

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

% Date of decision: 18.01.2011

+ WP (C) No.189/2011 and CM No.344/2011

YASHBIR SINGH

...PETITIONER

Through: Mr.Sudhir Nandrajog, Sr. Advocate with
Mr. Parvinder Chauhan, Advocate

Versus

LT. GOVERNOR OF DELHI & ORS.

...RESPONDENTS

Through: Mr. Sanjay Poddar, Advocate with
Mr. Vivek Mohanty, Adv. for R. 1,2 &3
Ms. Shobhana Takiar, Adv. for R.4/DDA
Ms. Sweety Manchanda, Adv. for R.5
Mr. Sumeet Pushkarna, Adv. for R.6.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The land of the petitioner is sought to be acquired under the provisions of the Land Acquisition Act, 1894(hereinafter referred to as 'the Act'). The petitioner wanted to set up a retail outlet

dealership of M/s Hindustan Petroleum Corporation Ltd. (hereinafter referred to as 'HPCL') on his land and applied for the said purpose to the HPCL. The LOI was issued on 17.08.2004 to the petitioner and an enquiry was made about the status of the land of the petitioner by the HPCL. On 26.10.2004, it was informed by the LAC that the land was free from notification under Sections 4 & 6 of the said Act. Pursuant to this, the petitioner was required to deposit the land conversion charges, which was deposited on 01.12.2004.

2. Unfortunately, for the petitioner prior to the deposit of the said amount and certain other communications, on 04.11.2004 a notification under Section 4 of the said Act was issued seeking to acquire the land of the petitioner and certain other persons located in Village Bamnoli for the planned development of Dwarka Phase-II.

3. The petitioner filed objections under Section 5A of the said Act on 24.12.2004. The same were dismissed and the declaration under Section 6 of the said Act was issued on 10.11.2005.

4. The petitioner filed Writ Petition(C) No.17582/2006 seeking to impugn both the notifications under Section 4 and the declaration under Section 6 of the said Act. The petitioner enjoyed the interim relief for a period of more than four years when the writ petition finally came up for hearing on 28.01.2010. The order records that the "learned counsel for the petitioner after arguing at length states on instructions that the petitioner does not want to press the petition but would seek release of land

under Section 48 of the said Act” for which already two applications had been filed. The Division Bench permitted the petitioner to file the comprehensive application within a week for the competent authority to take a decision in respect of the same.

5. The present petition is now filed by the petitioner aggrieved by the communication dated 20.12.2010 informing the petitioner that the case of the petitioner for de-notification was placed before the De-notification Committee in its meeting held on 20.05.2010 and the Committee did not recommend the case for de-notification and the matter may be treated as rejected and closed.

6. We have heard learned counsel for the parties and perused the record. The record specifically shows that the land in question has been allocated by the DDA for the benefit of Pragati Power Corporation Ltd. to set up a new power project with 750MW generating capacity. The total land, earmarked for the same, is 16.68 hectares out of which possession has been taken of 14.5 hectares. The remaining 2.18 hectares spread over four pockets is under litigations. Two of the writ petitions in respect of 2.15 acres of land was dismissed by the Division Bench of this Court in May, 2008 while the land situated in remaining two pockets including the land of the petitioner was pending possession because of the application filed under Section 48 of the said Act. The Secretary(Power), who is the CMD, Delhi Transco Ltd., also addressed a communication seeking early possession of the land

so that the process of establishment of a power generation plant could be initiated early.

7. The meeting of the De-notification Committee was held when a number of cases were examined, including that of the petitioner. The reason for non-recommendation of the case of the petitioner is stated to be the stand of the DDA that the land was required for Dwarka Phase-II project.

8. The substratum of the grievance, as urged by learned Sr. counsel for the petitioner before us, is that the land of the petitioner is really not required for the project as there would have been no occasion to issue the NOC for establishment of the petrol pump if the land was to be acquired shortly thereafter.

9. We are unable to accept the aforesaid pleas. No doubt, the process of acquisition of land under Section 4 of the said Act would have started earlier and the concerned authorities should have had intimation about the matter being under consideration. However, the fact remains that as on the date when the certificate was issued, the notification under Section 4 of the said Act had not been published. The amount deposited by the petitioner with the DDA is also after the issuance of the notification under Section 4 of the said Act and, thus, the petitioner knew, by that time, that the land in question was sought to be acquired. If we see the purpose for which the land is sought to be acquired, there can be no doubt about the same being for public purpose.

10. Learned counsel for the LAC has drawn our attention to the Division Bench judgment of this Court in **Raheja Hospital & Psychiatric Research Institute Through its Director Dr. H.C. Raheja v. Lt. Governor of Delhi, 2005 (121) DLT 193**. In the said case, the guidelines stated to be in existence for release of land were sought to be enforced through a writ petition. It was held that the guidelines were non-statutory in character. The scope of Section 48 of the said Act has also been discussed. The material aspect emphasized is that there cannot be two rounds of litigation arising from the same aspect, i.e., what could not be achieved by resorting to challenge the acquisition acquire under Sections 4 and 6 of the said Act cannot be achieved by resort to Section 48 of the said Act. The provisions of Section 48 of the said Act are enabling provisions for the Government to release the land in an appropriate case and the exercise of power is unilateral in character. Therefore, it has been observed that nothing said in sub-section (1) of Section 48 of the said Act can be read to mean that appropriate Government can be compelled to withdraw from the acquisition. The Division Bench went on to observe that a representation made by a land owner under Section 48 of the said Act really cannot say anything more or different from what has been indicated under Section 5A of the said Act and that is the reason why there cannot be repetitive or unlimited opportunities to the land owner to challenge the acquisition process. In fact, the Bench went as far as to

observe that a land owner has no enforceable right to make a representation under Section 48 of the said Act nor are the respondents obliged to consider such a representation even if a landowner has made it, more particularly when the acquisition is upheld by a court of law as in that case and only if the guidelines result in any discriminatory treatment against a landowner would a cause of action arise.

11. In the present case the possession of the petitioner was protected when the petitioner was permitted to withdraw the petition and make a representation to the competent authority under Section 48 of the said Act. This direction has been honoured. All the relevant material has been placed before the De-notification Committee. The De-notification Committee has found that in view of the requirement of the land, the same cannot be released. The recommendations of the De-notification Committee were, thereafter, placed before the Lt. Governor who approved the same. We cannot fault this decision. We may add, at this stage, that the very objections which have been raised under Section 48 of the said Act, as observed above, were also raised by filing objection under Section 5A of the said Act.

12. We, accordingly, dismiss the writ petition, leaving the parties to bear their own costs.

CM No.344/2011

No further directions are called for on this application.

The application stands disposed of.

SANJAY KISHAN KAUL, J.

JANUARY 18, 2011
RS

RAJIV SHAKDHER, J.