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

% **DECIDED ON: 19.07.2013**

+ W.P. (C) 4481/2013
CM APPL.10347, 10348/2013

RAJNEESH KUMAR & ORS Petitioners

Through: Mr. Setu Niket with Ms. Esha
Mazumdar, Advocates.

versus

LT. GOVERNOR OF DELHI & ORS Respondents

Through: Mr. Sanjay Poddar, Sr. Advocate with
Mr. Sanjeev Sahay, Advocate for L&B.
Mr. Ajay Verma, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The present writ petition questions land acquisition proceedings, culminating in a notification issued by the respondent Government of NCT of Delhi, dated 27.10.1999 in respect of the petitioners' lands.
2. The facts are that the Respondents issued Notification no. 10(29)/96/L&B/LA/11394 under Section 4(1) of the Land Acquisition Act (hereafter "the Act") on 27-10-1999, to acquire lands; including those of the Petitioner, (bearing Khasra No. 62//18/2 & 62/24 of Village Pehladpur

Bangar- hereafter “the suit lands”) for a public purpose, namely the Rohini Residential Scheme. Recourse was had to Section 17(1) to the acquisition of the lands and hearing under Section 5A was dispensed with. A final declaration was made under Section 6 along with Section 7 of the said Act, by notification no. F.10(29)/96/L&B/LA/2O dated 03-04-2000. The Land Acquisition Collector in furtherance of Section 4, 17 & 6 of the Act proceeded to issue Award No. 14/2002-03 dated 08-07-2002, in respect of the suit lands.

3. Few landowners, not including the Petitioners, aggrieved by the issuance of Section 4 notification approached this Court in writ proceedings. The petitions were dismissed on 09-07-2007. Aggrieved by this judgment the landowners approached the Supreme Court, which by order dated 22-10-2007 issued notice and granted stay on High Court’s order. The Supreme Court thereafter quashed the Section 17 notification, and the declaration issued and published u/s 6 of the said Act, dated 27-04-2012.

4. The following is the extract from the Supreme Court’s judgment:

“20. Where the government invokes urgency power under section 17(1) and (4) for the public purpose like planned development of city or development of residential area or Residential Scheme the initial presumption in favour of the government does not arise, and the burden lies on the government to prove that the use of power was justified and dispoaatation (sic dispensation) of enquiry was necessary .In the present case, the respondents have miserably failed to show to the satisfaction of the Court that power of urgency and dispoaatation (sic dispensation) of enquiry under Section 5A has been exercised with justification .The action of the Lt Governor, Delhi in, the facts of the case whereby he directed that the prohibition of Section 5A shall not apply. if allowed to stand, it would amount to depriving a person of his property without authority of law.

21. The power of urgency by the Government under Section 17 for a public purpose like Residential Scheme cannot be invoked as a rule but has to be by way of exception. As noted above no material is available on record that justifies dispensation of enquiry under section 5A of the Act. The High Court was clearly wrong in holding that there was sufficient urgency in invoking the provisions of section 17 of the Act.

3. Consequently, the appeal is allowed the Notification dated October 27, 1999 to the effect “the Lt Governor Delhi is satisfied also that provisions of sub-section (1) of section 17 of the Act are applicable to this land and is further pleased under sub section (4) of the said section to direct that all the provisions of section 5 (A) shall not apply” insofar as appellants land is concerned is quashed. The declaration dated April 3, 2000 Issued and published under Section 6 of the Land Acquisition Act., 1894 (for short “the Act”) concerning the subject property is also quashed. The competent Authority may now invite objections under Section 5A of the Act, pursuant to the Notification dated 27 October 1999 and proceed with the matter in accordance with law. No order as to costs.”

5. The Petitioners, who had preferred their claims for compensation, pursuant to notices received by them, had not approached this court or the Supreme Court, questioning the land acquisition proceedings. The Collector determined the market value at Rs.12,16,000/- per acre, which was received by the Petitioners. They then preferred a Reference Petition under Section 18 of the Act, which was decided by the Ld. Additional District Judge, Rohini on 15-09-2011, 22-10-2011, 18-10-2011 respectively. The Reference court decided in favour of the Respondents and the compensation payable on the land remained unchanged at Rs. 12,16,000 per acre. The said court only allowed grant of other statutory benefits available under the Act. The Third Respondent, by Notification No. F.10(29)/96/L&B/LA/19599 dated 20-03-2013 issued and published another declaration under Section 6 of the Act.

6. The Petitioners contend that their Constitutional and legal right of hearing was taken away by the Respondent under the garb of a fraudulent Section 17 notification. Such acquisition is in violation of Article 14, 19, 21 and 300-A of the Constitution of India and has been acquired in colourable exercise of power and without due application of mind. It is argued that Article 300-A has been violated as no public purpose existed at the time when the land was acquired.

7. It is argued that the Supreme Court's judgment resulted in liberty to the executive Government to issue a declaration after granting hearing under Section 5A of the Land Acquisition Act; however, that notification was to be issued within the statutory time period of one year. In the present case, if the previous periods were to be taken into consideration, the declaration issued and impugned in the present case was clearly beyond the prescribed time; the acquisition therefore was a nullity and in contravention of law.

8. It was submitted that the market value determined by the Controller was directly in contradiction to case bearing L.A.C. No. 180 AI 2009 titled, '*Jaipal v. Union of India & Anr*', where the market value of the lands of the same village i.e., Pahladpur Banger, was determined at Rs.2,00,000/- per *bigha*, in addition to the amount of compensation awarded by the LAC. It is averred that the Petitioners also applied for alternative plots in lieu of the lands compulsorily acquired and the same is yet to be allotted to the Petitioners. The Respondents failed to develop lands for 13 long years and also further failed to allocate alternative plots to the Petitioners in a time bound manner, thereby depriving the petitioners from developing alternative livelihood.

9. Counsel contended that the respondent Government cannot be allowed to take advantage of its own wrong, by first wrongly invoking Section 17, paying an exiguous amount of compensation and then again issuing a declaration u/s 6 of the Land Acquisition Act and not working on the land for thirteen long years. The legal maxim “*Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiores*” is applicable in a situation like this.

10. The official respondents resist the petition, and contend that the present challenge to the acquisition proceeding is not maintainable. It is submitted that the petitioner was not a party to the previous court proceedings and had never questioned the validity of acquisition proceedings. Therefore, they are bound by the notifications and acquisition of the suit lands cannot now be challenged at this late stage, after they claimed and obtained compensation.

11. The respondents relied on *Mahadeo (Dead) & Ors. v. State of UP* (2013) 4 SCC 524 where the Supreme Court held that:

“16. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in the case of Govt. of A.P. and Anr. v. V. Syed Akbar [MANU/SC/0987/2004](#) : AIR 2005 SC 492 held that:

“It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land

Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to reconvey the said land to the Respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr. MANU/SC/0731/1997 : (1997) 5 SCC 432 para 4 of the said judgment reads: (SCC p.433)

4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value.

18. Indisputably, land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilized by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land

in favour of the land owners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law”

12. In the present case, the petitioners do not dispute that their lands were notified for acquisition in 1999 when the requirements of Section 5A were dispensed with. They were, however, not aggrieved by that action, and chose to accept the notification. Indeed they never complained that dispensing Section 5-A was prejudicial to them. Consequently they experienced no difficulty in attending proceedings for determination of compensation. Their grievance against compensation determined too, was questioned in reference proceedings; however the District Court refused enhancement of compensation. Thus, the matter achieved finality. A facial reading of the Supreme Court judgment would show that the relief of quashing the notification in respect of the same scheme, on the ground that the hearing under Section 5A was wrongly dispensed with, was confined only to those who approached the courts. *The petitioners were concededly not amongst them.* In this context, the Court recollects the larger Bench decision of the Supreme Court in *Aflatoon v Lt. Governor of Delhi* AIR 1974 SC 2077, where it was stressed that a delayed challenge to land acquisition proceedings should not be entertained:

“Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the, notification even after the publication of the declaration under s. 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the, public purpose were not specified. A valid notification under

s. 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the, acquisition proceedings on the basis that the notification under s. 4 and the declaration under s. 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be, putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners.. ”

13. The facts of the present case would show that the petitioners were not aggrieved by the acquisition, notified in the Section 4 notification issued in 1999; they did not complain against the dispensing of hearing under Section 5-A of the Act. Now, after 14 years, they cannot use the occasion of the Supreme Court judgment quashing the notification vis-à-vis others, to ventilate what is obviously a stale cause of action. Furthermore, their grievance against compensation determination was articulated through reference proceedings under Section 18 of the Act. The present litigation can only be seen as an opportunistic effort to secure quashing of acquisition proceedings, whose public purpose was accepted by the petitioners over 13 years ago. In the circumstances, the petition has to fail. It is therefore dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

JULY 19, 2013