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

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Judgment delivered on: 05.05.2015

+ W.P.(C) 6576/2012 & CM No.9779/2013

NEENA MOHINI WILLIAMS AND ANR Petitioners

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) 6577/2012

RAJ KUMAR DHINGRA Petitioner

Through

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) 6578/2012 & CM Nos.11924/2013, 11925/2013

MOHAN GUPTA AND ANR Petitioners

Through

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) 6579/2012

FARIDA KHAN AND ORS Petitioners

Through

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

+ W.P.(C) 1981/2015 & CM No.3552/2015

HUKAM CHAND AND ORS. Petitioners

Through

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioners	:	Mr B.S. Maan with Ms Smita Maan, Advocates.
For the Respondents	:	Mr Jaswinder Singh, Advocate for UOI
		Mr Sanjay Kumar Pathak with Mr Sunil Kumar
		Jha, Mr Kaushal Raj Tater, Mr Yeeshu Jain and
		Ms Jyoti Tyagi, Advocates for LAC/L&B and
		GNCTD.
		Ms Shobhana Takiar with Mr Udayan
		Khandelwal, Advocates for DDA in WP(C)
		6576/2012, WP(C) 6577/2012, WP(C)
		6578/2012 & WP(C) 6579/2012

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These writ petitions raise a common issue and, therefore, are being taken up together. The point raised by the learned counsel for the petitioners in this case is that there was non-application of mind on the part of the Lieutenant Governor insofar as the provisions of Section 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') is concerned. It was contended that merely because emergency

provisions under Section 17(1) were being invoked, it does not *ipso facto* translate into invocation of Section 17(4) of the said Act whereunder the provisions of Section 5A of the said Act are directed not to apply. The specific plea raised by the learned counsel for the petitioners was that the Lieutenant Governor while invoking emergency provisions did not give any specific direction under Section 17(4) of the said Act for dispensation of the provisions of Section 5A of the said Act and that, in any event, there was no application of mind on this aspect of the matter. Consequently, it was submitted that the fact that Section 5A was dispensed with, was contrary to law and, therefore, the acquisition itself ought to be set aside.

2. On the part of the respondents, it was contended that the Lieutenant Governor had applied his mind to the entire provisions contained in Section 17 and directed that the same would be applicable which also included the direction that Section 5A would not apply to the acquisition proceedings at hand.

3. The Notification under Section 4 of the said Act was issued on 27.07.2012 which was to the following effect:-

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI LAND & BUILDING DEPARTMENT, VIKAS
BHAWAN, NEW DELHI

No.F.10(7)/08/L&B/LA/7404

Dated 27/07/2012

NOTIFICATION

Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at the public expense for a public purpose namely for the Development of Dwarka Phase II. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

The notification is made under the provisions of Sub Section 1 of Section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi is pleased to authorize the Officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land in the locality and do all other acts required or permitted by that section.

The Lt. Governor, Delhi is satisfied also that provisions of sub section (1) of the section 17 of the said 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 5A shall not apply.

SPECIFICATION

Village	Total Area (Bigha –Biswa)	Field Nos. of Boundaries	
		Kh.Nos.	Area
Dhool Siras	54-01	15//22	4-16
		23	4-16
		43//11	4-16
		12	4-16
		13	4-16
		18min	2-16
		19	4-16
		20	4-16
		21	4-13
		22/1min	0-2
		23/1min	0-2
		44//15	4-16
		16	4-10
		25/1	2-12
		26	0-6
		56//1/2	0-12

BY ORDER AND IN THE NAME OF THE LT. GOVERNOR OF DELHI.

(Vinay Kumar)
Addl. Secretary (L&B)”
(emphasis supplied)

4. On going through the said Notification, it reads as if the Lieutenant

Governor was satisfied that the provisions of Section 17(1) of the said Act were applicable and that the Lieutenant Governor was pleased to direct under Section 17(4) that all the provisions of Section 5A would not apply to the subject acquisition.

5. The learned counsel for the petitioners drew our attention to Page 155 of the paper book in WP(C) 6576/2012, which is a copy of the file noting at page 73/N of File No.F.10(7)/08/L&B/LA . The same is reproduced herein below:-

“73/N

F.10(7)/08/L&B/LA/

I have considered the proposal. I am informed that proposed acquisition of Khasra Numbers under reference in Village Dhulsiras falls in Zone K-II; Dwarka Sub-city, Sector-24 of Dwarka Project, phase-II. The Zonal Development Plan for Zone K-II (Dwarka Phase-II) has been notified by Ministry of Urban Development, Govt. of India in 2010. As per the approved Sector Plan, the area of Sector-24 Dwarka is about 300 Hectare. The residential areas of Sector-24 has been proposed for Second Diplomatic Enclave and the same has been approved by the DDA vide Item No. 51/2011 at the Authority meeting held on 26.5.2011. As per records available with DDA, majority of land of Sector-24 Dwarka, except the Khasras (54 Bigha 2 Biswa) now proposed to be acquired, is with DDA. The above mentioned Khasras are falling in the Integrated Scheme of DDA in Sector-24 proposed for Second Diplomatic Enclave and other connected planned development works. Any delay in acquisition of these khasras may affect the implementation of roads and other planned development work e.g. Second Diplomatic Enclave, Public Golf Course etc in Sector 24, Dwarka.

It goes without saying that the proposed Second Diplomatic Enclave is a project of National importance and Ministry of Urban Development &

Ministry of External Affairs, Govt. of India are pressing for early implementation of the integrated Scheme.

Therefore, I am fully convinced that the proposed Khasra Nos. should be acquired under Sections 4, 6 and Section 17 of the Land Acquisition Act, 1894 (Emergency Clause).

Hence, I order accordingly.

(TEJENDRA KHANNA)
LT.GOVERNOR, DELHI”

(underlining added)

6. It was pointed out that the Lieutenant Governor had merely mentioned Section 17 of the Land Acquisition Act but, had made no specific reference to Section 17(4) of the said Act which was independent of Section 17(1) thereof. It was further contended by the learned counsel for the petitioners that the competent authority had not applied his mind to the specific provisions of Section 17(4) and that the valuable rights of the petitioners of filing objections under Section 5A was taken away without a proper application of mind. Consequently, it was submitted, the acquisition was bad on account of this. A reference was also made to the Supreme Court’s decision in the case of **Radhy Shyam (dead) through Lrs. And others v. State of UP and Others** : (2011) 5 SCC 553.

7. The learned counsel for the respondents submitted that the Lieutenant Governor had applied his mind to the emergency provisions contained in Section 17 in entirety. He had applied his mind not only to Section 17(1) but also to Section 17(4). He submitted that, in fact, the note put up by the Land & Building Department specifically mentioned that though the Requisitioning Authority (DDA in this case) requested for

acquisition of land under the emergency clause, but as per the survey report of LAC (SW) under Section 3A, there were certain built up structures on the said land and, therefore, the Notification under the emergency clause was not being proposed. He submitted that despite this, the Lieutenant Governor considered the project to be of national importance and was of the view that any delay in the acquisition of the land may affect the implementation of the roads and other planned development work etc. for example in connection with the Second Diplomatic Enclave in Sector 24, Dwarka.

8. After having considered the arguments advanced by the learned counsel for the parties, we are of the view that the petitioners are right in submitting that no independent application of mind has taken place insofar as the provisions of Section 17(4) of the said Act are concerned. Before we move on to examine the same, it would be relevant to set out portions of the Supreme Court's decision in the case of *Radhy Shyam (supra)*. Referring to an earlier decision in the case of *Union of India vs. Mukesh Hans*: [(2004) 8 SCC 14], the Supreme Court in *Radh23y Shyam (supra)* observed, in paragraph 61, as under:-

“61. We may now notice some recent decisions. In *Union of India v. Mukesh Hans (supra)*, this Court interpreted Sections 5A and 17 and observed:

“32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A

inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency.....

33. An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Sections 17(1) and (2), the dispensation with inquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because Sub-section (4) of Section 17 itself indicates that the 'Government may direct* that the provisions

of Section 5-A shall not apply' which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry."

(emphasis supplied)

The Supreme Court in **Radhy Shyam** (*supra*) examined several other decisions rendered by it and then culled out certain principles. Paragraph 77 gives a summary of the principles which had been culled out. Sub-paragraphs (v), (vi), (vii), (viii) and (ix) of paragraph 77 of the said decision are relevant and they are reproduced herein below:

"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

- (i) xxxxxxxxxxxx
- (ii) xxxxxxxxxxxx
- (iii) xxxxxxxxxxxx
- (iv) xxxxxxxxxxxx

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all

probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of

audi alteram partem embodied in Section 5-A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition.”

(underlining added)

9. From the above decision, it is abundantly clear that the exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5A of the said Act in terms of which any person interested in land can file objections and is entitled to be heard in support of his objection. It is also clear that the use of the word “may” in Section 17(4) makes it clear that it merely enables the Government to direct that the provisions of Section 5A would not apply to the cases covered under sub-section (1) or (2) of Section 17. It has been made clear that the invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1). In the present case, we find that the Lieutenant Governor’s Note, which has been extracted above, has not specifically dealt with the provisions of Section 17(4). The Note does not at all indicate that the Lieutenant Governor had applied his mind to the provisions of Section 17(4) of the said Act and as to whether the provisions of Section 5A ought to be excluded from the present acquisition. The statement in the Section 4 Notification to the effect that the Lieutenant Governor has been “pleased under sub-section 4 of the said section to direct that all the provisions of Section 5A shall not apply”, is not correct. This is not borne out from the decision of the

Lieutenant Governor which we have extracted above. There is no specific direction in the said Note that Section 17(4) has been invoked and/or that the provisions of Section 5A are not to apply to the present acquisition.

10. As a result of the foregoing discussion, we are of the view that provisions of Section 17(4) would not apply and had, in fact, not even been invoked because there was no application of mind in respect of the said provisions. As such the right of the petitioners to file the objections under Section 5A could not have been taken away. The fact that they had been taken away is contrary to law. As a result the invocation of Section 17(4) of the said Act is bad in law. It follows that the Section 6 declaration dated 23.07.2013 is also bad in law and the same is quashed.

11. The consequence is that the parties shall be relegated to the stage at which petitioners can file their objections to the proposed acquisition in accordance with law.

12. The writ petitions are allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 05, 2015
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