

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

% Date of decision: 23.04.2009

+ WP (C) No.7284 of 2009

SHRI RAJEEV JOSHI & ORS.

...PETITIONERS

Through: Mr. Ramji Srinivasan, Sr. Adv.
with Mr. Kirtiman Singh,
Mr. S. Santhanam Swaminathan,
Mr. Vartika Sahay, Mr. Sapan &
Mr. Rohit, Advocates.

Versus

UNION OF INDIA & ORS.

...RESPONDENTS

Through: Mr. S.P. Sharma & Mr. Jitender
Chaudhari, Advocates for R-1.

Mr. Sanjay Poddar &
Mr. Mukesh Kumar, Advocates
for R-2 & 3.

Mr. Ravinder Sethi, Sr. Adv. with
Mr. Digvijay Rai, Mr. R.K.
Ghawana & Mr. Puneet Sharma,
Advocates for R-4/AAL.

Mr. Jayant Bhushan, Sr. Adv. with
Mr. Atul Sharma, Mr. Sarojanand
Jha and Ms. Milanka Chaudhary,
Advocates for DIAL/R-5.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioners seek to challenge the acquisition proceedings in respect of their land located at Village Mahipalpur, New Delhi under the provisions of the Land

Acquisition Act, 1894 (hereinafter referred to as the said Act) and dispensation of the hearing under Section 5-A of the said Act by invocation of the provisions of Sections 17 (1) and 17 (4) of the said Act.

2. The battle for acquisition of this land has been going on since 1965. A notification under Section 4 of the said Act was issued by the Lieutenant Governor of Delhi on 23.1.1965 for acquisition of a large chunk of land measuring 6241 bighas and 12 biswas in Village Mahipalpur, New Delhi sought for public purpose of planned development of Delhi. A declaration under Section 6 of the said Act was made on 22.12.1966 and another one on 26.12.1968. The land in question was really sought to be acquired for the benefit of the Airports Authority of India (for short 'AAI') for the airport. The affected parties including the petitioners who were running the business of pottery under the name of Palam Potteries filed proceedings which went up to Supreme Court. The views of the Supreme Court are found in Ravi Khullar & Anr. Vs. UOI & Ors. and other connected matters (2007) 5 SCC 231. Civil Appeal No.1707/2007 filed by Palam Potteries also came to be decided by the said judgement.
3. The Supreme Court held that the expression "public purpose and planned development of Delhi" would include the expansion and development of the Palam Airport which was also a public purpose. This was despite the fact that though the initial development work was to be executed by the development authority subsequently the work was to

be carried out by the AAI. It was held that it could not be said that there was a change of public purpose. The acquisition proceedings were upheld qua the various persons who laid the challenge but the petitioners succeeded in their challenge on a limited issue. The Supreme Court found that insofar as the acquisition of the land belonging to Palam Potteries is concerned, the proceedings lapsed for failure of the Collector to make an award within the prescribed period of limitation under Section 11-A of the said Act. Thus, it was on this technical plea that the petitioners succeeded and lived to fight another day.

4. The respondents instead of immediately taking steps for issuing a fresh notification under Section 4 of the said Act [the judgement in Ravi Khullar & Anr. case (supra) having been delivered on 30.3.2007] proceeded to file review petition and curative petition. The review petition filed by AAI was dismissed on 15.5.2007 and the subsequent curative petition, once again, filed by AAI was dismissed on 20.11.2007. The review petition filed by Government of National Capital Territory of Delhi (for short 'GNCTD') was, however, dismissed on 15.10.2008 as it was filed belatedly. The Supreme Court condoned the delay in filing the review petition but dismissed the petition.
5. The AAI after dismissal of the curative petition on 20.11.2007 addressed a communication dated 19.12.2007 to the Land Acquisition Collector stating that the land of the petitioners consisting of 19 bighas and 17 biswas was

essentially required by M/s. Delhi International Airport Private Limited (for short 'M/s. DIAL') on account of operational reasons for expansion/development of IGI Airport as per the Master Plan approved by the Ministry of Civil Aviation. It was further mentioned in the communication that the non-availability of this land would affect the airport development plan being initiated by M/s. DIAL which needs to be completed in a time bound schedule before Commonwealth Games 2010. The AAI requested that the land should be acquired on urgent basis. We may notice at this stage that M/s. DIAL is a private party, which is a consortium and there are various agreements entered into with the AAI for development of Airport. Even after this request, the matter proceeded at its own pace and the LAC prepared a draft notification only on 12.6.2008.

6. The records produced before us show that the LAC was waiting for the fate of the review petition filed by it. The notings of the file show that the LAC was concerned that while the owners of the land in respect of which acquisition proceedings were upheld in Ravi Khullar & Anr. case (supra) would get the market value of the land as prevalent in 1965 the consequences of a fresh notification to be issued in the case of the land of the petitioners would require current market value to be given and thus there would be a loss to the Public Exchequer. We may note that as per learned counsel for the LAC while the owners of other lands were being paid compensation @ Rs.14,340.00 per bigha as per

rate determined by this Court and upheld by the Supreme Court the tentative compensation rate for the petitioners on account of the new notification under Section 4 of the said Act would be in the vicinity of Rs.15.00 lakh per bigha. Thus, it is only on the dismissal of the review petition of the GNCTD on 15.10.2008 that the acquisition proceedings in respect of the land of the petitioners were put at a fast pace. The proposal was put up to the competent authority on 10.12.2008, which was scrutinized by the Additional Secretary, Land & Building and thereafter was laid before the competent authority.

7. We have had the benefit of perusing the records of the competent authority and one thing clearly emerges. A conscious decision was taken to invoke the provisions of Sections 17 (1) & 17 (4) of the said Act and dispense with the hearing under Section 5A of the said Act ostensibly on the ground of urgency in completion of the task of development of the airport and because the land of the petitioners “falls within the operational area”. This expression is important for the reason that in the various maps shown to us it is undisputed that the land of the petitioners is in the vicinity of the taxiway, hangers, etc. There is some dispute about the exact location of the land but that is not material since whether the land is 300 meters away or 500 meters away from the taxiway would not be a material factor for determining whether it fell within the operational area. In this behalf we may note that in the counter affidavit filed by the LAC it has been stated

that the land in question is in the middle of the airport and all the land around it except the land of the petitioners has been acquired and is under the possession and control of the concerned authorities for the use of the airport. It has been specifically stated that the land in question is required for the aircraft maintenance hangers, DMRC transport corridors as per Master Plan of the IGI Airport. It has further been averred that the land in question falls within the existing boundary of the airport and was urgently required by the AAI. Thus, the land falls within the airport area as on date and does not form part of the land which would be required subsequently for expansion.

8. We may note at this stage itself that learned senior counsel for the petitioners has strenuously contended that the justification of the DMRC transport corridors no more exists as the same has already been made and the land of the petitioners is located little further away from where the respondents allege and that portion of the land is either for development of commercial buildings or has to be kept open. However, the proximity to the hangers and the taxiway cannot be disputed. These facts have been discussed by us to emphasize that the land does fall “within operational area”, which is the main reason cited in the records for coming to a decision to invoke the provisions of Section 17 of the said Act and dispense with the hearing under Section 5A of the said Act.
9. A notification was finally issued under Sections 4 (1), 17 (1) & 17 (4) of the said Act only on 12.1.2009 followed by the

declaration published under Section 6 of the said Act on 16.2.2009. It is these notifications to which the challenge has been laid now by filing the present writ petition.

10. We have had the benefit of hearing learned counsels for the parties at length on various dates. Learned senior counsel for the petitioners has taken us through the records as filed before this Court and has strenuously sought to contend that this Court must look into the arrangement between AAI and M/s. DIAL as according to him the acquisition is really not for AAI but for M/s. DIAL, a private party. Learned counsel contends that the land forming subject matter of the acquisition proceedings would actually vest with M/s. DIAL because it is co-relatable to other activities which are commercial in nature. Since according to learned senior counsel for the petitioners M/s. DIAL is a private party the provisions of Part-VII of the said Act would apply.
11. We are unable to accept the aforesaid contention for the reason that in the affidavits it has categorically emerged that it is the AAI which has deposited the compensation with the LAC. We are not required to see the back-to-back arrangement between AAI and M/s. DIAL as urged by learned senior counsel for the petitioners. We are also not required to scrutinize the agreements and the effect thereof as entered into between AAI and M/s. DIAL. Suffice to say that the land in question forms part of the demised land under the agreements on which the airport is being made and is located in the vicinity of the hangers and the

taxiways. We may also note at this stage that AAI is a shareholder in this consortium known as M/s. DIAL.

12. Learned senior counsel for the petitioners seeks to emphasize that there is an obligation on M/s. DIAL to go ahead with the development of the airport irrespective of the fact whether the acquisition proceedings which were then pending against the petitioners succeeded or not. It is, thus, submitted that since there is no obligation on AAI to make available this land, it is M/s. DIAL who should have approached the petitioners for a private negotiation and the petitioners would have been able to get a realistic value for their land which is sought to be denied by the LAC. In a nutshell the real dispute is that according to the petitioners they are not getting good value for their land and would have walked off, if they had been properly compensated as per the market value which they consider to be prevalent.
13. Once again, we are unable to agree with the submission of the learned senior counsel for the petitioners for the reason that the agreements only provide that the project for development of the airport is not to be delayed on account of litigations pending including of the petitioners. The result is that the consortium was put to notice that there were some disputes and that would not be an impediment in the timely completion of the airport. This does not mean that the AAI is either absolved of its responsibility or is not authorized to seek acquisition of the land for the development of the airport, more so when AAI itself is a shareholder in M/s. DIAL. The challenge to the acquisition

proceedings filed in Ravi Khullar & Anr. case (supra), except in the case of the petitioners who succeeded on a technical ground failed and AAI legitimately sought fresh acquisition proceedings, to facilitate early completion of the project.

14. We consider it appropriate to discuss another aspect urged by learned senior counsel for the petitioners connected with the development of the airport based on the premise that there was no such urgency for the land in question so as to invoke the provisions of Section 17 (4) of the said Act even if Section 17 (1) of the said Act had been invoked. It is, thus, pleaded that Section 5A of the said Act being a valuable right and the right to property being protected under Article 300A of the Constitution of India, such a valuable right ought not to have been deprived to the petitioners.
15. We feel that it is not the specific purpose to which the land has to be put to or as to when that aspect has to be completed which would be germane. What is material is that the airport is already operational. It cannot be accepted that in such a situation the petitioners continue to occupy the land and reserve their right on the same which is in the vicinity of these hangars and taxiways. These taxiways and hangars have to be completed by 2010 and the area around the same should be free from access to other third parties. We cannot lose sight of the fact that there are grave security concerns which arise around the airport in this day and age. It cannot be said that the petitioners continue to occupy their land while on the

adjacent land there is an airport. We are, thus, unable to accept this plea advanced by learned senior counsel for the petitioners.

16. Learned senior counsel for the petitioners also sought to lay emphasis on the fact that when the respondents themselves took their own sweet time after the judgement in Ravi Khullar & Anr. case (supra) to file applications, review petition and curative petition, it would be reasonable to accept that at least the minimum time frame as provided in the said Act should be given to the petitioners to put forth their objections to the acquisition of the land under Section 5A of the said Act and be heard accordingly. We had found that there has been an element of delay in taking action after the judgement in Ravi Khullar & Anr. case (supra). This is, however, in the form of filing review petition and curative petition. The GNCTD (LAC) filed a review petition belatedly but the delay in filing the review petition was condoned though the review petition was dismissed. We have already noticed that the records have shown that the anxiety of the LAC was to preserve revenue for the State as a much larger compensation would have to be paid to the petitioners on issuance of a fresh notification. Thus, the review petition cannot be said to be motivated by any *malafide* but a concern for the revenue albeit made belatedly. It can also not be doubted that the remedy of review and a curative petition is available in law in appropriate factual matrix. The fact that the Supreme Court has not entertained them does not mean that the

exercise of filing them was *malafide*. The respondents had nothing to gain from it as the passage of time would have the possibility of increase in the value, which the petitioners would be entitled to get for their land. The time has been taken largely on account of the endeavour of the GNCTD to focus on the financial consequences of the acquisition proceedings qua the petitioners being quashed in Ravi Khullar & Anr. case (supra).

17. The view we have taken aforesaid find support in a number of cases including First Land Acquisition Collector & Ors. Vs. Nirodhi Prakash Gangoli & Anr. (2002) 4 SCC 160 where it was held that so long as the purpose of acquisition and urgency to acquire continue to exist, exercise of power under Section 17 of the said Act cannot be held to be *malafide* and mere delay on the part of the Government subsequent to its decision to dispense with enquiry under Section 5A of the said Act by exercising power under Section 17 of the said Act would not invalidate the decision itself. We may note at this stage that it is the competent authority which is to have subjective satisfaction about the urgency of acquisition proceedings in a particular case and Courts would loathe to interfere except in cases of *malafide*. We may note that in Union of India & Ors. Vs. Praveen Gupta & Ors. (1997) 9 SCC 78 it was noticed that while dealing with the aspect of urgency the appropriate Government was not required to pass a reasoned order as the decision is an administrative decision and is a matter of

subjective satisfaction of the appropriate Government on the basis of the material available on record.

18. The acquisition in question is one for the airport. It can hardly be said that there is no public purpose in acquiring the land for the development of an airport. The changed economic philosophy necessitated by the need of urgent infrastructural development has resulted in participative projects between the Government/public sector and private sector. In Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors. (1997) 1 SCC 134, it was observed in para 10 as under:

“10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as “Asian tigers”, e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the

acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.”

19. We may note that it is not as if the respondents were sleeping after the judgement in Ravi Khullar & Anr. case (supra) though the time taken was undoubtedly prolonged. The AAI after facing the adverse fate in the review petition and curative petition did forthwith write to the LAC. The LAC undoubtedly delayed in filing the review petition but waited for its fate for the reasons stated hereinbefore. Once that fate was decided steps were taken to urgently acquire the land in question.
20. We may note that an endeavour was made to invite our attention to a plethora of judgements but we see no reason to go into all these judgements. Apart from a docket explosion we have also case law explosion and on a click of a button case law on a particular point is available. We cannot permit indefinite oral hearings to go on and permit reference to each and every judgement which may arise on its own facts on a particular question of law. A judgement to be precedent and germane for the issue should either be laying down a general proposition of law apposite to the matter in issue or the facts must be so identical that the same is cited as a precedent to show a legal opinion formed by a court on identical facts. We may also note that we

have the benefit of a recent pronouncement of the Supreme Court in Sooraram Pratap Reddy & Ors. Vs. District Collector, Ranga Reddy District & Ors. and other connected matters (2008) 9 SCC 552 where practically all aspects dealing with the acquisition proceedings under the said Act and as would be liable to be considered in the present matter have been discussed. Thus, a reference to this judgement itself would suffice.

21. It has been specifically observed that while considering the eminent domain of the Government in respect of the land to be acquired and the existence of public purpose a holistic approach has to be adopted especially in cases of an integrated and indivisible joint venture mechanism for infrastructural development. The same cannot be split into different components to consider whether each and every component will serve public good. In such integrated and indivisible joint venture mechanism to tap resources of private sector for infrastructural development for fulfillment of public purpose the acquisition of land was held to be legal and lawful and not *malafide*. The compensation in the facts of the case was paid by a nodal agency developing the project which would facilitate socio-economic progress and even a token contribution from public revenue was held not to *ipso facto* be treated as colourable exercise of power. If these principles are applied in the given facts of the present case we find that the compensation of the land is paid by AAI which in turn had entered into a consortium in the form of M/s. DIAL with private parties to execute the

project. It can, thus, hardly be said that there is absence of a clear public purpose involved in such a project.

22. The Supreme Court has also emphasized that the role of the court is narrow and restrictive in such matters of exercise of eminent domain and the court should not seek to substitute its judgement for the legislature's judgement as to what constitutes a public purpose unless the use is palpably without reasonable foundation. In fact, the judgement also deals with the aspect of whether it is Part-II or Part-VII of the said Act which would come into play in case of such joint ventures and concluded that where the entire amount of compensation is paid by the State agency, Part-VII would have no application.
23. We are, thus, unable to conclude that the present case is one where the acquisition was for a company and thus Part-VII would have any role to play.
24. The Supreme Court has further emphasized that while dealing with this power of eminent domain the same inalienable, eminent domain is an implied collective necessity preferred against individual's proprietary rights. It is sufficient that a public purpose derives advantage from the scheme and once again at the cost of repetition we emphasize that construction of an airport is certainly something where the public derives an advantage. It is well within the domain of the Government to adopt the methodology of build, operate, transfer or any other appropriate methodology to ensure proper allocation of resources by the Government. These are aspects of

economic considerations in which the Government has unfettered power and absolute play for carrying out necessary development activity. The Government is not bound to develop the airport itself as may have been originally envisaged but the arrangement shows development of the airport in a phased manner with limited cost to the Government.

25. We may note at this stage that in Ramniklal N. Bhutta & Anr. case (supra) it has been emphasized that there are many ways of affording appropriate reliefs and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress.
26. We, thus, find that the challenge laid in this petition to the acquisition proceedings and the invocation of the provisions of Section 17 of the said Act is without any basis and the petition is without any merit on that account.
27. We may note in the end that the anxiety of any land owner is often to get adequate compensation for the land. A large number of cases arise to challenge the acquisition proceedings where such adequate compensation does not flow to the parties keeping in mind the market realities. One method which has been adopted by the legislature is to increase the percentage of solatium. It is really not a solatium in the sense of providing solace to the person whose land is sought to be acquired but an endeavour to compute realistic prices of the land on account of perennial problem of the registered documents often not reflecting the correct market value. This is a hard reality which

cannot be ignored. It is not as if the same person who has sold some adjacent land at a price and then seeks compensation for his remaining land by seeking to include the element not reflected in the sale deed. The breach of law by other parties by not reflecting the full consideration in the sale transaction is visited upon a person who is deprived of his land under the said Act. An endeavour to provide some mitigation has also been in the form of fixation of circle rate which can be one indicator for the prevalent market value. The circle rate would normally be, at least, the minimum market price of the land in most cases. Learned counsel for the LAC states that this matter is already receiving attention of the competent authority especially in view of certain directions passed by us in other matters.

28. The present case is one where we feel it appropriate to direct that there should be expeditious determination of realistic market compensation for the land. Learned senior counsel for the petitioners states that the claim with supporting documents will be filed by the petitioners within two (2) weeks. The AAI would give all necessary assistance to the LAC to expeditiously conclude the proceedings for determination of the value of the land and to publish the award. The LAC will endeavour to complete the proceedings within a period of four (4) months of the claim petition being filed by the petitioners.
29. In a matter of this nature where hearings have gone on for a number of days normally actual cost is awarded to a

succeeding party. However, considering that the petitioners are being deprived of the land and their compensation is yet to be determined we desist from doing so.

30. The writ petition is dismissed with the aforesaid directions.

SANJAY KISHAN KAUL, J.

APRIL 23, 2009
b'nesh

SUDERSHAN KUMAR MISRA, J.