

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 08.03.2011
% Date of decision : 08.04.2011

+ WP (C) No.3237/2007

GAIN CHAND SHARMA PETITIONER

Through : Mr.Ramesh Chandra, Sr. Advocate
with Mr.V.K. Singh, Advocate

- V E R S U S -

UNION OF INDIA & ANR. ... RESPONDENTS

Through : Mr. Rajan Sabharwal & Ms. Seema
Bhadauriya, Advocates for Respondent
No.1/UOI.

Ms. Deepika, Advocate for Respondent
No.2(a)/L&B Department, Government
of NCT of Delhi.

Mr. Sanjay Poddar and Mr. Ramesh
Ray, Advocates for Respondent
No.2(b)/LAC.

Mr.Ajay Verma, Advocate
for Respondent No.3/DDA.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE RAJIV SHAKDHER

Whether the Reporters of local papers
may be allowed to see the judgment? No

To be referred to Reporter or not? No

Whether the judgment should be
reported in the Digest? No

SANJAY KISHAN KAUL, J.

1. The petitioner claims to be the owner and in possession of land measuring 1 bigha in Khasra No.10/24 min situated in the revenue estate of Vilalge Singhu, Delhi. The land is stated to have been constructed and built up in the year 1950 and a veterinary hospital was set up in the year 1954. However, a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 ('the said Act' for short) on 23.02.2006 giving opportunity to the affected parties to file their objections under Section 5A of the said Act. The petitioner states that he filed objections to the said acquisition on 13.03.2006, but no opportunity of hearing was ever given to the petitioner. A declaration was, however, made on 22.02.2007 under Section 6 of the said Act.
2. In the aforesaid facts and circumstances of the case, the petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking quashing of the notification dated 23.02.2006 and the declaration dated 22.02.2007. The challenge laid by the petitioner is really on two grounds. The first ground is that since the land was fully built up since 1950, as per a policy of the Government, such built up area is not required. Secondly, the petitioner

has been denied the opportunity of personal hearing in respect of the objections filed under Section 5A of the said Act.

3. The writ petition was amended on account of issuance of notice under Section 9 of the said Act. The petitioner averred that despite this fact, he had filed objections on 09.01.2008 to the said notice and came to know at that stage that the award had been made and published on 20.06.2008. These facts were incorporated by amending the petition and making the additional prayer to set aside the award dated 20.06.2008.
4. The counter affidavit filed on behalf of the LAC states that in all 28 objections were received in respect of the acquisition proceedings of the Singhu Village and these objectors were given a hearing. A survey of the area was conducted and it was found that there existed 33 shops and one godown on the land sought to be acquired. The comments of the DDA were also obtained which opined that the land measuring 2 bighas in village Singhu cannot be released/excluded from the acquisition as the same was required for a 60-metre road for Singhu border, Narela and the Zonal Plan Zone – Zone M (part) and Zone P (part). The aspect of built up properties on the structure was also considered, but in view of the note of the DDA, the

same was rejected. Insofar as the notice issued under Sections 9 and 10 of the said Act is concerned, the counter affidavit states that the petitioner had preferred its objections/claims and thereafter the award was pronounced after due consideration of the same on 20.06.2008. It is specifically denied that the award suffers from any vagueness about the description of the property to be acquired. The plea of there being a policy of the Government for not taking over the built up area has been denied and the right to acquire such built up area is stated to have been upheld from time to time including in the judgments – Shri Bhagwan and Anr. v. Union of India & Ors.; 1991(2) Delhi Lawyer 59 and Roshanara Begum v. Union of India & Ors.; AIR 1996 Delhi 206.

5. The land in question was being acquired for the benefit of the DDA and thus at the oral request of learned counsel for the petitioner, the DDA was impleaded as R-3 in terms of the order dated 12.09.2008. On the same date, plea of learned senior counsel for the petitioner was noticed that according to the Zonal Development Plan, the right of way on the road in question had been reduced from 60 metres to 30 metres and thus the petitioner claimed that much of the area which was being acquired would not be required for purposes of widening of the road. The

DDA filed an affidavit affirmed on 30.05.2009, but the same failed to answer the question which had been raised i.e. width of the road and the requirement of the remaining land specifying the purpose. The fate of the Zonal Development Plan stated to be sent to the Ministry of Urban Development on 01.06.2009 for approval was still being awaited.

6. On 09.03.2010, we were informed by the counsel for UOI that the Zonal Development Plan had been approved on 08.03.2010 and thus the counsel for the DDA wanted some time to scrutinize the approved Zonal Development Plan. On 06.04.2010, learned counsel for the DDA produced in the Court the Zonal Development Plan as also the Exact Alignment Plan to scale to contend that the land of the petitioner fell within the curvature road going from 30-metre wide road to the G.T.Karnal Road. The result was that the plea that the DDA may not require the land did not survive. We may further note that the plea raised on behalf of the petitioner that the constructed area cannot be acquired would run contrary to the settled principles of law as laid down in Shri Bhagwan and Anr. v. Union of India & Ors.'s case (supra) and Roshanara Begum v. Union of India & Ors.'s case (supra). However, the second plea survived in respect of failure of LAC to give personal hearing to the

petitioner after the petitioner having filed objections under Section 5A of the said Act as no notice of hearing was issued to the petitioner, as alleged. On 30.04.2010, the counsel for LAC submitted that on verification of the record, it had been found the petitioner was not heard in respect of the objections filed by him under Section 5A of the said Act, but 28 other persons were heard who were claiming interest in the entire land comprising of 33 shops and one godown. It was thus pleaded that the petitioner had sold his interest in the land in question through various documents being agreement to sell, GPA, etc. We thus called upon the petitioner to file an affidavit setting out as to whether he had executed any such documents in respect of the suit property and if so the extent thereof. The tenancy rights, if any, created were also directed to be disclosed and all supporting documents were also required to be filed.

7. The petitioner filed an affidavit affirmed on 16.07.2010. The petitioner has stated in the affidavit that there were 60 shops and 14 godowns and that the petitioner is doing business under the name and style Shree Shyam Sweets and Fast Food and of property dealing under the name and style Parth Properties. A site plan was annexed where the shops which had been transferred through Power of Attorney

documentation were shown in red while the shops in yellow were stated not to be falling in the part of land of 1 bigha of the petitioner. The veterinary hospital was stated to fall in the part of the land of the petitioner. The petitioner also claims to be doing the other business of running PCO from the said shops. The response to the notice under Sections 9 and 10 of the said Act was stated to have been filed by the petitioner on the basis of a copy made available to him by one Sh.Ravinder Nath who was the recorded owner of 1 bigha of acquired land since the total of 2 bighas of land was being acquired.

8. In response to the aforesaid affidavit, the LAC has filed an affidavit affirmed on 29.01.2011. The allegation is that the petitioner is guilty of suppressing material facts as in the writ petition he claimed to be the owner and in possession of the land measuring 1 bigha falling in Khasra No.10/24 min on which he was running a veterinary hospital. The story of shops and godowns on the land in question came to light much later and it is only when the petitioner was asked to file details of transactions, it came to light that he had sold certain shops on a Power of Attorney basis. There has been no disclosure about the persons to whom these shops have been sold. The total area of 2 bighas of Khasra no.10/24 min which was notified is stated to

stand recorded in the name of three persons – 1) Gian Chand, petitioner herein (10 biswas), 2) Ravinder Nath (10 biswas) and 3) BDO, District North West, BDO Office Complex, Alipur, Delhi (one bigha). Thus, one bigha of land does not stand recorded in the name of the petitioner, but only 10 biswas. Not only that, as per Khatoni of the year 2003-2004 of the revenue estate of village Singhu as per the order of the SDM dated 07.12.2004, the land in Khasra no.10/24 min (0-10) biswas stands vested in the Gram Sabha under Section 81 of the Delhi Land Reforms Act, 1954. Illegal structures are stated to have been raised by the petitioner without any sanction from the competent authority.

9. Learned counsel for the LAC also seeks to rely upon the judgment of the Supreme Court in Tej Kaur & Ors. v. State of Punjab and Ors.; (2003) 4 SCC 485 where a ground was raised that no inquiry as contemplated under Section 5A of the said Act was completed as the appellants therein had not been given a personal hearing regarding the objections filed by them. The Supreme Court while emphasizing the importance of the reasonable opportunity of being heard to be afforded to the objectors under Section 5A of the said Act and the prejudice caused by the denial thereof, took into consideration the fact that the objections

raised were, in fact, examined though no personal hearing had been granted and thus held in favour of the authorities.

10. What emerges on reading of affidavits and pleadings filed by the parties is as follows:

(i) That a notification under Section 4 of the Land Acquisition Act was issued on 23.02.2006.

(ii) The objections under Section 5A were invited. The LAC submitted report after hearing the objections to the competent authority.

(iii) A declaration under Section 6 of the Act was made on 22.02.2007. In pursuance to the notification under Section 4 and 6 of the Act, claims have been filed by interested person including the petitioner.

(iv) The award was passed by the LAC on 20.06.2008.

11. In the affidavit dated 16.07.2009 filed by the petitioner pursuant to this court's order dated 30.04.2010 whereat it had emerged that the petitioner had perhaps sold his interest in the land in view of construction of 33 shops and one godown. The petitioner claims in paragraph 6 that he had filed his objections to the award as soon as he came to know from one Ravinder Nath s/o Lekh Ram, who is the owner of the other piece of land admeasuring evidently one bigha out of the two bighas acquired, that an award had been passed qua the land as well.

The petitioner submitted in the affidavit of 16.07.2009 that there are 60 shops and 14 godowns on his land and that he has been carrying on business under the name and style of Shree Shyam Sweets and fast food as also the business of dealing in properties under the name and style of Parth Properties. The petitioner in effect claims ownership of one bigha of land.

12. On the other hand, LAC records that the revenue records (khatoni) shows that the petitioner is the recorded owner of only 10 biswas. It is quite evident that the petitioner had been less than candid in disclosing facts pertaining to the state of construction on the land in issue. As correctly argued and pointed out by the respondents in their affidavit the petitioner has sought to portray that on his land, which, according to him measured one bigha, there stood a veterinary hospital. The fact pertaining to shops emerged only on it being pointed out by the LAC in the hearing on 30.04.2010. The respondents' position is thus that they heard the persons who are the owners of the shops. The petitioner appears not to have been issued a notice of the intended acquisition prior to publication of notification under Section 6 of the Act.

13. Given the facts which obtains in the present case, it cannot be said that the petitioner was unaware of the acquisition proceedings as the other

28 persons not only were issued notice, but were also heard prior to issuance of notification under Section 6 of the Act. Even though the petitioner has filed his claim, he somehow seeks to plead ignorance even of notices under Section 9 & 10 of the Act. The fact remains that the petitioner did not approach this court till 02.05.2007 even though the notification under Section 6 was issued on 22.02.2007. On the other hand the LAC, while considering the objections of 28 persons, has dealt with various issues raised by the objectors and submitted a report in that regard. Alacrity in these matters is of prime importance. The main plank to impugn the acquisition in the present petition seems to have been that the Government cannot acquire built up properties. Having failed in respect of that submission the other issue of lack of personal hearing under Section 5A of the Act was raised. Given the fact that the petitioner did not come to the court at the earliest, and also the fact that he has kept back details as to what was the extent of construction on the land in issue and what exactly is the extent of his interest in the land, if any, we are of the view that in these peculiar circumstances, no interference is called for on the ground that no personal hearing was accorded to him under Section 5A of the Act.

14. On perusal of the record, we find that the LAC has taken note of the objections in respect of two bighas of land and summarized them as under:

i) the land contains a full-fledged market from the last around 30 years.

ii) the land is available around the market which may be used rather than uprooting the existing market; and

iii) the shops existing are the only source of income and the objectors will be affected.

15. These objections have been duly taken care of even before the competent authorities. It was thus verified that the DDA still needs the land for development purposes for a 60-metre road. The public purpose behind construction of such a road can hardly be doubted.

16. Once in substance the plea of the petitioner on merits is that the land in question needs to be de-notified or that there is some policy dis-entitling acquisition of developed land, all of which are not sustainable, there is nothing which can be said on merits even in a personal hearing. The personal hearing would only expand on the objections already filed which objections have been duly taken note of. Thus, though in a normal course there is a valuable right given under Section 5A of the said Act, in the present case, taking into consideration the objections

already filed and the merits of the same having been examined by the LAC, a personal hearing could not have added to the same in the peculiar circumstances noted above.

17. We may also note that even non-service of notice under Sections 9, 10 and 12 of the said Act have been held not to vitiate the proceedings in view of the observations in Roshanara Begum v. Union of India & Ors.'s case.

18. There is also strength in the submission of learned counsel for the respondents that the petitioner did not come to the court with clean hands. The petitioner did disclose about the existence of some structure claiming to be in existence from 1950 onwards, but did not disclose that he had already sold part of the area on a Power of Attorney basis. The area is not large being 1000 square yards which is stated to have a number of shops and godowns and the petitioner through the mode of Power of Attorney has transferred them to third parties without even making a disclosure about the same in the original writ petition. It is only on the objection of LAC that the petitioner was asked to file an affidavit in this behalf when this fact came to light and there also the petitioner failed to disclose as to whom and when such shops and godowns were transferred. This is another

substantive ground on which the petitioner under Articles 226 of the Constitution of India is liable to be non-suited.

19. We thus find that for the all the aforesaid reasons, the writ petition is not liable to be entertained and the same is thus dismissed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

APRIL 08, 2011
dm

RAJIV SHAKDHER, J.