

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

+ W.P.(C) 15424-27/2006

Date of Decision: 4th April, 2008

WG.CDR Y.S.SOLANKI RETD. & ORS Petitioner
! Through: Mr. B. S. Maan, Adv.

versus

\$ UOI & ORS. Respondent
^ Through: Mr. Gaurav Sarin, Mr. Ms. Charul
Sarin and Mr. Yatinder Chaudhary,
Adv. for DDA.
Ms. Monika Garg and Ms. Parminder
Kaur, Adv. for R-1, UOI.
Mr. R. C. Ray with Mr. H. P. Sahu,
Adv. for L&B.
Mr. Sanjay Kumar Pathak, Adv. for
Respondent-L&B Deptt.

% **CORAM:**
HON'BLE MR. JUSTICE T. S. THAKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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

J U D G M E N T

Per Thakur, J(oral)

This writ petition calls in question a preliminary notification dated 07.09.2005 issued under Section 4 of the Land Acquisition Act and a final declaration dated 07.09.2006 issued under Section 6 of the Land Acquisition Act whereunder a parcel of land measuring 1 bigha situated in Khasra No. 178/2, Village, Shahbad Mohammedpur, New Delhi has

been notified for acquisition for the public purposes of planned development of Delhi.

2. Appearing for the petitioner, Mr. Maan made a solitary submission in support of the challenge mounted in the writ petition. He submitted that even in the year 1984 the land in question had been notified for acquisition by the Government but was excluded from the process of acquisition in the light of the objections filed by the father of the petitioner. The objection, precisely, was that the land in question constituted a Samadhi built in the memory of the mother of the petitioner who was cremated at the place where a Samadhi stands erected, is in the form of a tomb, 15 feet tall. He urged that in response to the impugned notification the petitioner had filed objections before the Collector and pointed out that the land in question had been earlier exempted from acquisition and could not, therefore, be notified again. This objection was, according to Mr. Maan, neither noticed nor discussed by the Collector which rendered the acquisition proceedings illegal hence liable to be quashed.

3. Mr. Ray, counsel appearing for the Collector, Land Acquisition further drew our attention to the official record of Collector and argued that the contention urged by Mr. Maan regarding the non-consideration of objections filed by the land owner was factually incorrect. He argued on the basis of the said record that the objections to the acquisition of the land, based on the exclusion from acquisition in the year 1984, had not only been noted by the Collector but rejected in specific terms. There was, therefore, no failure on the part of the Collector to deal with the

objections raised by petitioner to warrant interference with the acquisition proceedings.

4. A perusal of official record, in particular the report submitted by the Collector, reveals that he was conscious of the land in question having been earlier exempted on the ground that a Samadhi had been built in the memory of the mother of the petitioner. The question, therefore, is whether the exemption of any such land in the first round of acquisition proceedings would exempt for good the said land even when it is admittedly required for the construction of a 30 meter wide sector road in Sector 22 of Dwarka. Our answer to that question is in the negative. In fairness to Mr. Maan we may mention that he did not dispute the legal position that Samadhies erected are not exempt from acquisition proceedings so long as the purpose for the acquisition is a public purpose and the procedure established by law is strictly followed. It is also not in dispute that land in question has been notified and is being acquired for a road which is obviously a public purpose. The only question then is whether the procedure established by law is being properly followed. Our answer to that is in the affirmative as the respondents have issued the requisite preliminary notification followed by a declaration, upon consideration of the report filed by the Collector under Section 5A in which he has dealt with the objections raised by the land owner. In the circumstances, therefore, the mere fact that on an earlier occasion the land in question has been exempted from acquisition, would not mean that said land is exempted from acquisition for good. With the change in time and the emerging need for acquisition, if the

authorities come to the conclusion that the acquisition is inevitable there is no reason why they should be prevented from doing it.

5. Mr. Maan next argued that the aspect regarding the shifting of the Samadhi could be examined by a committee nominated by the DDA. He urged that the petitioner may be permitted to approach the said committee for allotment of an alternative plot of land for shifting of the Samadhi. Mr. Sarin on the other hand pointed out that the said committee was examining only cases of religious institutions and other places which are visited by the people out of devotion to the person in whose memory the same have been erected. It is not the case of the petitioner that the Samadhi has attained any public character or is place of worship. There is, therefore, no room for any interference. We do not for the present wish to make any comment as to whether the petitioner has a remedy before the Committee. All that we now say is that if the petitioner is advised to file a representation to the Committee, the committee shall be free to examine the same and pass appropriate order having regard to the nature of the brief it holds and the scope of its powers and jurisdiction. With these observations the writ petition fails and is accordingly dismissed. No costs.

T.S. THAKUR, J.

SIDDHARTH MRIDUL, J.

APRIL 04, 2008
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