision : September 5th, 2008

MR. MANISH SETHI & ANR. Petitioners
Through Mr. Arun Bhardwaj, Sr. Advocate
with Mr. Nitin Ahlawat, Mr. Atin
Shankar Rastogi and Mrs. Pooja
Rastogi, Advocates

versus

UNION OF INDIA & ORS. Respondents
Through Mr. V.K. Tandon with Mr. Prem
Mishra, Advocates for DOE
Mr. Sanjay Poddar with
Mr. Ramesh Ray, Advocates for
LAC & L&B

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE MANMOHAN

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.

JUDGMENT

MANMOHAN, J :

1. The present writ petition under Article 226 of the Constitution of India has been filed seeking a writ of Mandamus for quashing the notification issued under Section 4 of the Land Acquisition Act, 1984

dated 19th February, 2003 No. F.8(12)/2002/L&D/LA/18646, declaration under Section 6 dated 16th February, 2004 bearing No. F.8(12)/2002/L&D/LA/25144 & Award No. 2/2004-05/Distt/Northeast in respect of Khasra No. 2 Min (1-02), 8(1-12), 9(4-16), 12(4-16), 13(1-14), 18/1(1-10) & 19/1(1-04) measuring 18 bigha 14 biswa situated in the Revenue Estate of Village Jivanpur @ Johripur (hereinafter referred to as 'Petitioners' land') and a writ of certiorari seeking a direction from this Court for disposal of the application under Section 48 of the Land Acquisition Act for denotification of the abovementioned land pending before the competent authority.

2. The facts of this case are that on 19th February, 2003 a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'said Act') was issued by the Government of India to acquire land measuring 19 bigha and 4 biswa for a public purpose namely for '*opening of a Senior Secondary School*' at Village Jivanpur @ Johripur. Objections under Section 5 A of the said Act were also invited from interested persons. In pursuance thereto, in March 2003 Petitioners filed objections which were personal to the land. No allegation of malafides were raised in the objections filed.

3. Mr. K. Mahesh, LAC (NE) gave a personal hearing to the Petitioners along with their counsel. All the objections raised by the

Petitioners during the oral hearing were noted in the proceedings sheet. No allegation of malice was ever raised during the personal hearing.

4. Mr. C.R. Garg, successor LAC, in his report dated 20th September, 2003 recommended that in view of the Petitioners' objections, the requisitioning department may reconsider its acquisition proposal.

5. In pursuance to the recommendations made by the LAC, the requisitioning department namely the Director of Education was asked for a clarification. In response, the Director of Education furnished a digital map of the area indicating the schools available within a radius of three kilometers from the Petitioners' land as well as the data of eligible school going children (in the age group of 6 to 17 years) in this area. The Director of Education on the basis of above data stated that for 44000 eligible school going children, there were only nine schools in this area. The Director of Education also pointed out that while according to norms student capacity of a school should not exceed one thousand, six out of nine existing schools in the area were working much beyond their capacity and some of them had thrice the requisite number of students. The Director of Education further clarified that the available school infrastructure was able to cater to only half the eligible school going population and there was

an urgent requirement for a senior secondary school in the area for which the Petitioners' land happened to be an ideal one, being located on the main road.

6. The Government after being satisfied that the land was required for a valid purpose, issued a declaration on 16th February, 2004 under Section 6 of the said Act with respect to Petitioners' land measuring 18 bigha 14 biswa after excluding the area covered by the temple.

7. On 8th April, 2004, the Petitioners filed an application under Section 48 of the said Act for release of their land. In this application, not only the grounds which were raised in the objection petition filed under Section 5A of the said Act were repeated but additionally it was vaguely urged that the Petitioners' land was being acquired at the behest of a local MLA.

8. On 25th August, 2004 Petitioners made another representation under Section 48 of the said Act for release of their land containing similar objections to the one raised under Section 5A of the said Act. However, in this new representation there was no allegation against the local MLA.

9. On 20th May, 2005 Award bearing No. 2/2004-05/DC/NE was announced by the LAC. Pursuant to the notice under Section 9 of the

said Act, Petitioners filed their claim and asked LAC to assess their compensation.

10. On 28th March, 2007, according to the Respondents, the possession of the said land was taken over and handed to the Department of Education, after drawing a panchnama at the site. But the Petitioners contend that possession had not been taken on the said date and the Petitioners continue to be in physical possession of their land.

11. On 2nd April, 2007 the present writ petition was filed. Initially no ground of malafides was raised but the same was subsequently added by way of an additional affidavit and the then local MLA was added as Respondent No. 6. On 12th July, 2007 this Court granted a status quo order with regard to possession of the Petitioners' land and the said interim order continues to subsist till date.

12. Mr. Arun Bhardwaj, learned Senior Counsel for the Petitioners contended that on 12th November, 1999 the Director of Panchayat had already allotted Goan Sabha land of Village Johripur, in the vicinity of Petitioners' land, for setting up a school. But he contended that this alternative land, due to malafide intent, was not utilized for construction of a school.

13. Mr. Bhardwaj further contended that in the vicinity of Petitioners' land there are sufficient number of schools to cater to the existing population of the said area.

14. According to Mr. Bhardwaj the present acquisition proceedings were initiated with malafide intent as the same had been carried out at the instigation and pressure of the then MLA, Mr. Roop Chand. The learned Senior Counsel contended that the MLA was interested in purchasing the Petitioners' land in benami name and as the Petitioners did not succumb to the pressure of Mr. Roop Chand, he wrote a letter dated 12th October, 2002 to the Sub-Divisional Commissioner (Revenue) requesting the authorities to acquire only the Petitioners' land for setting up a school. Mr. Bhardwaj contended that it was because of the MLA's letter that the entire acquisition process was initiated. Considerable emphasis was laid on the fact that the MLA in his letter had referred only to the land of 'three farmers' – which three, all belong to the Petitioners' family.

15. According to Mr. Bhardwaj as the Land Acquisition Collector had given a report favourable to the Petitioners, the State Government should have given another hearing to the Petitioners before issuing a declaration under Section 6.

16. Mr. Bhardwaj also submitted that the Petitioners' land according to Master Plan of Delhi 2021 fell in the green belt zone and, therefore,

it could not be used for construction of a senior secondary school. In this connection Mr. Bhardwaj referred to the Master Plan of Delhi 2021 in detail.

17. Lastly Mr. Bhardwaj contended that as the Petitioners' representation under Section 48 of the said Act had not been disposed of, the State Government should be directed to decide the same in accordance with law within a strict time schedule.

18. Mr. Sanjay Poddar and Mr. Vivek Tandon, learned Counsel appearing for Respondents referred to the counter-affidavits, digital map and data of eligible school going children collected under 'Sarva Shiksha Abhiyan' to point out that there was an immediate and urgent necessity of constructing a senior secondary school in Village Johripur. It was contended that in the absence of an appropriate school building, one of the Government's schools was functioning from a barat ghar in Village Johripur. Learned Counsel for Respondents were emphatic that a new secondary school building was immediately required to be constructed in Village Johripur for providing satisfactory and better educational environment to the students of the said area.

19. Mr. Poddar submitted that the Petitioners' allegation of malafides was an afterthought. Learned Counsel submitted that no such plea had been taken in the initial objections filed under Section

5A of the said Act. He contended that the plea of malafides was baldly taken in one of the representations under Section 48 of the said Act but not thereafter. According to Mr. Poddar, the plea of malafides being a ground personal to a person, was required to be taken at the initial stage under Section 5A of the said Act. Mr. Poddar further submitted that the Petitioners had, in any event, abandoned the plea of malafides when they filed a second Section 48 application and subsequently when they participated in the Award proceedings. In this connection Mr. Poddar referred to the judgment of the Apex Court in ***Delhi Administration Vs. Gurdip Singh Uban & Ors. reported in (2000) 7 SCC 296 paras 53 to 55.***

20. Mr. Poddar also relied upon the judgments of the Apex Court in ***Abdul Husein Tayai Ali & Ors. Vs. State of Gujarat & Ors. reported in AIR 1968 SC 432 para 16*** and ***Kalumiya Karimmiya Vs. The State of Gujarat & Ors. reported in (1977) 1 SCC 715 para 8*** to submit that under the Land Acquisition Act only one hearing has to be provided at the Section 5A stage and no second hearing was contemplated under the said Act. In the above referred judgments it was held that the report of the Land Acquisition Collector was merely recommendatory and not binding on the Government. Consequently, according to Mr. Poddar, the Petitioners could not derive any benefit from the recommendations made by the LAC, Mr. C.R. Garg.

21. Learned Counsel for the Respondent further submitted that, the acquisition cannot be held to be invalid merely because the land proposed to be acquired was for a purpose other than one permitted by the Master Plan or Zonal Plan applicable to that locality. In this connection Mr. Poddar relied upon the judgment of the Apex Court in ***Bhagat Singh Vs. State of U.P. & Ors. reported in (1999) 2 SCC 384 para 22*** wherein it has been held:-

“22.....Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired.....

.....it is clear that acquisition for a public purpose and obtaining permission from the competent authority under the Development Act concerned for change of land use are different from one another and the former is not dependent upon the latter.”

22. Mr. Poddar further submitted that the present writ petition was not maintainable as it had been filed after issuance of a declaration under Section 6(3) of the said Act, by virtue of which, the Petitioners’

land already stood vested in the Government free from all encumbrances.

23. Mr. Poddar further submitted that the present petition was barred by delay and laches as the Petitioners right from the inception of the acquisition proceedings were aware, but had not challenged the same when the notifications under Section 4 and 6 were issued. In this connection, Mr. Poddar referred to and relied upon the judgments of the Apex Court in ***State of Rajasthan & Ors. Vs. D.R. Laxmi & Ors. reported in (1996) 6 SCC 445 paras 9 & 10; Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria & Ors. reported in (1996) 4 SCC 579 para 4*** and ***Swaika Properties Pvt. Ltd. & Anr. Vs. State of Rajasthan & Ors. reported in 2008 (2) SCALE 271.***

24. Mr. Poddar further submitted that the Petitioners had waived off their objections to the acquisition inasmuch as they not only filed any objection at Section 4 and 6 stage but they had also raised their claim for compensation after receiving the Section 9 notice.

25. Mr. Poddar also referred to the counter-affidavits filed by the Respondent No. 5 to contend that the Gaon Sabha land, referred to by Mr. Bhardwaj as being available for construction for school, in fact was never made available to the Director of Education. In the said affidavit it has been stated that in proceedings filed under Section 81

of the Delhi Land Reforms Act by the initial owner of the Gaon Sabha land, the land vested back in the initial owner and consequently the same was never available for construction for a senior secondary school.

26. Mr. Poddar further referred to the counter-affidavits to point out that in view of the Respondents' categorical stand that the said land was required for a public purpose, it was not possible to release the same to the Petitioners under Section 48 of the said Act. Mr. Poddar further submitted that once the possession of the said land had been taken over by the Respondents, even though according to Petitioners it was a symbolic possession, the land vested in the Government free from all encumbrances and there was no legal vested right with the Petitioners under Section 48 of the said Act to seek release of the said land. In this connection Mr. Poddar relied upon the judgment of a Division Bench of this Court in ***Nagin Chand Godha Vs. Union of India & Ors. Reported in (2003) 70 DRJ 721 paras 7 and 10.***

27. From the averments in the counter-affidavit of Respondent No. 5 (Department of Education), which are unrebutted in the rejoinder, we are of the view that the alternative Gaon Sabha land referred to by Mr. Bhardwaj was never available to the Director of Education for construction of a senior secondary school.

28. From the noting of the acquisition file, survey and data on record, it is apparent that for 44000 school going children in the age of 6 to 17, there are only nine schools, out of which six are working two to three times over and above their capacity. We are of the opinion that the land in the present instance has been acquired for a genuine public purpose namely for construction of a senior secondary school to cater to the immediate existing need of a large number of school going children who are facing an acute infrastructural shortage of a senior secondary school.

29. The Petitioners' allegation of malafide against Mr. Roop Chand, the then MLA does not inspire confidence as firstly, the said allegation had not been taken at the initial Section 5A stage and secondly even after having taken the said objection, it was neither reiterated in the subsequent representation under Section 48 of the said Act nor in the original writ petition filed in this Court. As held by the Apex Court in **Gurdip Singh Uban's** case, referred to hereinabove, the objections with regard to malice are personal to the objector and if they are not raised at the initial Section 5A stage, then the same are deemed to have been waived off. Though we agree with Mr. Bhardwaj that fraud and malice in issuing acquisition notification would unravel all the actions of the State, we are of the view that in the present case the independent survey and data on record confirm beyond doubt the need for a senior secondary school

in the area. In fact, a perusal of the noting on the land acquisition file shows that all views were considered and the decision to acquire land was not based on the ground that the then local MLA had asked for its acquisition.

30. We also agree with the submission advanced by Mr. Poddar that the report of the LAC at Section 5A stage is only recommendatory and the Government is entitled to take a different view from the said report. We are also of the view that only one hearing to the objectors is to be afforded at the Section 5A stage and no second hearing is contemplated by the statute.

31. As far as the submission that the purpose of acquisition was contrary to the Master Plan of Delhi 2021 is concerned, we are of the view that as held by the Apex Court in **Bhagat Singh's** case referred to hereinabove, acquisition can be valid even if it is for a public purpose not permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made as it is always open for a beneficiary of an acquisition to move the competent authority and obtain sanction for suitable modification of the Master Plan.

32. We also agree with the submission of Mr. Poddar that the present writ petition is not maintainable as it is barred by laches as the same had admittedly been filed three years after notifications under Sections 4 and 6 and two years after an Award had been

issued. In **Reliance Petroleum vs. Zaver Chand Popatlal Sumaria, (1996) 4 SCC 579** (paras 8 and 12) it was held that if the writ petitioners' intention was to challenge the acquisition proceedings, they should have done so immediately at least after the publication or declaration under Section 6 or immediately after the receipt of notice under Section 9 of the Land Acquisition Act. Since the petitioners in the said case waited till the Award was passed before filing their petition, the Apex Court held that it only showed that the object of the said petitioners was just to get maximum price for the land acquired.

33. Therefore, the legal position that emerges is that while High Courts have the jurisdiction and power to entertain a petition under Article 226 of the Constitution, it would be sound exercise of that discretion, if the Court refuses to interfere with land acquisition proceedings in cases where the land owners have allowed the authorities to complete the said proceedings and challenge the same at a belated stage. In our view, it is too late in the day for the Petitioners to now turn around and to challenge the same after the Collector has made his Award.

34. Even if we accept Mr. Bhardwaj's contention that the petitioners are in actual physical possession of the property, we may note that the Hon'ble Supreme Court in **Balmokand Khatri Educational and Industrial Trust, Amritsar vs. State of Punjab & Ors. (1996) 4**

SCC 212 and in the case of **Tamil Nadu Housing Board vs. A Viswam (Dead by Lrs)**, (1996) 8 SCC 259 has held *“it is seen that the entire gamut of the acquisition proceedings stood completed by 17.4.1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of the panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession”*. Further, a Coordinate Division Bench of this Court in **Nagin Chand Godha vs. UOI & Ors. reported in 2003(70) DRJ 721** (in para 10) has held that *“suffice it to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.”*

35. In the present case since the respondents have at least taken symbolic possession, a curtain has been drawn so far as land acquisition proceedings are concerned and the land has gone outside the purview of the Land Acquisition Act. Consequently, as the acquisition proceedings are complete, the application under Section 48 has become infructuous and no direction for disposal of the said application can be passed.

36. In view of what is stated hereinabove, the present petition is dismissed with no order as to costs.

MANMOHAN, J

MUKUL MUDGAL, J

September 5th, 2008
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