

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

Judgment reserved on: 09.08.2012

% **Judgment delivered on: 05.12.2012**

+ **W.P.(C) 3725/2011**

MRS. MITHLESH SHARMA & ORS Petitioners
Through: Mr. Sumit Bansal, Mr. Ateev Mathur
& Ms. Sumi Anand, Advocates.
versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Yeeshu Jain, Advocate for the
respondents No. 2 & 3.
Mr. Sanjay Poddar, Senior Advocate
along with Mr. Ajay Arora,
Mr. Govind Kumar & Ms. Navlin
Swain, Advocates for the respondent
No.4/MCD.

+ **W.P.(C) 3726/2011**

SHRI RAMESHWAR GOPAL & ORS Petitioners
Through: Mr. Ravinder Sethi, Senior Advocate
along with Mr. Rajiv Kumar
Ghawana, Advocate.
versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Yeeshu Jain, Advocate for the
respondent No. 2.
Mr. Sanjay Poddar, Senior Advocate
along with Mr. Ajay Arora,
Mr. Govind Kumar & Ms. Navlin
Swain, Advocates for the respondent
No.3/MCD.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. These writ petitions have been preferred under Article 226 of the Constitution of India to seek the quashing of the notification dated 27.04.2010 issued under Section 4 of the Land Acquisition Act, 1894 (the Act) and the consequent declaration issued under Section 6 of the Act dated 21.03.2011 in respect of the land comprised in Khasra No.835 min, 836 min, 837 min, 838 min, 839 min and 840 min, admeasuring 6800 sq. yds situated in the revenue estate of Village Tihar, Tehsil Rajouri Garden, G- Block, Hari Nagar Extension, Delhi (referred to as the said land). Since the issues arising in these petitions, and the reliefs sought are the same, we have heard common arguments and proceed to dispose them of with this common judgment.

2. W.P.(C.) No.3726/2011 has been preferred by five petitioners, i.e., Sh. Rameshwar Gopal, Sh. Ashish Dewan, Smt. Vandana Srivastava, Ms. Ruby Dewan and Ms. Swati Gopal, who claim to be the legal heirs of late Sh. Bans Gopal, the original recorded owner of the said land, who is stated to have died in 1979. Petitioner no.1 Sh. Rameshwar Gopal is the son of late Sh. Bans Gopal, whereas petitioner nos.2 to 4 and respondent nos.4 and 5 are legal heirs of late Rajeshwar Gopal, deceased son of late Sh. Bans

Gopal. Petitioner no.5 is the daughter of late Sh. Shiveshwar Gopal, who is also a deceased son of late Sh. Bans Gopal. Respondent no.1 is the Union of India, respondent no.2 is the GNCT of Delhi and respondent no.3 is the MCD.

3. W.P.(C.) No.3725/2011 has been preferred by various persons claiming to be owner of the shops in the structure constructed on land forming part of Khasra 837 min, 838 min and 839 min having an approximate area of 621.11 sq. mtrs. from out of the said land.

4. We may note the common case made out by the petitioners in these two petitions. The petitioners state that late Sh. Bans Gopal was the exclusive owner of a large tract of land in village Tihar. On a part of his holding, he developed a colony known as Hari Nagar G-Block. The building plans submitted by various plot holders were sanctioned on the basis of the lay out plan of the colony submitted by late Sh. Bans Gopal. The said land, which is the subject matter of the writ petitions is a part of the said colony and was earmarked in the lay out plan by the Delhi Improvement Trust in 1951 for establishing a cinema hall.

5. The petitioners state that out of the said land admeasuring 6800 sq. yds, in about 800 sq. yds of land, 26 shops were constructed, out of which 16 shops are owned by the petitioners in W.P.(C.) No.3726/2011, whereas the remaining were sold to third parties. The petitioners state that plans for raising construction of cinema hall and shops were submitted to the MCD, which assumed jurisdiction upon its formation in 1957. These plans were neither rejected, nor any objection was communicated to the same.

Consequently, according to the petitioners, there was deemed sanction of the building plans. Late Sh. Bans Gopal started raising construction. He constructed the basement of the building and 26 shops. The compound wall was also constructed. The shops were let out to tenants - some of which were subsequently sold. The said shops are being subjected to property tax by the MCD. When the construction of the cinema building above the plinth level was being raised, the officers of the MCD and DDA started interfering with the construction and threatened its demolition. Consequently, late Sh. Bans Gopal filed Suit No.255/63/260/80, which was subsequently withdrawn. Thereafter, in 1968 he filed Suit No.698/68 against the respondent MCD and the DDA to seek a permanent injunction restraining them from interfering in his right to complete construction of the cinema building.

6. The said suit as well as the first appeal of late Sh. Bans Gopal were dismissed on the premise that although sanction was deemed to have been granted, the actual construction had not commenced within the period of one year. The petitioners submit that while the aforesaid suit proceedings were pending, in the year 1979 the Government came out with the policy for regularization of unauthorized colonies and formulated plans for regularization of unauthorized colonies. The plans for Hari Nagar group of colonies including Hari Nagar G-Block were also considered and vide resolution dated 02.04.1979, the DDA approved the said lay out plan for Hari Nagar G-Block colony. In the said lay out plan, the area in question was shown for commercial purpose as local shopping centre (LSC).

7. Against the said order passed in the first appeal, a second appeal being RSA No.84/80 was preferred. This second appeal of late Shri Bans Gopal (pursued by his legal heirs) was allowed by judgment dated 30.08.1982 (it is not clear whether the date is 30.08.1982 or 13.08.1982 as the date of the order as noted in the copy of the order dated 29.08.1992 passed in R.C.A. No.37/1983 by S.N. Dhingra, ADJ, as his Lordship then was, notes the date as 13.08.1982) and the matter was remanded back to the First Appellate Court for a fresh decision.

8. After the remand, the first appeal was heard and vide judgment dated 29.08.1992, it was allowed by Sh. S.N. Dhingra, ADJ, as his Lordship then was, and the suit was decreed. The finding of fact returned by the First Appellate Court read as follows:

“....Thus from the above witnesses and record and from other records as approved on record, it was proved by the appellant/plaintiff that the site in question was marked for cinema and it was not earmarked as Central Park. The issue should have been decided in favour of the plaintiff.....”

9. Against the judgment of the learned ADJ in first appeal, the MCD preferred a second appeal being RSA No.25/1993, which was dismissed by this Court on 23.03.1998. The MCD sought to place reliance on resolution no.292 dated 24.06.1960, stated to have been passed under Section 313 of the Delhi Municipal Corporation Act, 1957 (DMC Act), to claim that the land in question was meant for a park. The High Court held that the resolution passed by the standing committee of the MCD under Section 313

of the DMC Act had no force in law. It was held that by virtue of the said notification, the plot in question could not have been earmarked as a public park. It was further held that even as per the zonal development plan prepared by the DDA, the land in question was earmarked for a LSC and the same was prohibited from being used as a public park. The relevant observations from this judgment dated 23.03.1998 are extracted hereinbelow:

“There is no quarrel with the proposition urged by Mr. R.D. Jolly, counsel for the appellant that a resolution passed by the Standing Committee of MCD under Section 313 of the Act has a force of law. His contention that Resolution No.292 dated 24th June, 1960 had a force of law, but the moot question for consideration is whether this Resolution was passed in accordance with the provision of the Act? The answer is clearly in the negative.

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Admittedly, in this case no written application seeking sanction of lay out plan was submitted by the owner of the land i.e. the respondent. On the contrary the lay out plan had already been sanctioned by the then Committee, a competent authority. Therefore, in the absence of any written application which has been filed by the respondent to the Commissioner, MCD seeking sanction of lay out plan of the land the appellant could not have invoked the provisions of Section 313 of the Act. Even otherwise as Mr. Mukul Rohtagi, Senior Advocate appearing for the respondent pointed out that in view of subsequent Resolution No.48 dated 8th March, 1985 the Resolution No.292 lost its importance and relevance. Item No.21 of the Resolution No.48 indicates that the Standing Committee on re-examination of the whole matter came to the conclusion and said that “site in question does not vest with the MCD and, therefore, no comments can be offered. The case may be placed before the

Standing Committee for information". Accordingly it was resolved that since the land belonged to a private person hence public park could not be carved out from this plot. Thus it is apparent that even appellant admitted vide Resolution No.48 that since the land belonged to somebody else the MCD could not have resolved to ear-mark that land for a park. This apart, the fact on record is fully established that a Competent Authority had already sanctioned the lay out plan submitted by the respondent. Therefore, MCD had no authority under the Act nor under any bye-law to review the already sanctioned lay out plan suo-moto and impose conditions on the property of a private person. That apart even the zonal plan of the DDA prohibits this plot to be a public park. As per zonal plan the area has been shown to be a shopping centre. The First Appellate Court at length dealt this aspect though specifically not mentioned Resolution No.292 but in substance dealt with the same. It was after considering all aspect of the matter and also the stand of the appellant, the First Appellate Court came to the conclusion that land belonged to respondent and appellant had no right to interfere with the same. Moreover, lay out plan already stood sanctioned by the Competent Authority. For the above reasons, I find no merits in the contention of the appellant."

10. The Supreme Court dismissed the Special Leave Petition No.11569/1999 of the MCD against the judgment of the learned Single Judge of this Court on 05.11.2001 holding that since the property belongs to the petitioners, therefore, the MCD has no right to prevent the petitioners from using the same in accordance with law.

11. The petitioners submit that in the meantime, a general notification under Section 4 of the Act was issued on 13.11.1959 covering a large tract of land admeasuring 340.70 acres for the planned development of Delhi. The land in question also fell within the notified boundaries. The

declaration under Section 6 was issued on 06.11.1969. However, no award was made and no steps were taken in respect of the land belonging to Sh. Bans Gopal which included the land in question. The petitioners state that upon exertion of political pressure, notices under Section 9 and 10 of the Act were issued on 14.03.1986.

12. The land owners filed W.P.(C.) No.1298/1986 upon receipt of the said notices under Section 9 and 10 of the Act to challenge the acquisition proceedings. During the pendency of the said writ petition, the MCD sought to pass a fresh resolution being resolution no.231 on 18.05.1987 to retain the said land as a park instead of permitting its use for a LSC. The aforesaid writ petition was dismissed as withdrawn on 20.02.2009 when it transpired that the acquisition proceedings had lapsed. The Land Acquisition Collector filed an affidavit in that writ petition stating that the land in question is being notified afresh for acquisition.

13. The petitioners in both the writ petitions have alleged that there was an attempt to grab the land in question by persons belonging to a minority community to set up a religious place of worship. That attempt failed in litigation which was contested right upto the Supreme Court. The petitioners allege that thereafter, a municipal councilor and elected mayor of Delhi started using his influence by demanding that the land in question be converted into a park.

14. The petitioners submit that the impugned notification under Section 4 of the Act was issued on 27.04.2010 which was published in the newspaper on 30.04.2010.

15. The petitioners filed their objections to the said notification under Section 5A of the Act stating that the lay out plan of the colony has been duly approved by the erstwhile Delhi Improvement Trust showing the user of the land in question as commercial. The shops had been constructed prior to the year 1959. The layout plan of the colony has been duly approved by the DDA on 02.04.1979 and the land user had been shown as LSC. It was stated that the said land had not been shown in the legally sanctioned lay out plan as a park. It was further stated that in the layout plan, ten parks had been shown to be in existence in the vicinity. The said parks had been allowed to be encroached upon and now the land in question was sought to be acquired ostensibly for setting up a public park. The petitioners narrated the history of the earlier litigation undertaken by them and the findings returned by the Courts which had attained finality. Specific reliance was placed on the judgments of the First Appellate Court dated 29.08.1992 of Shri S.N. Dhingra, ADJ, and of this Court in R.S.A. No. 25/1993 dated 23.03.1998. They stated that the impugned notification under Section 4 was contrary to the lay out plan and was, therefore, liable to be withdrawn.

16. The petitioners further submit that they were heard through counsel by the AMD/Land Acquisition Collector, West Distt., Rampura, Delhi. The LAC was shown the lay out plan of the colony which showed the earmarked user of the said land as LSC. The LAC was also shown the judgment rendered in RSA No.25/1993 dated 23.03.1998. In spite of the same, and without consideration of the objections preferred by the petitioners, the impugned declaration under Section 6 of the Act was issued on 21.03.2011, leading to the filing of the present writ petitions.

17. We have heard the submissions of Mr. Sumeet Bansal, Advocate who appears for the petitioners in W.P(C) 3725/2011, Mr. Ravinder Sethi, Senior Advocate who appears for the petitioners in W.P(C) 3726/2011 and the learned counsels for the respondents, who appear in both these cases led by Mr. Sanjay Poddar, Senior Advocate.

18. The submission of learned counsels for the petitioners, firstly, is that the issuance of the notification dated 27.04.2010 under Section 4 of the Act itself is laconic and vitiated on account of the fact that the same proceeded on the fundamentally erroneous premise that the said land was earmarked for a park. This misstatement was made before the Competent Authority, namely, the Lt. Governor who granted approval for issuance of notification under Section 4 of the Act on the basis of the resolution passed by the MCD seeking to resolve to use the land in question as a park, even though this Court had in clear terms held in its decision rendered in RSA 25/1993 dated 23.03.1998, that the Resolution No.292 dated 24.06.1960, relied upon by the MCD had not been passed in accordance with the provisions of the DMC Act. It is argued that the Court had further held that the Standing Committee of the MCD had resolved vide Resolution No.48 dated 08.03.1985 that the land in question does not vest with the MCD and, therefore, the MCD could not have resolved to earmark the same for the purpose of setting up of a park. The Court had also held that the MCD had no authority under the DMC Act nor under any byelaw to review the already sanctioned lay out plan *suo moto* and impose conditions on the owners of the land. The zonal plan prepared by the DDA earmarked the said land for

setting up a LSC and, consequently, prohibits the user of the said land as public park.

19. It is further submitted that placing of wrong material before the Hon'ble Lieutenant Governor for his consideration whether, or not, to direct issuance of a notification under Section 4 of the Act vitiates the decision taken by the Hon'ble Lieutenant Governor as he was mislead into believing that the land in question was validly earmarked for the setting up of a Central Park. It is argued that the Hon'ble Lieutenant Governor was not apprised of the fact that a portion of the land in question already stands constructed as is evident from the photographs filed on record, particularly at page 91 of W.P.(C.) No. 3725/2011, which not only shows the construction already existing, but also the factum of its commercial user.

20. It is further submitted by the petitioners that their objections under Section 5A of the Act were perfunctorily dealt with, even though they had specifically placed reliance on the earlier decisions of the First Appellate Court; of this Court in second appeal, and; of the Hon'ble Supreme Court, as aforesaid. In this regard attention has been drawn to the report prepared by the Collector on 25.11.2010, which merely states that following the mandate of Section 5A of the Act, a hearing in person was given to all the interested persons who had filed the objections and that, in his opinion since the acquisition is being made on the request of a Government agency, i.e., the MCD for the purpose of a Central Park, it is recommended that notification under Section 6 of the Act may be issued and acquisition proceedings may be allowed to be continued. It is submitted that there is no consideration of

the specific objections raised by the petitioners, as aforesaid, before the ADM/LAC (West).

21. Our attention has also been drawn to the already sanctioned layout plan stated to have been approved by the Delhi Improvement Trust in the early 1950's, which showed the plot in question as a site for Cinema with shops.

22. The petitioners have also drawn our attention to documents marked A-3 filed along with the counter-affidavit of MCD in W.P.(C.) No. 3725/2011 at page 116 of the record, which appears to be Resolution No.182 of the Standing Committee of the MCD. It is argued that this Resolution also proceeds on a wrong premise – describing the status of the said land as a site earmarked for a park as per the approved regularization plan of Hari Nagar approved by the MCD vide Resolution No.292 dated 24.04.1960. It is submitted that the aforesaid is contrary to and in the teeth of the decision of this Court in R.S.A. No.25/1993. It is also pointed out that this Resolution ignores the fact, despite noticing the same, that the DDA changed the use of the site to LSC. The recommendation was made by the MCD to the Land & Building Department for acquisition of the said land on the premise that the said land had been denotified under the Delhi Development Act and was no longer a development area and had reverted back to the MCD. It was claimed that the MCD had passed a Resolution No. 231 dated 10.03.1987 in its Standing Committee, stating that the land use was originally earmarked for “Central Park” and that it was resolved to

retain the same as a park instead of a LSC and that the land be developed as a park.

23. It is argued by the petitioners that mere passing of the Resolution No.231 dated 10.03.1987 by the MCD was of no avail, since the MCD had no authority or competence to act contrary to the judgment rendered by this Court in R.S.A. No. 25/1993 which had been approved by the Supreme Court on 05.11.2001.

24. The petitioners have sought to place reliance on various decisions, including the decisions of the Supreme Court in *Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chennai & Others*, JT 2005 (8) SC 470; *Raghubir Singh Sehrawat Vs. State of Haryana & Others*, (2012) 1 SCC 792; and *Kamal Trading (P.) Ltd. Vs. State of West Bengal & Others*, (2012) 2 SCC 25.

25. The petitions have been opposed primarily by the MCD, arrayed as respondent No.4 in W.P.(C.) No. 3725/2011 and respondent No.3 in W.P.(C.) No. 3726/2011.

26. The first submission of Mr. Poddar is that the petitioners in W.P.(C.) No. 3725/2011 claim ownership of various shops, but they have not filed any document of ownership before this Court. He, therefore, seeks to question their *locus standi* to file the said writ petition. In this regard, reliance is placed on *Rajinder Kishan Gupta & Another Vs. Union of India & Others*, (2010) 9 SCC 46.

27. The further submission of Mr. Poddar is that the judgment of this Court in R.S.A. No.25/1993 does not pronounce on the validity of the resolutions passed by the MCD converting the earmarked user of the land in question as “Central Park”. He, therefore, submits that this judgment cannot operate as *res judicata* and would not bind the respondent-MCD from changing the user of the land in question to a public park. In support of his submission, he placed reliance on ***Sajjadanashin Sayed MD. B.E. (D) By LRS Vs. Musa Dadabhai Ummer & Others, (2000) 3 SCC 350***. He submits that, in any event, the Resolution No. 231 dated 10.03.1987 has never been assailed by the petitioners and this resolution has not been pronounced upon by the Court.

28. Mr. Poddar has also placed reliance on the judgment of the Division Bench of this Court in ***The Radha Soami Satsang Beas & Another Vs. The Delhi Administration & Another rendered in W.P.(C.) No.1282/1978 on 15.10.2004***, to submit that since the Resolution No. 231 dated 10.03.1987 is valid, it has force of law and cannot be brushed aside. The same has to be given its full legal effect.

29. The respondents, lastly, argued that since the land in question is required for a public purpose, namely for development of a public park/Central Park, this Court should not interfere with the acquisition proceedings in larger public interest.

30. In their rejoinder, the petitioners have submitted that Resolution No.231 dated 10.03.1987 suffers from the same lacuna as Resolution No.292 dated 24.06.1960, whereby the MCD had earlier sought to approve

the layout plan of Hari Nagar Colony showing the land in question as a park. The said Resolution No. 292 dated 24.06.1960 had been considered by the Court in R.S.A. No. 25/1993 and it was found to be of no avail.

31. We may first deal with the objection raised by the respondent-MCD to the maintainability of the writ petition being W.P.(C.) No.3725/2011 by the various persons, who claim to be shop owners on the constructed portion of the said land.

32. There can be no quarrel with the proposition that the petitioners should establish their interest in the property, of which acquisition proceedings are challenged by them. However, one finds from a perusal of the counter-affidavit of respondent No.4/MCD in W.P.(C.) No. 3725/2011 that no such plea has been raised by them. Had such an objection been raised, the petitioners in this petition would have had the opportunity to place their documents of title on record. In fact, there is no denial of their claim to title, as made by them in the writ petition. This objection loses force even for the reason that the owners – who are the heirs of late Sh. Bans Gopal – the original owner of the land, have also simultaneously challenged the acquisition proceedings by filing their own writ petition being W.P.(C.) No. 3726/2011, which is also being dealt with simultaneously. Consequently, this objection of the respondents is rejected.

33. The issue which arises for our consideration is whether the notification dated 27.04.2010 issued under Section 4 of the Act, and the declaration issued under Section 6 of the Act in respect of the said land suffer from any legal infirmity and, if so, the consequence thereof.

34. We called for the original file of the Land Acquisition Branch of the Land & Building Department and have perused the same. From the facts as narrated hereinabove and also from the original record it appears that on 07.07.2004 the Administrative Officer, Land & Estate Department of the MCD addressed a communication to the Secretary (L&B) requesting the latter to start the acquisition proceedings in respect of the said land. Along with this communication the copy of the Resolution No.231 dated 18.03.1987 was also enclosed, which was discussed as Item No.210. The relevant extract from the said Resolution reads as follows:

“Whereas in the regularised plan of Hari Nagar ‘G’ block a site for a park abutting Jail Road was provided in the Plan approved in 1961-62.

Whereas in the revised regularisation plan the land use of the site was changed from park to Local Shopping.

Whereas this is the only site available for development of park in the entire area and there is no other land available for this purpose.

Whereas the site is still lying vacant, the standing committee resolves that the land use of the site be restored as part as per the original approved regularisation plan and the land developed as a park.

The case has been looked in and it is observed that the site in question was earmarked for central park in the regularised plan approved by the Standing Committee of the MCD vide its Res. No. 292 dt. 24.6.1960. The plan was subsequently revised by the DDA because the area in the meanwhile was declared as “Development Area” of the DDA and in the revised regularisation plan approved by the DDA vide its Res. No. 23 dt. 2.4.1979 the site is shown for local

shopping. The group of Hari Nagar 'G' Block, Shiv Nagar, Virender Nagar Colonies has now been notified from the 'Development Area' of the DDA vide notification No. F.7A(11)/79-L&B/LA(P)/15457 dt. 10.5.1979 and these colonies are now in the MCD jurisdiction. In the Zonal Plan the land use of this site is shown as Residential and parks are permissible use in Residential area. From planning point of view, there is no objection if the site as originally earmarked for central park be retained as park instead of local shopping.

The above report is submitted to the Standing Committee.

Item No. 210

Resolution No. 231 Having considered the position brought out by the Commissioner in his letter No. F.33/TP/750/C&C dated 26.2.1987, resolved that the site as originally earmarked for central park be retained as park instead of local shopping and the land be developed as a park."

35. It would, therefore, be seen that the aforesaid Resolution proceeds on the basis that in the regularization plan of Hari Nagar G-Block, "*a site for a park abetting the Jail Road was provided and approved in 1961-62*". However, the details of the so-called site, namely the field/Khasra Nos, directions/boundaries or even the names of the owners are conspicuously missing. It is, therefore, not clear whether this Resolution refers to the said land, or to some other land in the area.

36. The Resolution goes on to observe that in the revised regularization plan prepared by the DDA, the use of the site was changed

from park to LSC. We may note that the MCD has failed to produce before us any approved plan of 1961-62 vintage to show that the said land was earmarked or approved for setting up of a park. We may also note that the positive case of the petitioners is that the Delhi Improvement Trust had approved the initial plan, even before the so-called approval of the MCD, wherein the user of the said land was earmarked as for a Cinema and shops. It is also noteworthy that the Resolution No. 231 dated 18.03.1987 is blissfully silent about the legal proceedings which had already been undertaken between late Sh. Bans Gopal and his successors, namely the petitioners in W.P.(C.) No. 3726/2011, and the MCD, and the findings returned by the Court in those proceedings.

37. Firstly, the First Appellate Court, namely Sh. S.N. Dhingra, ADJ had returned the finding that the site in question was earmarked for Cinema and it was not earmarked as a Central Park. Even more importantly, this Court in its decision dated 23.03.1998 in R.S.A. No. 25/1993 had squarely held that Resolution No. 292 dated 24.06.1960 had not been passed in accordance with the provisions of the DMC Act. Moreover, the MCD itself has passed the subsequent Resolution No.48 dated 08.03.1985 stating that on re-examination of the whole matter, it had come to the conclusion that the site in question does not vest with the Standing Committee of the MCD and, therefore, no comments could be offered. Hence, it was resolved that since the land belonged to a private person, no public park could be carved out from the said land. This Court had already held that the MCD had no authority under the Act or any other bye-law to review the already sanctioned layout *suo moto* and impose conditions on the owners in respect

of the said land. That apart, even the zonal plan of the DDA prohibits the user of the said land as a public park, wherein it had been shown as a LSC.

38. Consequently, when the proposal for acquisition of the said land was sent to the Land & Building Department, it was founded upon the erroneous premise that there was a valid and legal resolution passed by the MCD way back on 24.06.1960 in earmarking the said land as a public/Central Park, which was not the case.

39. We may here itself deal with the submission of Mr. Poddar that the resolutions passed by the MCD, on which it placed reliance have not been challenged by the petitioners. The respondent-MCD had sought to place reliance on its Resolution No. 292 dated 24.06.1960 to defend its action of not permitting late Sh. Bans Gopal to raise construction of a Cinema Hall over the said land. This defence of the MCD was rejected by the Court by squarely holding that the said Resolution had not been legally passed by the MCD and that it had no authority to pass such a Resolution. It was not necessary in these circumstances for the petitioners, or even late Sh. Bans Gopal, to have specifically assailed the Resolution No. 292 dated 24.06.1960 in separate independent proceedings. The finding and declaration of the Court, as aforesaid, was returned in litigation inter-partes and would bind the MCD as it has attained finality. Pertinently, the judgment in the aforesaid R.S.A. was rendered on 23.03.1998, whereas Resolution No. 231 had already been passed as early as on 18.03.1987, yet the MCD had not sought to place reliance thereon before the Court. We do not find merit in the respondent's submission that the validity of the

Resolution No. 292 dated 24.06.1960 was not directly and substantially in issue before the Court deciding R.S.A. No.25/1993, or that it was only collaterally or incidentally in issue in those proceedings. The defence, founded upon legality and validity of the Resolution No. 292 dated 24.06.1960, was raised by the respondent-MCD itself with a view to defend its action in not permitting late Sh. Bans Gopal to raise construction of a Cinema Hall. Consequently, the MCD had itself invited the Courts verdict on the legality and validity of its said Resolution. The decision in *Sajjadanashin Sayed* (supra), therefore, in our view, is of no avail to the respondent.

40. The repeated passing of resolutions by the MCD merely reiterating the earlier Resolution of 24.06.1960 would not lend validity to the said original resolution or even the later resolution. Also the Resolution No. 231 dated 18.03.1987 is in the teeth of the judgment of this Court in R.S.A. No.25/1993, the said resolution is bad and laconic for the same reasons for which this Court declared Resolution No. 292 dated 24.06.1960 as invalid.

41. It is, therefore, clear that the Land & Building Department was mislead into believing that there it was a legally valid and binding Resolution of the MCD dated 24.06.1960, which was sought to be reiterated on 18.03.1987 after the said had been denotified and was no longer development area within the control of the DDA. Clearly, the decision of the learned ADJ, as aforesaid, and of this Court were not brought to the notice of the Land & Building Department. The file of the Land & Building Department, as produced, does not show the consideration of the aforesaid

aspects even by the Competent Authority, namely the Hon'ble Lieutenant Governor when he gave his approval to the issuance of notification under Section 4 of the Act on 07.04.2010.

42. We fail to appreciate the purpose of citing the judgment of the Division Bench of this Court in ***The Radha Soami Satsang Beas & Another*** (supra). In our view, the same does not answer the issues raised in the present writ petitions in any manner.

43. The Supreme Court in ***Raja Anand Brahma Shah Vs. The State of U.P. & Others***, AIR 1967 SC 1081, while dealing with a challenge to issuance of a notification under Section 17 of the Act, quashed the same on the ground that the same had been issued in ignorance of the correct factual position by the Competent Authority. The Supreme Court in paragraph 8 of the report held as follows:

“ 8. It is true that the opinion of the State Government which is a condition for the exercise of the power under Section 17(4) of the Act, is subjective and a court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government under Section 17(4). The legal position has been explained by the Judicial Committee in King Emperor v. Shibnath Banerjee [72 IA 241] and by this Court in a recent case — Jaichand Lal Sethia v. State of West Bengal [Criminal Appeal No 110 of 1966 — decided on July 27, 1966] But even though the power of the State Government has been formulated under Section 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If therefore in a case the land under acquisition is

not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of Section 17 are applicable, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue. It follows therefore that the notification of the State Government under Section 17(4) of the Act directing that the provisions of Section 5-A shall not apply to the land is ultra vires. The view that we have expressed is borne out by the decision of the Judicial Committee in Estate and Trust Agencies Ltd.v. Singapore Improvement Trust [(1937) AC 898] in which a declaration made by the Improvement Trust of Singapore under Section 57 of the Singapore Improvement Ordinance 1927 that the appellants, property was in an insanitary condition and therefore liable to be demolished was challenged. Section 57 of the Ordinance stated as follows:

“57. Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary.”

The Judicial Committee set aside the declaration of the Improvement Trust on two grounds: (1) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said Ordinance and therefore the declaration was liable to a challenge if the authority stepped beyond those terms, and (2) that the ground on which it was made was other than the one set out in the Ordinance. In another case — Ross Clunis v. Papadopoulos [(1958) 1 WLR 546] — the appellant challenged an order of collective fine passed under Regulation 3 of the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955 which provided that if an offence was committed within any

area of the colony and the Commissioner “has reason to believe” that all or any of the inhabitants of that area failed to take reasonable steps to prevent it and to render assistance to discover the offender or offenders it would be lawful for the Commissioner with the approval of the Governor to levy a collective fine after holding an inquiry in such manner as he thinks proper subject to satisfying himself that the inhabitants of the area had been given an adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon. It was contended on behalf of the appellant that the only duty cast on the Commissioner was to satisfy himself of the facts set out in the Regulation, that the test was a subjective one and that the statement as to the satisfaction in his affidavit was a complete answer to the contention of the respondents. In rejecting the contention the Judicial Committee observed as follows:

“Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts.”

In another case — R.v. Australian Stevedoring Industry Board [(1952) 88 CLR 100] — the High Court of Australia was called upon to review the conduct of a board empowered to cancel the registration of an employer of dock labour if “satisfied” that he was unfit to be registered or had so acted as to interfere with the proper performance of stevedoring work. It was held by the High Court that it was entitled to award prohibition against the board if the board was acting without any evidence to support the facts upon which its jurisdiction depended, or if it was adopting an erroneous test of the employer's liability to cancellation of his registration, or if it appeared likely to go outside the scope of its statutory discretion.”

44. For the aforesaid reasons, we are of the view that the notification issued under Section 4 of the Act cannot be sustained, it having been issued by the Hon'ble Lieutenant Governor on the basis of incorrect and misleading information. Had the Hon'ble Lieutenant Governor been provided with the complete history relating to the earlier litigation between the owners and the MCD in respect of the said land, wherein authoritative pronouncement had been made by the Court regarding the resolutions passed by the MCD (which were sought to be relied upon by the MCD to recommend acquisition of the said land), the Hon'ble Lieutenant Governor may, or may not, have arrived at the same conclusion with regard to the issuance of the impugned notification under Section 4 of the Act. Since the relevant and germane material and evidence has escaped the consideration of the Hon'ble Lieutenant Governor in the decision making process, the decision of the Hon'ble Lieutenant Governor to approve issuance of the notification under Section 4 of the Act cannot be sustained and is, accordingly, quashed.

45. Since the impugned notification under Section 4 of the Act is unsustainable, consequently, further proceedings undertaken including the issuance of the declaration under Section 6 of the Act in respect of the said land must also fail. However, we have even otherwise independently examined the submission of the petitioners that their objections under Section 5A of the Act have not been duly considered and that the Land Acquisition Collector has made a perfunctory report to the Competent Authority, i.e., the Lieutenant Governor in this regard.

46. The submission of the petitioners is that they were granted hearing by the LAC(West)/ADM on their objections and that they had placed before him the relevant material, as aforesaid. However, a perusal of the report prepared by the LAC(West)/ADM dated 25.11.2010 shows that the same is cryptic and apart from stating that he has followed the mandate of Section 5A of the Act of granting a hearing in person to the interested persons, who had filed their objections, it does not deal with the objections. As to what these objections are has not even been taken note of by the LAC(West)/ADM in his aforesaid communication. The least that was expected of the LAC(West)/ADM was that he should have taken note of the objections raised by the petitioners/interested persons and should have dealt with the same by giving his opinion thereon while recommending that the said land be acquired. Grant of a hearing of objections raised under Section 5A of the Act is not a mere empty formality. Vital rights of persons whose land is sought to be acquired are adversely affected as the acquisition of land is a compulsory acquisition and not a voluntary bipartite agreement between the land owners and the land acquiring authority. The right to file objections under Section 5A and to be heard on those objections is the only safeguard provided in the Act to the land owners to effectually oppose the proposal to acquire their land before a decision is made by the Competent Authority whether, or not, to acquire the land.

47. We have perused the original record produced before us and even the said record is blissfully silent about the objections raised by the petitioners to the proposed acquisition of their land and the reasons why the LAC recommended the acquisition of the land in the face of such objections.

The mere recital of the factum that the acquisition of land has been sought by a public authority for establishment of a Central Park is not good enough a reason to make a recommendation as the said public purpose was known to the LAC even before the filing of the objections and grant of hearing to the land owners. If that by itself were to be enough, there was no purpose of inviting objections under Section 5A of the Act and granting a hearing as that would mean that the fate of the land owners was already sealed when the notification under Section 4 of the Act was issued, and that the right to file objections and seek a hearing before the LAC was a mere formality. The focus of the LAC, once he has granted a hearing on the objections to the land owners, should have been on the objections. Unfortunately, that has not happened in the present case. We are, therefore, of the view that the LAC(West)/ADM has dealt with the objections of the petitioners in the most perfunctory and casual manner, and his recommendation has been made without any application of mind.

48. Unfortunately, a perusal of the record shows that before arriving at his decision to grant his approval to the issuance of a declaration under Section 6 of the Act, the Hon'ble Lieutenant Governor did not independently examine the objections of the petitioners as he has merely penned down his signatures on 05.03.2011 in token of grant of approval to the proposal for issuance of notification under Section 6 of the Act without disclosing any consideration or reasons therefor.

49. In *Hindustan Petroleum Corporation Limited* (supra), the Supreme Court considered the scope and importance of the right conferred

on the land owners under Section 5A of the Act. The Supreme Court observed:

“7. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

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9. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

10. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant

factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.”

50. The Supreme Court referred to its earlier decisions in various cases in this decision and went on to observe:

“18. Section 5-A of the Act is in two parts. Upon receipt of objections, the Collector is required to make such further enquiry as he may think necessary whereupon he must submit a report to the appropriate Government in respect of the land which is the subject-matter of notification under Section 4(1) of the Act. The said report would also contain recommendations on the objections filed by the owner of the land. He is required to forward the records of the proceedings held by him together with the report. On receipt of such a report together with the records of the case, the Government is to render a decision thereupon. It is now well settled in view of a catena of decisions that the declaration made under Section 6 of the Act need not contain any reason. (See Kalumiya Karimmiya v. State of Gujarat [(1977) 1 SCC 715] and Delhi Admn. v. Gurdip Singh Uban [(2000) 7 SCC 296] .)

19. However, considerations of the objections by the owner of the land and the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced.

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21. *In view of the fact that the action required to be taken by the State Government is distinct and different from the action required to be taken by the Collector; when the ultimate order is in question it was for the State to satisfy the court about the validity thereof and for the said purpose the counter-affidavit filed on behalf of a Collector cannot be held to be sufficient compliance with the requirements of law. The job of the Collector in terms of Section 5-A would be over once he submits his report. The Land Acquisition Collector would not know the contents of the proceedings before the State and, therefore, he would be incompetent to affirm an affidavit on its behalf.*

22. *Furthermore, the State is required to apply its mind not only on the objections filed by the owner of the land but also on the report which is submitted by the Collector upon making other and further enquiries therefor as also the recommendations made by him in that behalf. The State Government may further inquire into the matter, if any case is made out therefor, for arriving at its own satisfaction that it is necessary to deprive a citizen of his right to property. It is in that situation that production of records by the State is necessary.*

x x x x x x x x x x

32. *Although assignment of reasons is the part of principles of natural justice, necessity thereof may be taken away by a statute either expressly or by necessary implication. A declaration contained in a notification issued under Section 6 of the Act need not contain any reason but such a notification must precede the decision of the appropriate Government. When a decision is required to be taken after giving an opportunity of hearing to a person who may suffer civil or evil consequences by reason thereof, the same would mean an effective hearing.”*

51. Unfortunately, the aforesaid dictum of the Supreme Court has been followed only in breach rather than in compliance in the present case.

52. In ***Raghubir Singh Sehrawat*** (supra), the Supreme Court held that the Land Acquisition Collector should give a fair opportunity of hearing to the objector and “*objectively consider his plea against the acquisition of land*”. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. The recommendations of the Collector must reflect objective application of mind to the objections filed by the land owners and other interested persons.

53. As aforesaid, in the present case, the recommendation made by the LAC (West) is completely devoid of any application of mind. Neither there is any objective consideration of the pleas of the land owners against the acquisition of their land nor is the recommendation supported by reasons – brief or otherwise, as to why the said land should be acquired. As there is no reference to the pleas put forward by the objectors/petitioners there is, obviously, no question of consideration of the aspect whether the said plea merit acceptance. The recommendation made by the LAC (West) betrays lack of objective application of mind to the objections of the land owners/interested persons.

54. ***Kamal Trading (P.) Ltd.*** (supra) is an example of a case where, once again, the objections of the objectors were dealt with perfunctorily and without application of mind. The manner in which the LAC dealt with the

objections, and the comment of the Supreme Court are found in the paras 27 & 28 of the judgment, which read as follows:

“27. The paragraphs which contain the submissions and the so-called reasons of the Second Land Acquisition Officer need to be quoted:

“Heard the officers present from the requiring body. They vehemently protested as regards the statements contained in this particular letter. Their submissions in short that the statements made by the interested persons are all fake, arbitrary and groundless. They simply endeavour to oust the requiring body by hook or crook in order to grab this office space so that in turn can realise higher rent. Further, the purpose of the requiring body is very much public-oriented and if it is not acquired they will suffer immensely. They further submitted that acquisition proceeding to be completed as quickly as possible inasmuch as they have the time-bound programmes to implement it as per guidelines of the Government for the greater interest of public.

In view of these circumstances and for greater interest of the public, the submissions made by the interested persons by their letter dated 8-9-1997 are overruled.”

28. By no stretch of imagination, can it be said that the Second Land Acquisition Officer had applied his mind to the objections raised by the appellant. The abovequoted paragraphs are bereft of any recommendations. The Second Land Acquisition Officer has only reproduced the contentions of the officers of the acquiring body. The objections taken by the appellants are rejected on a very vague ground. Mere use of the words “for the greater interest of public” does not lend the report the

character of a report made after application of mind. Though in our opinion, the declaration under Section 6 of the LA Act must be set aside because the appellant was not given hearing as contemplated under Section 5-A(2) of the LA Act, which is the appellant's substantive right, we must record that in the facts of this case, we are totally dissatisfied with the report submitted by the Second Land Acquisition Officer. His report is utterly laconic and bereft of any recommendations. He was not expected to write a detailed report but, his report, however brief, should have reflected application of mind. Needless to say that as to which report made under Section 5-A(2) could be said to be a report disclosing application of mind will depend on the facts and circumstances of each case.”

55. For all the aforesaid reasons, we are of the view that the impugned declaration under Section 6 of the Act dated 21.03.2011 is wholly unsustainable and we hereby quash the same.

56. Consequently, both the writ petitions are allowed and the rule is made absolute. The impugned notification dated 27.04.2010 issued under Section 4 of the Act and the declaration dated 21.03.2011 issued under Section 6 of the Act in respect of the said land are quashed. The petitioners in each of these petitions shall be entitled to Costs quantified at Rs.20,000/- each to be paid by the respondent-MCD. The Costs be paid within four weeks.

**(VIPIN SANGHI)
JUDGE**

**(SANJAY KISHAN KAUL)
JUDGE**

DECEMBER 05, 2012 /SR/BSR'