

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

+ WRIT PETITION (C) NOS. 16833-16845 OF 2006

Reserved on: February 25, 2009
Date of Decision: May 29, 2009

PRIT PAL SINGH & OTHERS Appellants
Through Mr. Ravinder Sethi, Sr. Advocate with
Mr. Rajiv Kumar Ghawana, Advocate

Versus

UNION OF INDIA & ORS. Respondents
Through : Mr. Sanjay Poddar, Advocate for LAC &
Ms. Shobana Takiar, Advocate for DDA

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J.

1. Thirteen petitioners have come before this Court praying that Notification No. F.11(25)/2005/L&B/LA/652 dated 25th April, 2006 issued under Section 4 of the Land Acquisition Act, 1894 and the Notification No. F.11(25)/2005/L&B/LA/9129 dated 7th September, 2006 issued under Section 6 of the Land Acquisition Act, 1894 in

respect of the land of the petitioners, in all measuring 15 bighas 11 biswas situated in their revenue estate of village Sameypur, Delhi, be quashed and set aside on a number of grounds.

2. At the outset, Mr. Ravinder Sethi, learned Senior Counsel appearing for the petitioners has confined himself to the plea that the impugned Notification under Section 4 of the Land Acquisition Act published on 25th April, 2006 only envisages the construction of a road therefore, land in excess of what is legitimately required for that road could not have been notified. He does not seek to challenge the aforesaid Notification to the extent of the land actually required for the construction of the road in question or for any purpose related to that road. He says that the petitioners are ready to give up the land required for construction of the said road which, according to him, is the avowed purpose of the said Notification.

3. It is his case that although the impugned Notification under Section 4 of the Land Acquisition Act, 1894, refers to the purpose of acquisition as, “(for construction of road in Sector 16, Rohini)” and that the subsequent Notification under Section 6 of the Land Acquisition Act, 1894 also states the purpose specifically as, “(laying out road in Sector 16, Rohini)”, the respondents, however, have proceeded to notify larger areas of land which are admittedly not required for that road and which the respondents admittedly intend to put to some other use. He submits that the same constitutes a fraud on power being a colourable exercise and, therefore, the said actions are vitiated in law and deserve to be quashed. We are confining ourselves to this aspect alone.

4. The relevant background of the matter is as follows:-

To begin with, in the year 1984, land measuring 180 bighas 15 biswas situated in the village Sameypur was notified under Section 4 of the Land Acquisition Act, 1894, on 27th July, 1984, and under Section 6 thereof on 20th November, 1984, by respondent No. 2, (hereinafter referred to as the '1984 notifications'). The land of the petitioners was also covered by those notifications. The purpose of acquisition stated in those notifications was, "planned development of Delhi".

5. Amongst others, the petitioners also filed their objections to the proposed acquisition under the aforesaid 1984 notifications. Ultimately, after making appropriate inquiries, and after surveying the area, the respondents decided to release 55 bighas 1 biswa of land from the said acquisition. This included the land belonging to the petitioners which is the subject matter of these proceedings. According to the petitioners, their land was released from the aforesaid acquisition because their properties were fully built up.

6. The petitioners contend that their lands are properly developed and had been in continuous use for both commercial and industrial purposes before the aforesaid 1984 notifications. House tax is being levied thereon by the MCD and regular, proper electric connections have also been installed by the electricity company. The land in question is stated to be adjacent to the abadi of village Sameypur. Mr. Sethi also submits that in the year 1994-95, the question of acquiring the same land was again taken up by the respondents, but ultimately, no notification was issued.

7. On 28th April, 2004, while disposing of another writ petition titled, 'Vijay Kumar Vs. DDA', Writ Petition (C) No. 11301 of 2004 along with three other writ petitions, this Court directed the DDA to provide a road as envisaged in the approved lay out plan in Sector 16, Rohini, within nine months.

8. Thereafter, the impugned notifications under Sections 4 and 6 of the Land Acquisition Act came to be issued on 25th April, 2006 and 7th September, 2006. The notification under Section 4, insofar as the same is relevant for our purpose, is as follows:

"Whereas it appears to the Lt. Governor of Delhi that land is likely to be needed for the Rohini Residential Scheme (for construction of Road in Sector 16, Rohini). It is hereby notified that the land in the locality described below is likely to be acquired for the said above purpose.

This notification is made under the provision of Section 4 of the Land Acquisition Act, 1894 in respect of the land notified u/s 4 of the L.A. Act, 1894."

The relevant portion of the aforesaid notification under Section 6 reads as follows:

"Whereas the Lt. Governor, Delhi is satisfied that land is required to be taken by Government at the public expense for a public purpose namely for Rohini Residential Scheme, (laying out road in Sector 16, Rohini) under Planned Development of Delhi."

Both the notifications specify the actual khasra numbers notified under Sections 4 and 6. Admittedly, the extent of land notified in this manner is much more than what is required for the construction of the road in question.

9. The aforesaid notifications under Sections 4 and 6 of the Land Acquisition Act, 1894, proposing to once again acquire the land of the petitioners in excess of what is required for the road are impugned before us on the ground that the proposal to acquire that portion of the petitioner's land, which has nothing to do with the road, all over again, is mala fide. It is submitted that once the said land was duly notified and thereafter excluded from acquisition earlier, the same cannot be permitted to be taken over under the garb of acquiring land for a road to implement the High Court's aforesaid judgment in **Vijay Kumar's case (supra)**.

10. They say that the respondents have not followed the established procedure whilst issuing the impugned notifications in respect of the land not required for the road. They contend that the actions of the respondents in including additional areas, not required for the road, are a colourable exercise of power based upon mala fide actions of the subordinate staff of the respondents. The petitioners also contend that ex facie, on a plain reading of the impugned notifications, it is obvious that land is sought to be acquired for a specific purpose limited to construction of a road in Sector 16, Rohini; and that despite this specifically stated purpose, the total area sought to be acquired is much more than what is legitimately required for that purpose. In fact, admittedly, the additional land is to be used for purposes other than the road in question and the respondents intend to carve out 60 and 90 meter plots for schools or parks or other common facilities from the additional land covered by the impugned notifications.

11. In response, Mr. Poddar, Advocate, who appears for respondents 2 to 4, submits that a bare reading of the impugned notifications shows that the purpose of acquisition is not restricted to the construction of a road for the Rohini Residential Scheme and that the purpose of acquisition stated on the face of the notifications is the requirement of the land for, "the Rohini Residential Scheme" as a whole, of which the road in question only forms one part. According to him, the words of the impugned notification placed in parenthesis that state, "(for construction of road in Sector 16, Rohini)" are really irrelevant for determining the purpose of the notifications. He submits that, therefore, the acquisition of the land for the purposes of the road, as well as for carving out various plots, which are intended to be put to other uses, cannot be assailed.

12. He also contends that, "the Competent Authority was fully appraised of the fact that the land in question is required for road as well as other purposes and clearly reflected in the *Aksh Shajra*, before the approval of the Section 4 notification. Thus, there is clear intention of the competent authority to issue a direction for acquisition of the land for both the purposes." At the same time, Mr. Poddar submits that mere mention of the requirement of, "planned development of Delhi", has been repeatedly held to be a sufficient description of the public purpose for which the lands are required, in the notification. He submits that notifications couched in such language cannot be declared invalid on the ground of vagueness. For this purpose, he relies on a decision of Supreme Court in **Aflatoon vs. Lt. Governor AIR 1974 SC 2077**. He submits that since, "need of

the land for Rohini Residential scheme is clearly mentioned in the notification”, therefore, in view of ratio of the said case, there is no infirmity with the impugned notifications.

13. It is also contended by the respondents that the purpose mentioned in the notifications must be read with the purpose mentioned in the master plan, the zonal plan, as well as the lay-out plan of the area, and since the lay out plan of the area shows that the land in question is required for the road, as well as other uses of the Rohini Residential Scheme, therefore, no fault can be found with the notifications in terms of the decision of the High Court in **Lohia Developers (India) Pvt. Ltd. vs. Union of India in WP(C) No. 5569 of 2007** decided on 8th August, 2008. At the same time, it is also contended that it is open to the government to change the purpose in the midst of the acquisition and the same cannot be invalidated on that account alone as held by the Supreme Court in, **Ravi Khullar and another vs. Union of India and others (2007) 5 Supreme Court Cases 231** where the land originally acquired for the DDA was thereafter utilized for the Airport Authority of India for expansion of the airport.

14. There are thus two main planks of the respondents’ arguments. Firstly, that a bare reading of the impugned notifications shows that the purpose of acquisition is not confined merely to the construction of the road in question, and that if the notifications are read holistically, it would show that the lands are required for the Rohini Residential Scheme as a whole. Secondly, that it is settled law that if the land acquired was not used for the purpose for which it was

acquired, the landowner does not get the right to ask for restoration of his land [See **Northern India Glass Industries** vs. **Jaswant Singh and Ors.** (2003) 1 SCC 335].

15. As regards the factual circumstances in which the impugned notifications came about, it has been strongly stressed by the respondents that a scrutiny of the records would show that the Lt. Governor was fully satisfied that the land is required for construction of the road as well as for further development of the Rohini Residential Scheme. It has also been urged by the counsel for the DDA that the placing of certain words within parenthesis in the impugned notification is merely an irregularity and does not affect the substance of the notification and, therefore, the acquisition proceedings are not vitiated.

16. We might mention that on 28th February, 2007, this Court also directed the DDA to file an additional affidavit, "disclosing the manner in which the acquired land mentioned in the notification dated 7th September, 2006 is proposed to be used. In addition thereto, a copy of the site plan of the proposed road development will also be annexed." Consequently, an affidavit of Mr. M.R.M.Rao, Director (LM), DDA was filed on 24th November, 2006. Paragraph 5 of this affidavit, insofar as the same is relevant, states as follows;

"The land in question is required for the public purpose and construction of road in Sector – 16, Rohini. The answering respondent auctioned residential plots in Sector 16. These residential plots showed a road running in front of them. As certain pockets were left un-acquired and not handed over to the answering respondent the road could not be constructed."

Paragraph 6 of the said affidavit states as follows:

"Some of the auction purchasers, therefore, filed Writ Petitions before this Hon'ble Court inter – alia seeking directions to provide amenities including construction of roads. This Hon'ble Court vide judgment and order dated 24.8.04 allowed the Writ Petition directing:

'Writ Petitions are accordingly disposed of issuing mandamus to DDA that the roads as per the approved layout plan in Sector 16, Rohini be laid within 9 months from today.' "

Paragraph 7 states as follows:

"The answering respondent however, could not construct the roads as per the directions of this Hon'ble Court as the land has not been placed at its disposal. The answering respondent made repeated request for acquisition of land prior to filing of the Writ Petition, after filing of the Writ Petition and after the disposal of the Writ Petition in order to comply with the directions."

The remaining paragraphs 8 and 9 of this affidavit are best reproduced in their entirety. They state as follows:

"8. The road as directed by this Hon'ble Court was not constructed a Contempt Petition was filed against the officers of respondent No. 5. Respondent NO. 5 brought to this notice of the remaining respondents seeking immediate action to acquire the land so that the orders of this Hon'ble Court can be complied with. Senior officers of the respondents were called to be personally present in the court for not complying with the orders of the court.

9. Finally, in view of the immediate requirement and in order to fulfill the public obligations and in larger public interest, the notifications were issued seeking to acquire the petitioners land. It is respectfully submitted that the land is urgently required for public purpose of constructing roads and

there is absolutely no merits in any of the contentions raised by the petitioners and the petition is liable to be dismissed with costs.”

17. Thereafter, again on 7th May, 2007, another additional affidavit was placed on the record by the DDA. It is sworn by Shri B.S.Jaglan, OSD (RL), DDA. This affidavit is also stated to be filed in compliance with the aforesaid orders of this Court. Paragraph 5 of this affidavit states as follows:

“A perusal of the layout plan shows that the land acquired vide notification dated 7.9.06 is proposed to be used for carving out of plots under Sector 16 and under Sector 17. Part of the land is proposed to be used for High School, and common facilities. Most of the land acquired is being used for laying roads, service lanes etc.”

Paragraphs 7, 8 and 9 of the said affidavit state as follows:

“7. The acquired land falling in Sector 17 is earmarked under the layout plan for carving out 60 sq. mtrs. Plots, which is meant for allotment under the Rohini Residential Scheme. The rest of the land falls under proposed roads, service lanes, park and other community facilities.

8. It is respectfully submitted that the total area of the acquired land is 15 bigha 11 biswas (13,100 sq. mtrs. Approximately). The proposed usage of this land as per the layout plan is:

Usage	Area in Sq. Mtr.
Roads	8389
Park	275
Other community facility	360
School	1800
90 sq. mtr. plots	495.15
60 sq. mtrs. Plots	1782.50

9. It is respectfully submitted that the entire acquired land is meant for public purpose. Planned development of area in question is not possible unless the land in question is acquired. It is respectfully submitted that there is absolutely no

merit in the contention of the petitioner that as the Ld. Single Judge has directed construction of road, at the most only the land for construction of the road as directed by the Ld. Single Judge only could be acquired. Planned development of the area in question is not possible unless the entire land is acquired and developed in accordance with the layout plan that has been prepared when, most of the land in question was acquired for development. In anticipation of acquisition of land in question layout plan was drawn proposing the use of the land for different purposes as indicated above and the land is required for public purpose.”

18. This Court, therefore, has two affidavits filed by the DDA in response to its direction that an additional affidavit be filed disclosing the manner in which the acquired land mentioned in the impugned notification of 7th September, 2006 is proposed to be used, along with a site plan of the proposed road development. Whilst the first affidavit of 28th February, 2007 categorically states that the land is required to implement a direction of the High Court in another writ petition to construct the said road as per the approved lay-out plan in Sector 16, Rohini, and that the land is urgently required for constructing that road; however, the second affidavit of 7th May, 2007 takes a different stand. It now states that the notified land is proposed to be used for other purposes also. It goes on further to state that in fact the planned development of the area in question is not possible unless the land in question is acquired, and the petitioners’ contention that since the High Court had directed the DDA to construct a road in **Vijay Kumar’s case (supra)**, the impugned notification was issued only for that purpose, is without merit.

19. Since the claims of either side in this petition would turn on the circumstances that led to the issuance of the impugned

notification, we have sent for the original records of respondent No. 2. From the record, we find that steps were initiated for impugned notifications, inter alia, by a letter of the Director, DDA on 7/8th April, 2005, whereby it was pointed out that whilst disposing of another writ petition bearing No. 11301/2004, titled 'Vijay Kumar Vs. DDA', along with three other similar writ petitions, on 28th April, 2004, the Delhi High Court had directed the DDA to construct the road as per the approved lay out plan in Sector 16, Rohini within nine months. The letter pointed out that after scrutinizing the matter, the DDA has found that, "the land on which the road has to be laid as per the directions of the Hon'ble Court has not been acquired at all". It further goes on to state that, "hence, it has been decided to acquire the above mentioned land in order to lay the road in terms of the directions of the Hon'ble High Court of Delhi." He, therefore, requested the Principal Secretary, Land and Building Department of the Delhi Government to acquire the said land so that the High Court's directions could be complied with within the stipulated time.

20. Thereafter, we find a note prepared by the Deputy Secretary (LA) on 16th January, 2006, which refers to the aforesaid proposal of the Director, Delhi Development Authority, dated 8th April, 2005, indicating that matters have been taken up with a view to implementing the aforesaid directions of the Delhi High Court. In fact, with a view to emphasizing the urgency, the Deputy Secretary has also drawn attention to the aforesaid court orders and said that;

"copy of court order is placed at 127/C wherein Court has directed the DDA that, the road as per the approved lay-out plan in Sector 16, Rohini, be laid

within nine months from the date of the order i.e. 24th August, 2004.”

It further goes on to state that,

“in view of the requirement of land by DDA for Rohini Residential Scheme (laying out road in Sector 16, Rohini), Hon’ble Lt. Governor may be requested to accord approval for issuance of notification under Section 4 of the Land Acquisition Act. Draft is placed opposite for approval please.”

21. We might also notice that it is in this background that the Deputy Secretary (LA), who initiated that note, has also chosen to frame the requirement in the following terms;

“.....for Rohini Residential Scheme (laying out road in Sector 16, Rohini)”.

The same officer has also prepared the draft notification where he has expressed this requirement as follows;

“Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at public purpose namely for Rohini Residential Scheme, (laying out road in Sector – 16, Rohini) under Planned Development of Delhi. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.”

22. The aforesaid letter of the Director, DDA, dated 7th/8th April, 2005 initiating the matter, and the consequent note prepared thereon by the Deputy Secretary (LA) on 16th January, 2006 along with a draft notification proposed by him, leaves no doubt that the entire matter has been initiated with the intention of complying with directions of the High Court issued to the DDA for providing the

required road in Sector 16, Rohini, and this is what he intended his proposed draft to mean.

23. On this, Additional Secretary (Land & Building) has also placed his own note which states as follows:

"The land is required by the DDA for providing a road in the colony as per development plan. There is a court order also in this regard. May please request the Hon'ble L.G. to approve the above proposal."

Clearly, the Additional Secretary (Land and Building) also understood the note alongwith the draft notification put up by the Deputy Secretary to mean that the DDA required the land to construct the road with a view to implementing the High Court's orders and endorsed the request to the Lt. Governor to approve the proposal. This was further endorsed by the Principal Secretary, Land and Building, who noted as follows;

"May kindly approve notification under Section 4 of Land Acquisition Act."

24. After this, the matter was put up to the Lt. Governor and the following endorsement was made on the file on 25th January, 2006;

"L.G. has seen and desired that the lay-out plan of the road may be placed on file before a decision is taken."

Consequently, a request in this behalf was made to the DDA.

25. It is at this stage that the proposal for acquisition of land with a view to implementing the orders of the High Court of Delhi by constructing the road in question began to take on a life of its own. In response to the communication from the office of respondent No. 3 to

the DDA requesting for lay-out plan of the road in question, as desired by the Lt. Governor, before any decision was taken, the Deputy Director (NL-1) replied on 14th February, 2006 stating, inter alia, that he was, "enclosing herewith a copy of lay-out plan of Sector 16, Rohini, as desired by you." What was sought was a lay-out plan of the road. What was sent was a lay-out plan of the entire Sector 16, Rohini. This time, the OSD to the Lt. Governor stated in his note that the Lt. Governor had seen, "the case as well as the area earmarked in the lay-out plan wherein the land to be acquired for construction of the road has been indicated in red". He further stated that the Lt. Governor was not satisfied because the lay-out plan in fact shows extra areas in addition to what is required for the road and, therefore, a query was raised whether any additional area, apart from what is required for the road, is sought to be acquired. Consequent upon this, it appears that another more detailed plan was forwarded on 4th April, 2006 by the Deputy Director (NL-1) of the DDA where he has states that certain pockets of land adjacent to the proposed road, "which are in mid of project, hence cannot be left from the purview of acquisition". Along with this letter, at page 28-C a site map is annexed titled, "part Shazra plan of village Sameypur showing the land duly acquired and to be acquired". Here, the area to be acquired for the road is delineated in blue colour whilst certain portions, which are delineated in red abutting the proposed road, are denoted as, "verbal demand by Eng. Wing yet to be acquisition".

26. It is quite clear that at this stage, what is being sought to be included by the Deputy Director (NL-1) is this area in red, whose

acquisition is apparently sought because of some, "verbal demand", of the engineering wing of the DDA. We are not aware of any such procedure whereby, a "verbal demand", of some constituents of the DDA can be put up to the Lt. Governor without following the established channels for deciding to acquire any land. In this context, we might also notice that in the aforesaid accompanying letter of 4th April, 2006, the requirement for this land has been stated to be the fact that this land is, "in the mid of project and hence cannot be left from the purview of acquisition". What seems to be getting increasingly obfuscated, whether intentionally or otherwise, is the fact that the purpose of the notification was urgent implementation of a direction of the High Court to construct the road, and it was with this in view that the proposal was initiated by the DDA.

27. Even thereafter, the Commissioner (NL) has written to the Principal Secretary, Land and Building Department on 6th October, 2006 that, "the land is required for construction of the road which is held-up due to non-availability of land". Significantly, the Commissioner's letter further states in bold-type face as follows:

"In this regard, it is bring to your kind notice that contempt petition was listed for 6-09-06 before the Hon'ble High Court and Hon'ble Court has taken a very serious view why the land has not been acquired so far."

This letter reiterates that what the DDA required was sufficient land so that the left out portion of the road is completed in terms of the decision of the High Court in **Vijay Kumar's case (supra)**. This communication came to be issued because of a contempt petition

having been filed by the petitioners in aforesaid Writ Petition (C) No. 11301 of 2004 in which the directions had been given to the DDA to provide the road in question.

28. As a matter of fact, even after all these communications to the Lt. Governor, what has been approved is the original proposal moved by the Deputy Secretary (Land Acquisition) in his aforesaid note on 16th January, 2006 as well as the draft notification proposed by him in this behalf. That notification, including the words in parenthesis, are very clear. Parenthesis means, "a word, clause or sentence inserted as an explanation or afterthought into a passage which is grammatically complete without it" and "usually a pair of round brackets is used for this". (see **The Concise Oxford Dictionary of Current English, 9th Edition**). In this case, undoubtedly, what has been inserted in the impugned notifications in parenthesis is an explanation specifying the exact purpose for which the land is required. It states clearly the land is required for construction of the road in Sector 16, Rohini. This also completely in accord with the tone and tenor of the case initiated by the DDA requesting acquisition of land to implement the aforesaid decision of the Delhi High Court directing the DDA to construct the road in question, as well as with the aforesaid note of 16th January, 2006 and its subsequent endorsement by the Additional Secretary (Land & Building) as well as the Principal Secretary (Land & Building).

29. We have been constrained to go into and examine the records because counsel for the respondents have sought to urge before us that in fact the impugned notifications do not mean what

they actually seem to be saying ex facie, and that they mean something else altogether. We are unable to agree with the contentions of the counsel for the respondents. As brought out by the notings on the file, which we have extracted above, the intention was clear. It was to acquire land for the road. The draft notification, as well as the notifications actually issued under Sections 4 and 6 of the Land Acquisition Act, also make it very clear that the land is required for construction of the said road. Looked at in any way, it cannot be said that the words placed in parenthesis in the notification are redundant or meaningless.

30. What has happened is that certain elements within the DDA, for reasons best known to them, on realizing that a process of notification for acquisition of land for construction of a road is under way, albeit to implement a decision of the court in this behalf, decided to ride piggy back on this ongoing proposal with a view to securing some further land. It is quite possible that these officials were tempted to do this since they were aware that this very land had been released from acquisition earlier when the original notifications for securing lands for the Rohini Residential Scheme were published in 1984, and that some efforts to again rake up the issue of acquiring the same land in the year 1994-95, had also come to nought. They probably felt that faced with such a situation, they would not be able to justify the case for re-notifying the same lands afresh; therefore, they decided to move to acquire this land under cover of implementation of court orders.

31. It appears indeed strange to us that after first withdrawing this land from acquisition after going into the question and conducting the requisite surveys etc. at site, the Deputy Director (NL-1) should try to include this extra land on the basis of some, "verbal demand" by the engineering wing by further endorsing that these are small pockets which are, "in mid of project, hence cannot be left from the purview of acquisition". Looking to the circumstances under which the impugned notifications came about, the only interpretation to be placed on the expression, "in mid of project", employed by the Deputy Director (NL-1) has to be a reference to the road project and not the Rohini project as a whole. If it is taken to mean the Rohini project as a whole, then, what it means is that the Deputy Director (NL-1) is in fact over turning the earlier decision of the respondents to withdraw these lands from acquisition. We do not see how a Deputy Director of the DDA, working in the New Lease Branch, is empowered to do any such thing. For that reason also, this attempt to have these extra pockets included in an acquisition initiated and approved up to the level of the Additional Secretary (Land & Building) and the Principal secretary (Land & Building) for the road project with a view to implementing the orders of the court, cannot be countenanced. Significantly, even later, on 6th October, 2006, his superior i.e. the Commissioner (NL) was still seeking urgent action on the original proposal from the Principal Secretary, Land and Building Department, as aforesaid, on the ground that land was required for construction of the road and that the Delhi High Court is taking the serious view of the fact that its orders for construction of the road are not being implemented.

32. Similarly, the reliance of the Deputy Director (NL-1) on a so called "verbal demand", by the engineering wing, as constituting a sufficient basis for the DDA, as an Institution, to put up that demand to the Lt. Governor, is inexplicable. As far as we can tell, normally, every statutory body, or department of the Government, functions with a sense of responsibility within well defined parameters. Decisions of great moment, effecting the lives and properties of citizens, are always taken with due care and caution, and after going into the matter in depth by conducting the necessary studies, surveys, etc. This is done on a consultative basis amongst the officers and departments concerned. All this is always duly reflected on the files and records. This is also required under the rules. In this case, whilst on the one hand, after following all the requisite procedures, it was decided to de-notify the property and withdraw it from acquisition; on the other hand, later on a bare, "verbal demand", attributed generally to the, "engineering wing", has been considered sufficient to over-turn everything, and that too by an officer of the rank of Deputy Director (NL) of the DDA acting on his own. Our attention was not drawn to anything to the contrary in the records. Such an action is clearly colourable and cannot be countenanced. To say the least, such actions cannot be supported in law. To our minds, the respondents have acted in a wholly mala fide and colourable manner. While it was always open to the respondents to acquire any land under Land Acquisition Act, 1894 after due application of mind and in terms of the procedure prescribed for the same, it cannot be done in this manner.

33. Even the affidavit of Shri B.S.Jaglan, OSD (RL), DDA filed in this Court on 7th May, 2007 leaves much to be desired. It is at complete variance with the earlier affidavit of Mr. M.R.M.Rao, Director (LM), DDA that was filed on 24th November, 2006. It makes no attempt to either refer to the DDA's own records, which have now been examined by us, to demonstrate the scope and purpose of the impugned notification nor does it even attempt to deal with the specific purpose for which the lands were being acquired as disclosed on the face of the notification. By taking the stand that the planned development of the area in question is not possible unless the entire land is acquired and developed in accordance with the layout plan that has been prepared, it conveniently overlooks the fact that after this very layout plan had already been prepared, and the 1984 notifications seeking to acquire the land in question were also duly issued, the respondents thereafter decided to withdraw this land from acquisition after conducting the requisite surveys etc. It goes without saying that the decision of the respondents to withdraw this land from acquisition at that time could only mean that it was not considered absolutely necessary to acquire the said land. The only thing that emerges from this affidavit is merely a ratification of the allegation that the DDA in fact intends to use the land not merely for the road, but for other purposes also. The claim of the petitioners that this is being attempted in an illegal manner is not even attempted to be displaced. After having examined the records ourselves, we feel that no reliance can be placed on this affidavit.

34. Under the circumstances, and looking to the specific language employed in the impugned notifications, as well as the factual circumstances surrounding the notification available on the record, we can only conclude that the requirement for the land cannot be said to have been expressed as one for the Rohini Residential Scheme generally but for a specific purpose within that Scheme. We, therefore, do not agree with Mr. Poddar that the acquisition was intended for the Rohini Residential Scheme generally, or that **Aflatoon's case (supra)** applies to the facts and circumstances of this case. Rohini Residential Scheme is a vast enterprise. It is a whole township and large-scale acquisitions were carried out to implement it a quarter of a century ago. The impugned notifications, however, are only to provide a road in one portion of that Scheme. We might add that our examination of the record does not reveal any bona fide change of purpose in the midst of acquisition of the type countenanced by the Supreme Court in **Ravi Khullar's case (supra)**.

35. In view of the facts and circumstances of this case, we do not think it is necessary to go any further into any of the authorities referred to by the respondents for the reason that, not only does each case turn on its own facts, but at the same time, it is also settled law that actions that are colourable and vitiated by mala fides can never be countenanced by the courts, and none of the authorities cited by the respondents at the bar state otherwise. As we have already stated, we do not agree with the counsel for the respondents that the notifications are general notifications as is sought to be contended before us. Furthermore, for the reasons stated above, the actions of

the respondents in seeking to acquire the lands of the petitioners in excess of what was actually required for the construction of the road in Sector 16, Rohini, with a view to implementing the judgment of this Court in the case of **Vijay Kumar Vs. DDA, Writ Petition No. 11301/2004** decided on 28th April, 2004, is illegal and cannot be sustained. For that reason, and to that extent, the same deserves to be quashed.

36. Under the circumstances, the writ petitions are disposed of with the following reliefs to the petitioners:

- (a) The land to be acquired under the impugned notification shall be confined to that portion which is required for construction of the road in Sector 16, Rohini, alone. This shall be restricted to the area shown in blue in the Annexure to the letter dated 4th April, 2006 sent by Mr. Pritam Singh, Deputy Director (NL-1), DDA to the Deputy Secretary (LA), Land & Building Department, Vikas Bhawan, New Delhi. With regard to the remaining portions of the land, the said notifications are quashed.
- (b) The petitioners shall be entitled to costs of Rs. 11,000/-.

SUDERSHAN KUMAR MISRA, J.

May 29, 2009
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SANJAY KISHAN KAUL, J.