

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

+ W.P.(C) 9005/2007

Date of Decision: 8th February, 2008

M/S DEEPAK RESORTS & HOTELS PVT. LTD. & ANR.

..... Petitioners
Through Mr. J.P. Sengh with Ms. Priyanka
Gupta, advs.

versus

UNION OF INDIA & ORS.

..... Respondents
Through Mr. Sanjay Poddar, adv. for R-1-3.
Mr. Sandeep Aggarwal, adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 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

More than 15 years have rolled by since the Supreme Court first expressed its serious concern about the quality of environment in the National Capital Region of Delhi. Such was the failure on the part of the Delhi Development Authority, the MCD, the Central Pollution Control Board as also the Delhi Pollution Control Committee in the discharge of their duties that the court castigated them for their inaction in the matter in M.C. Mehta Versus Union of India, 1992 (3) SCC 256. Referring to a World Health Organization study, the court observed that utter disregard to environment has placed Delhi in an

unenviable position of being the world's third grubbiest and most polluted and unhealthy city. The court observed :-

“We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the Air, Water and Land to such an extent that it becomes a health-hazard for the residents of the area. We are constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly re-miss in the performance of their statutory duties and have failed to protect the environments and control air- pollution in the Union territory of Delhi. Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by the World Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environments.”

2. By an order passed in the very same petition on 22nd April, 1994, the Court emphasized the urgent need to set up sewage treatment plants for the ever increasing population of Delhi within a time bound schedule and started monitoring the setting up of such plants. The court observed :

“The Delhi Development Authority has filed an affidavit through its Secretary Mr. V.N. Bansal. It is stated that the Authority is ready and willing to provide land to the M.C.D. for setting up of the Sewage Treatment tanks. Keeping in view the urgency of the matter, we request Mr. Subhash Sharma, Commissioner, M.C.D., Mr. S.P. Jkhanwal, Vice Chairman, D.D.A., Mr. Ashok Kumar, Additional Commissioner, Water and Mr. J.K. Mathur, Chief Engineer of the Delhi Water Supply and Sewage Disposal Undertaking to be present in Court on May 6, 1994. We are requesting the officers to be present in Court so that we can have their view points for taking

appropriate decisions on the spot. Needless to say that with the increase of population in Delhi, it is of utmost urgency to set up the Sewage Treatment Plants within the time-bound Schedule.”

3. Subsequent orders passed by their lordships in the said proceedings maintained a continuous pressure on the authorities to ensure that sewage treatment plants are set up on a war footing. By order dated 21st April, 1995, the court once again described the treatment of sewage as of utmost importance for health and supply of pure water to citizens of Delhi. “Any delay in this respect is a health hazard and cannot be tolerated”, observed the Court.

4. In Jai Narain and Others Versus Union of India and Others, 1996 (1) SCC 9, the Supreme Court transferred the petitions filed in this court to itself for disposal. These petitions challenged the acquisition proceedings in respect of revenue estate of village Nilothi in the National Capital Territory of Delhi. One of the issues that arose for consideration was whether the authorities were justified in invoking the provisions of Section 17 of the Land Acquisition Act as according to the petitioner land owners, there was no urgency to justify the invocation of the said provision. While dismissing the said petitions with costs quantified at Rs.10000/- in each petition, their lordships observed :

“This Court repeatedly indicated in the orders/directions that there was urgency in taking over the possession of the land, under acquisition, for the construction of STP at Keshopur. The authorities were directed to take up the work of land acquisition and construction of STPs on war

footing. "Likely" in the background of this Court's order passed from time to time for a time bound programme for setting up the STPs means, for purposes of this case, "certainly" and "urgently".

5. It is in the above backdrop that the respondents have continued the process of setting up of sewage treatment plants in different areas including in village Kapashera with which we are presently concerned. The respondents have on the analogy of the earlier cases of acquisitions for STPs monitored directly by the Supreme Court, invoked the provisions of Section 17(1) and 17(4) of the Land Acquisition Act in respect of an area measuring 19 bighas and 4 biswas situate in different survey numbers of village Kapashera mentioned in a notification dated 23rd August, 2007 issued under Section 4 readwith Section 17(1) and 17(4) of the Act. A declaration dated 31st October, 2007 issued under Section 6 of the Act and a notification of even date issued under Section 17(1) of the said Act has also been assailed with a prayer for a mandamus restraining the respondents not to interfere with the peaceful enjoyment and possession of the land presently in the occupation of the petitioners.

6. Appearing for the petitioners, Mr. J.P. Sengh, strenuously argued that the notification under Section 17(1) and 17(4) of the Act was vitiated in as much as the same uses the expression "likely to be acquired", which implies that there was no existing need for the land in question and that the land may be required some time in future. It was, on that basis, contended by Mr. Singh that there was no urgency

involved in the acquisition proceedings so as to justify the invocation of the powers vested in the Government under Section 17(4) of the Act.

7. On behalf of the respondents, Mr. Poddar on the other hand argued that the use of the expression “likely to be acquired” was not conclusive of the matter. He urged that the question of urgency involved in any acquisition could not be determined solely by the expression used in the notification under Section 4 of the Act especially when that existence of an urgency is a matter which is entirely based on the subjective satisfaction of the Government. He submitted that looking to the background in which the entire process of setting up of sewage treatment plants has been started by the authorities and the urgency which the Supreme Court has attached to that process, there was no room for holding that there was no urgency in the setting up of the proposed STP. It was, according to Mr. Poddar, a case where the urgency was evident on the face of public purpose for which the land was being acquired. Reliance was also placed by Mr. Poddar on the decision of the Supreme Court in State of UP Versus Pista Devi, **AIR 1986 SC 2025** where the court took judicial notice of the fact that housing accommodation was a matter of national urgency and upheld the invocation of the powers under Section 17(4) in relation to acquisition of land for providing house sites.

8. There is, in our opinion, considerable merit in the submission made by Mr. Poddar. As already noticed earlier, the entire process relating to the setting up of sewage treatment plants in Delhi has its genesis in judicial proceedings in public interest and the directions issued by their lordships in the same from time to time. As seen earlier the Apex Court has repeatedly emphasized the need for immediate action being taken by the authorities for setting up of the STPs which are considered absolutely essential for providing a pollution free environment to the inhabitants of Delhi. It is also evident from the decision of the Supreme Court in Pista Devi's case (supra) relied upon by Mr. Poddar that pressing needs of the time like housing accommodation can be taken judicial notice of and invocation of the emergency provisions justified on that basis. The following observations made by the Apex Court in Pista Devi's case are instructive :

“In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5A of the Act.”

9. An argument similar to the one urged by Mr. J.P. Sengh before us was advanced even in Jai Narain's Case(supra). Their lordships, however, repelled the contention that the use of the expression “is

likely to be needed for a public purpose” was conclusive or that it suggested the non-existence of an immediate need and a consequent urgency for acquisition. The court observed that whether or not there was an urgency to justify invocation of Section 17(4) of the Act was a matter entirely based on the subjective satisfaction of the Government and the Court would not interfere with the exercise of the powers vested in the Government unless the reasons given were wholly irrelevant or no application of mind evident from the record. The following observations made by the Court are in this regard apposite :-

“The First contention raised by the Learned counsel is based on the language of Section 4 of the Act. The power under Section 4 of the Act can be exercised when it appears to the Government that the "land in any locality is needed or is likely to be needed for any public purpose". It is no doubt correct that the expression "is needed" indicates the existing need whereas the expression "is likely to be needed" refers to the future need. When the later expression is used in the notification under Section 4 of the Act it may be suggestive of the fact that there may not be emergency to acquire the land, but the question of urgency cannot be determined solely by the expressions used in the notification under Section 4 of the Act. The emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind. When a notification under Section 4 of the Act uses the expression "is likely to be needed" it may be necessary, in a given case, to examine the records or the attendant circumstances to satisfy that there was material before the Government justifying the Order under Section 17, dispensing with the provisions of Section 5A of the Act. If the public purpose on the face of it shows that the land is needed urgently, that by itself is

a relevant circumstance for justifying the action under Section 17(4) of the Act.”(Emphasis Supplied)

10. The above observations, in our view, provide a complete answer to the argument advanced by Mr. J.P. Sengh. Having regard to the fact that the urgency regarding the need for setting up of the sewage treatment plants, has been judicially recognised by the Supreme Court and the work of setting up of such plants has been directed to be undertaken forthwith and completed at war footing, it is futile for the petitioners to contend that there was no real justification for invoking the emergency provisions of Section 17(4). A number of sewage treatment plants have already been set up by the respondents but the fact that there is need for setting up one at Kapashera is not in dispute. That being so, no fault can be found with the Government taking adequate steps for setting up of such a plant on an urgent basis by invoking the provisions of Section 17(1) and 17(4) of the Act. The first limb of the challenge to the acquisition proceedings thus fails and is hereby rejected.

11. It was next argued by Mr. J.P. Sengh that the choice of the site at which the proposed STP is to be constructed was not proper. It was argued that the site was too close to the human habitation at Kapashera which is likely to adversely affect the living environment for the people in the neighbourhood. We do not think so for two precise reasons. Firstly, because the choice of the site at which the STP should be constructed is a matter which must be left to the

Executive to determine. Interference with that choice would be uncalled for unless the decision is so outrageously perverse that no reasonable person could countenance the same. No such perversity has been established in the instant case. Merely because the proposed STP could as well be constructed at another place is, in our view, no reason for us to meddle with the acquisition proceedings.

12. Secondly, because the issue regarding the suitability of the site of construction has been examined by us in WP(C) No. 6526/2007 filed in public interest. We have in that petition addressed the entire background in which the challenge to the lack of the STP was mounted by the petitioner in that case and held that there was no legal or other infirmity in the choice of the site where the STP was being constructed to warrant interference in public interest. We need only recall that the concerns shown by the inhabitants of village Kapashera regarding the possible health hazards arising out of the construction of the STP near their village was looked into by the monitoring committee headed by the Chief Secretary, Government of Delhi and found to be without any basis. We do not propose to go into the question whether the said public interest petition was also inspired by the petitioners in the present writ petition whose land are being acquired for the STP, for it is unnecessary for us to establish any such connection between the two petitions. All that we need say is that the choice of the location of the STP has not been shown to be

vitiated by either any illegality or perversity to warrant interference by us.

13. That brings us to the question whether the acquisition proceedings were vitiated by mala fides of respondents Nos. 5 and 6. It was contended by Mr. J.P. Singh that R-5 and 6 who were inimically disposed towards the petitioner were holding key positions in the Government of NCT of Delhi and the Delhi Jal Board which positions they had misused to influence the location of the Sewage Treatment Plant at Village Kapashera. The petitioners allege that initially land bearing Khasra No. 157 of Village Bijwasan was surveyed by the authorities for the project but subsequently due to the opposition of the Delhi Jal Board, the location of the proposed STP was changed from Khasra No. 157, Bijwasan to the present location. The selection of the present site was, according to the petitioner, mala fide and intended to cause financial loss to the petitioners who have a history of litigation and acrimony with R-5 and 6. The writ petition alleges that the petitioner company is a group company of Deepak Bhardwaj group which has been in litigation with various officers of the State Government. Contempt Case Civil No. 307/97 is according to the petitioner pending between Smt. Ramesh Kumari and Shri Manoj Kumar, respondent No. 5 and 6. The said proceedings have, according to the petitioner, given rise to an animus in the minds of Respondents No. 5 and 6 against the

petitioner with the result that a deliberate attempt has been made by the said respondents to notify land which was not otherwise suitable for the purpose for which it is being acquired. There is, in our opinion, no merit even in this contention urged by Mr. Sengh. It is true that the petitioners have made allegations about the pendency of some proceedings between a group company of Deepak Bhardwaj Group on the one hand and officers of the GNCT of Delhi but mere pendency of the said proceedings either against Shri Manoj Kumar or any other officer without any material to show that Shri Manoj Kumar or any other officer was in any way connected with the decision regarding the location of the proposed STP does not lend any credence to the allegation of mala fides. The writ petition is silent as to how and at what stage and in what manner the respondent Nos. 5 and 6 or any one of them influence the decision making process regarding the location of the proposed STP at Kapashera in preference to Bijwasan. So long as respondent No. 5 and 6 are not shown to be in any way connected with the decision making process especially in relation to the location of the STP at Kapashera, the pendency of any proceedings between a group company of Deepak Bhardwaj Group and the said two respondents or any one of them would be of little consequence. Messrs Poddar and Sandeep Aggarwal, counsel appearing for the respondents emphatically stated that neither Shri Manoj Kumar nor Shri X.K.

Mahto, Respondent Nos. 5 and 6 in the petition was in any way connected with or instrumental in the decision regarding the location of the STP at Kapashera. They produced for our perusal the original record which does not suggest the association of the said two respondents with the decision making process leading to the location of the proposed STP at Kapashera. The challenge to the acquisition proceedings on the ground of malafides must also in that view fail.

14. That leaves us with the question whether the Government had applied its mind while invoking powers under Section 17(1) and (4) of the Act. A perusal of the original record which was produced before us shows that the Executive Engineer, DR-XIV, Delhi Jal Board had initiated a proposal for acquisition of 0.5 hectares of land near Kapashera for construction of mini Sewage Treatment Plant. The proposal referred to the directions issued by this Court in WP(C) No. 3637/1998 disposed of on 3rd September, 2002. That proposal was later revised in April 2007 for acquisition of 1.6 hectares of land in place of 0.5 hectares only which was processed and the matter recommended to the Lieutenant Governor for approving the acquisition of land measuring 90 bighas 4 biswas in Kapashera by issuing a notification under Section 4 read with Section 17(4) (6) and (1). The matter was then examined by the Principal Secretary, Land and Development who recommended the case for approval to the Lieutenant Governor pointing out that the requirement was urgent.

A draft notification under Section 4 readwith Section 17(4), (6) and 17(1) of the Act was also placed for the perusal of the worthy Lieutenant Governor who upon consideration passed an order which reads as under :

“I have gone through the records and requirement of Delhi Jal Board for construction of Sewage Treatment Plant at Kapashera and the draft notifications prepared by LAC.

I am fully satisfied that the land measuring 19 Bigha 04 Biswa of Village Kapashera is urgently required for above purpose. In view of the urgency of the scheme, I order that notifications under Section 4 read with Section 17(4), (6) and 17(1) of the Land Acquisition Act, 1894 be issued immediately.

TEJENDRA KHANNA
LT. GOVERNOR, DELHI

DATED : 16.08.07”

15. The above in our opinion sufficiently meets the requirement of law as to a due and proper application of mind by the Government before the emergency provisions of Section 17(1) and (4) are invoked. It is true that the order passed by the Lt. Governor does not spell out the reasons for his satisfaction but that in our view is not necessary in view of the decision of the Supreme Court in Union of India and Others Versus Praveen Gupta and Others, 1997 (9) SCC 78 according to which the decision regarding urgency is an administrative decision and a matter of subjective satisfaction of the appropriate government to be taken at on the basis of the material available on record. There is in that view no need to pass a reasoned order to justify the

conclusion that there is any urgency in the acquisition justifying the dispensing with an inquiry under Section 5-A. The court observed :

“It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry under Section 5-A in exercise of power under Section 17(4).”

16. We may also refer to the decision of the Supreme Court in First Land Acquisition Collector Versus Nirodhi Prakash Gangoli and Another, 2002 (4) SCC 160 where the Supreme Court has reiterated that the question of urgency for an acquisition under Section 17(1) and (4) of the Act are matters of subjective satisfaction of the Government and that a writ court would not ordinarily scrutinize the propriety of that satisfaction on objective appraisal of the facts. All that the court may do, in cases where the invocation of Section 17(4) is assailed, is to enquire where the appropriate authority had the relevant material before it and whether there was any non-application of mind in the making of the order. The following observations are in this regard instructive.

“The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and (4) of the Act, and issues

notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned. If an order invoking power under Section 17(4) is assailed, the courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by the non-application of mind.”

17. In the light of the above settled legal position and what we have stated while dealing with the question of urgency underlying the acquisition of land for setting up of STPs in Delhi, we have no hesitation in holding that the invocation of the powers under Section 17(1) and 17(4) of the Act was perfectly justified and that there was neither any illegality nor any irregularity or perversity in the decision to invoke the said powers.

18. In the result, this petition fails and is hereby dismissed but in the circumstances without any orders as to costs.

T.S. THAKUR,J

VEENA BIRBAL, J

FEBRUARY 08, 2008
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