

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

Reserved on: 06.07.2017
Pronounced on: 12.07.2017

+ **W.P.(C) 7984/2010, C.M. APPL.35088/2016 & 20532/2017**

RAFIQ AHMED AND ORS.

..... Petitioners

Through: Sh. Gaurav Sarin with Ms. Charul Sarin
and Sh. Ajitesh. K. Kir, Advocates.

versus

UOI AND ORS.

..... Respondents

Through : Sh. Sanjay Poddar, Sr. Advocate with
Sh. Mukesh Gupta, Advocate, for MCD.

Sh. Sanjay Kumar Pathak with Ms. Kumari
Kaomudi Kiran Pathak, Sh. Sunil Kumar Jha and
Sh. Kushal Raj Tater, Advocates, for Respondent
Nos. 2 to 4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. These writ proceedings, challenge the acquisition of land, to the extent of 3841 square metres, located in Model Basti, village Sidipura (the "suit lands" hereafter) on the ground that the notifications issued by the Govt of NCT of Delhi (hereafter "the NCT") are vague and *per se* illegal; besides, it is also contended that the NCT's proposal to take over possession of certain

lands, after demolition of structures built on them is illegal, as it exceeds the areas notified, in respect of which award was made (during the pendency of these proceedings).

2. The petitioners claim to be owners/occupants of buildings and structures, falling part of the acquired lands, which were the subject matter of a notification, under Section 4 of the Land Acquisition Act, 1894 ("the old Act" or the "LA Act" hereafter), issued on 20.04.2010. The NCT dispensed with the requirement of hearing and orders, under Section 5A of the old Act, invoking the urgency provisions under Section 17. It thereafter proceeded to issue declaration, under Section 6 of the old Act, on 28.06.2010. Notices under Sections 9 and 10 of the old Act, were issued on 05.07.2010 pursuant to which 18 individuals made their claims.

3. On the first date of hearing, i.e. 29.11.2010, the court made the following order, refusing interim relief:

"We are not inclined to grant interim relief at this stage in this case for the reasons that the notification under Section 4(1) read with sub-sections (1) & (4) of Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) was issued as far back as 20.4.2010 and the declaration under Section 6 of the said Act was published on 28.6.2010. Not only that, the land is required for a Grade Separator and another set of petitioners had approached this Court aggrieved by the denial of hearing under Section 5A of the said Act. Those writ petitions were listed on 23.11.2010 where after hearing learned counsels for the parties, learned counsel for the petitioners confined his relief to moving the respondent authorities under Section 48 of the said Act.

Curiously the present petition has been filed on 25.11.2010, two (2) days after passing of the said order for vacation of

injunction. It, thus, does appear to us that the petitioners were waiting by the side and when the other set of petitions have failed this petition has been filed only when the date fixed for taking over of possession is tomorrow though the notification issued under Section 4 of the said Act may be different.

We may also notice that the project in question relates to a huge Grade Separator and this Court cannot do realignment of the Grade Separator(s).

Learned counsel for the petitioners vehemently contends that the urgency was only for the Commonwealth Games. We are unimpressed by this because the Grade Separator is required for the larger interest of Delhi and for de-congestion of traffic in a very congested area and it cannot be said that de-congestion measures have to stop after Commonwealth Games."

4. On 16.12.2010, the following order was made in this case:

"It is stated by learned counsel for the petitioners that though the possession of part of the area sought to be acquired has been taken over, for the remaining area measurement process is taking place at site. Learned counsel for the petitioners submits that some of the petitioners do not know the extent of loss of their properties as their properties are often behind other properties. It is thus agreed that the exact measurements showing the extent to which the possession of the properties has to be taken over will be indicated at site to facilitate the petitioners to remove the construction from the affected area themselves and to strengthen the remaining area if they so choose. In order to facilitate the aforesaid, petitioners who want to remove the construction from the affected area themselves will file an undertaking before the LAC (North) on or before 21.12.2010 to do so. The inspection shall be carried out by the respondents from 22.12.2010 at 10 AM onwards. We grant time to the petitioners, who file an undertaking in terms aforesaid, to remove the construction from the affected area

themselves within three weeks thereafter. We make it clear that such of the petitioners who do not file any undertaking, the respondents are free to proceed against them forthwith.

Needless to say that aforesaid arrangement is without prejudice to the rights and contentions of the petitioners in the main petition.

The application accordingly stands disposed of."

5. The petitioners contend that undertakings, as required of them, by orders of the court, were furnished. It is also stated that though portions of the land notified were taken possession of, a large number of shopkeepers and *tehbazari* holders, who were plying their trade from the acquired land, continued to remain in possession; they advert to a Central Government policy whereby such *tehbazari* rights holders could claim alternative properties. It is submitted that all these facts were brought to the notice of the court, in support of their grievance that though the NCT claimed urgency and dispensed with hearing of objections, possession of lands was not taken over; in the meanwhile the purpose cited, i.e., the Commonwealth Games, went by. At the directions of the court, the MCD (Municipal Corporation of Delhi) filed an affidavit, on 08.10.2012, stating *inter alia*, as follows:

"As regards teh Bazari holders from the Govt. land it is submitted as per alignment plan of the grade separator there were 115 tyre shops on Rani Jhansi Road that had to be immediately shifted, out of which 24 were covered teh bazari and there were 92 License shops. These 24 teh bazari shops were also decided to be relocated at Sanjay Gandhi Transport Nagar along with 92 License Shops simultaneously, for the sake of construction of fly over....

6. The affidavit further disclosed that the tentative project cost was ₹177 crores and further that the said *tehbazari* holders as well as the license holders were shifted and possession of the suit lands, taken over. The MCD filed another affidavit, on 09.04.2015, to the following effect:

“the land required for the construction of Grade Separator at Rani Jhansi Road has been acquired by the North DMC through L&B Dept., GNCTD. The Land Acquisition Collector (Central) has passed an Award No.1/2012-13 dated 15.06.12 for 1244.63 sqm of the land of Model Basti area for which North DMC has paid Rs.11,27,99,828/- for full and final payment towards compensation and the Land Acquisition Collector (North) has passed an Award No. 12/LAC/N/12-13 dated 31.05.12 for 3430 sqm of the land of Azad Market area for which North DMC has paid Rs. 29,41,78,109/-for full and final payment towards compensation. It is further submitted that Land Acquisition Collector (North) has also passed an Award No. 11/LAC/N/11-12 dated 19.08.11 for 411.16 sqm of the land of Kothi Mem area for which North DMC has paid Rs. 3156,29,627/- for full and final payment towards compensation.

5. That the possession of land / properties of Kothi Mem area under Award No. 11/LAC/N/11-12 dated 19.08.11 has been handed over by the LAC on 30.11.10. Whereas the possession of land / properties of Azad Market area under Award No. 12/LAC/N/12-13 dated 31.05.12 has been handed over by the LAC on 29.08.14 and the possession of land / properties, except those under stay, of Model Basti area under Award No. 1/2012-13 dated 15.06.12 has been handed over by the LAC on 02.09.14.”

7. In C.M. Appl. 35088/2016, the grievance articulated on behalf of three petitioners is that though the collector (hereafter "LAC") published an award (Award No. 12/LAC/N/2012-13 dated 31.05.2012) under the old Act and despite the fact that possession proceedings of the suit lands were carried out

on 27.08.2014 - 29.08.2014 and duly recorded in the Possession Proceedings dated 29.08.2014 thus, resulting in takeover of all the properties and demolition of constructions; yet on 21.09.2016, they were informed that the LAC on the request of the MCD wanted to undertake further demolition of properties and possession. It is alleged that such properties (or parts thereof) were never acquired in the first place i.e. for which neither any section 4 notification nor a declaration under section 6 was issued nor any award has been passed; and were left out of the acquisition process entirely. The petitioners rely on affidavits filed by the respondent authorities which admit that the entirety of the properties that were acquired and formed part of the award made have been demolished and possession taken. Yet the LAC i.e. ADM/LAC, District Central, 14, Darya Ganj, New Delhi 110002, on 21.09.2016 issued a notice dated 20.09.2016 (without any reference to the power or provision empowering him to do so) to some of the Petitioners purportedly alleging that a certain area of land acquired had not been handed over to the beneficiary, under land acquired by award dated 15.06.2012.

8. Mr. Gaurav Sarin, learned counsel for the petitioners, at the outset urged that the proceedings and challenge are confined to vagueness in the acquisition notification, especially the declaration under Section 6, and in respect of the three sets of petitioners, the grounds urged in C.M. Appl. 35088/2016, viz. imminent dispossession without authority of law.

9. Mr. Sarin argues that the impugned notifications could not have been issued without conducting a survey of the land proposed to be acquired by the respondent authorities. Furthermore, the respondent authorities discriminated and conducted a survey of only a portion of the properties proposed for acquisition (i.e. Model Basti, Village Sidipura) and did not

conduct any survey prior to issuance of impugned notifications in respect of Kothi Mem, Beri Wala Bagh, Noor Ganj, Nawab Ganj, Naya Mohalla and Pul Bangash (all in Village Delhi). It is stated that the description of “locality” in the impugned notification is vitiated on account of the vagueness and ambiguity by insufficient/non-specification of the properties and the extent thereof proposed to be acquired, consequently the same is defective and does not comply with requirements of the LA Act, thus not only is the notification vitiated but the entire acquisition proceedings are bad in law. In support of this submission learned counsel relies upon the decision reported as *M.P. Housing Board v. Mohd. Shafi and Ors.* 1992 (2) SCC 168, where it was held as follows:

“8. It is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under section 4 of the land acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the Courts. The object of issuing a notification under Section 4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the collector to the effect that the land, as specified herein, is needed or is likely to be needed by the government for the public purpose mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the “public

purpose” for which the acquisition proceedings are being commenced but also the “locality” where the land is situate with as full a description as possible of the land proposed to be acquired to enable the “interested” persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged “public purpose” also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notifications, but also renders all subsequent proceedings connected with the acquisition, bad.”

10. It is argued that the impugned notification of declaration under Section 6 suffers from material irregularity and is contrary to the provisions of the LA Act as well as principles of natural justice, inasmuch as in the absence of availability of any plan and the vagueness in the description of the property/or extent thereof notified for acquisition, resulted in the disabling of the substantive and statutory rights of the affected persons including the petitioners from filing any claim for compensation. Counsel also states that absence of plan under Section 8 of the old Act prior to issuance of notice for filing of claims under Section 9 is bad in law and contrary to the scheme and provisions of the said Act. It is stated that the notice for taking over of possession, issued in 2016 of land comprising an area has not been notified for acquisition (i.e. Khasra No.283 of Village Civil Station) whereas the impugned notifications pertain to acquisition of land in Village Delhi.

11. The NCT of Delhi urges that the suit lands are part of a project, i.e. construction of a grade separator in Rani Jhansi road and cannot be excluded from acquisition. It is submitted that in these circumstances and taking into

consideration the larger public interest the competent authority decided to dispense with the inquiry under section 5A of the old Act. It is submitted that the aforesaid project is of public importance and the same is required for smooth traffic movement and for decongestion on the road. It is submitted that the land in question is being acquired for the grade separator for which various parcels of the land were sought to be acquired vide various notifications issued by the answering respondents. Some of the acquisition proceedings have been upheld by this Court. This Court, submits NCT's counsel, has also rejected the challenge to the invocation of the urgency clause under section 17(4) of the LA Act. It is submitted that the petitioners, are fence sitters and took the chance and allowed the respondents to complete the acquisition proceedings. The same is liable to be dismissed on the ground of delay and laches.

12. Mr. Sanjay Poddar, learned senior counsel for NCT argued that none of the petitioners have filed any document showing their interest in the land sought to be acquired. The title documents have been intentionally and deliberately suppressed from this Court. The petition is thus liable to be dismissed on this short ground alone. It is also submitted that the present petition has been filed on behalf of 39 persons. It is stated that the Lieutenant Governor directed issuance of the Section 4 notification read with Section 17(1) of the old Act since he was satisfied that the land was urgently required by the MCD. The right to file objections under Section 5A could, therefore, be dispensed with, under Section 17(1) of the old Act and thus a direction to such effect was also issued by him. A notification under Section 4 of the old Act read with Section 17(1) was thus issued on 20.04.2010 and

published. The declaration under Section 6 of the LA Act was issued 28.06.2010. It is also submitted that in exercise of powers under section 17(1) of the LA Act, the Lieutenant Governor directed the LAC to take possession of the land after the expiry of 15 days from the date of issuance of notice under section 9(1) of the LA Act.

13. Mr. Poddar submits that pursuant to the said notification issued by the NCT, the LAC issued notices under Section 9(1) and 10(1) dated 05.07.2010 and served them in accordance with law to all persons interested, as per the revenue records. The notice under section 10(1) being a public notice was also published on the conspicuous places in the locality inviting their claims under section 9 of the LA Act. Pursuant to the notice eighteen persons filed their respective claims. Counsel states that pursuant to the MCD's request a joint survey of the area was conducted on 07.07.2009. The total description of the property and the extent of the land required for the acquisition was also ascertained. The same were delineated on the map provided by the MCD and were sent to the NCT for consideration by letter dated 01.12.2009 along with the extract of the field book. It is also submitted that a detailed survey of the area was undertaken time and again and was also cross-checked before publication of the notifications. Thereafter 80% of the estimated compensation was also determined as per the circle rates notified by the Government on 18.07.2007. The MCD also obtained the approval of the DDA Technical Committee for the said project. It is submitted that thereafter the matter was laid before the competent authority for approval on 25.03.2010 and the Lieutenant Governor by his order dated

13.04.2010 granted approval for the issuance of the notification under Sections 4, 6 and 17(1) of the LA Act.

14. Counsel urged that since the right to file Section 5A application was dispensed with, this was also stated in the order. Relying on the pleadings of NCT, it is submitted that for the project a total area measuring 15300 square metres approximately was sought to be acquired by various notifications issued from time to time. Out of the said area land measuring 3841 square meters is sought to be acquired through the notification in question. The entire land falls within the revenue estate of village Delhi as per the revenue records and the same has been clearly mentioned in the notifications. NCT says that full and complete description of the land sought to be acquired was given in the notifications in question. It was also known to everyone affected by such acquisition; even to the petitioners. There was no confusion in the minds of the petitioners as is evident from their representations from time to time to various authorities.

15. Since the first issue which the court has to decide is whether the Section 6 declaration was vitiated and illegal because of vagueness and imprecision about the extent and particulars of land to be acquired, it would be useful to extract the relevant part of the said notification:

"NOTIFICATION

Whereas the Lt. Governor, Delhi is satisfied that land is required to be taken by the Government at the public expense for a public purpose namely for construction of Grade Separator at Rani Jhansi Road. It is hereby notified that the land is required for the above purpose.

This declaration is made under the provisions of Section 6 of the Acquisition Act, 1894 in respect of the land notified u/s 4 of L.A. Act, 1894 Notification 'No. F. I O(36)/06/L&B/LA/872 dated 20.04.2010 to all whom it concern. Under the provisions of Section 7, of the said Act, the Land Acquisition Collector (North), Delhi is hereby directed to take orders for the acquisition of the land.

A plan of the land may be inspected at the office of the Land Acquisition Collector (North), Delhi.

SPECIFICATION

<i>Village</i>	<i>Total area (sq mtrs)</i>	<i>Khasra No.</i>	<i>Area (sq.mtrs)</i>
<i>DELHI</i>	<i>3841</i>		
<i>{434 min, 435 min, 437 min (560.00)}, 441 min, 442 min, 443 min, (266.72)}, 444 min, (1756.55) 383 mm (19.17), 383 mm (264.00), 383 (563. 40), 383 min (as per Revenue record) or 223 min (as per DDA Nazul Record) (411.16)</i>			

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

16. The petitioners rely on *M.P. Housing Board's* case (*supra*) to say that the lack of particulars in the notification, as to the lands that were subject of the declaration, vitiates the entire acquisition itself. *Narendrajit Singh v. State of U.P.* [(1970) 1 SCC 125] too appears to support this contention. The NCT and other respondents counter this argument, saying that both notifications mentioned not only the public purpose, but the location, i.e. Rani Jhansi Road; furthermore, the details and particulars of the individual lands were indicated in the Section 6 notification. NCT also argues that the said notification clearly stated that any person interested could inspect the details of the land. It refutes the petitioners' submission

about lack of prior inspection, referring to inspection notes and a detailed chart about the shopkeepers who were occupying the lands and premises, which were proposed to be acquired. These details and charts were prepared in 2007 and 2008; the MCD's correspondence with NCT too is relied upon. The NCT is clear that all these documents were available with its officers and that in fact several interested landowners did avail the opportunity to inspect and pressed claims in the award proceedings.

17. This court is of opinion that the Section 6 notification cannot, in this case, be said to suffer from the vice of vagueness. Firstly, the location of the lands sought to be acquired, i.e. Rani Jhansi Road, was clearly indicated; secondly, the precise Khasra numbers of lands sought to be acquired were also indicated in the notification. Further, it is settled law (Ref. *Indrajit C. Parekh v State of Gujarat* 1975 (1) SCC 684; *State of T.N. v. A. Mohammed Yousef* (1991) 4 SCC 22 and *S. Gurdial Singh v. Ludhiana Improvement Trust*, (1997) 5 SCC 138) that where the notification permits inspection of plans and documents, the acquisition cannot be held to be vague in regard to the particulars of land. In *S. Gurdial Singh (supra)* the Supreme Court held as follows:

"3. This Court has recently considered the entire case-law and held in State of T.N. v. L. Krishnan [(1996) 1 SCC 250] that the notification cannot be quashed on the ground of vagueness. Therein, notification under Section 4(1) indicated that the lands were needed for the housing scheme to meet the demands made by various sectors of the population under K.K. Nagar Further Extension Scheme. That scheme was not found to be vague and hence could not be quashed on the ground that it was vague. This Court has reversed the judgment in State of T.N. v. A. Mohammed Yousef [(1991) 4 SCC 224] wherein it was held that unless a detailed scheme is framed under the improved

scheme, the notification under Section 4(1) is illegal. It is seen that the notification issued in the present case indicates the existence of the map and the detailed scheme for the inspection of the persons interested in the scheme. It was reiterated in the declaration published under Section 6 of the Central Act. A scheme was also annexed to the declaration. Under these circumstances, though the notification has not disclosed the public purpose, it cannot be said that the scheme itself is vague and is liable to be quashed. That apart, the award was made on 19-1-1977 and the reference under Section 18 also was sought for and was made. Under those circumstances, the writ petition was filed after an inordinate delay of 8 years and the appellants accepted the award passed by the Court and the relief sought for. Accordingly, we do not find any illegality in the ultimate conclusion reached by the High Court that it does not even warrant interference."

18. This court also notices, in this context, that *M.P. Housing Board* (supra) was distinguished in *Pratibha Nema v. State of M.P.*, (2003) 10 SCC 626. For these reasons, the contention of vagueness has to fail.

19. Coming next to the petitioners' complaint that lands in excess of the notification are sought to be acquired. Here, the court notices that the petitioners have nowhere relied upon or produced any map, document, or revenue records, to evidence their lawful possession of the shops and premises they occupy. It is a matter of record that possession of the entire extent of the properties notified could not be taken over. Further, the petitioners furnished an undertaking to demolish the built-up properties occupied by them. In these circumstances, the notices issued by the NCT, in 2016, to the extent of 39 square metres, appear to have been what can be termed as "left over" acquired lands, of which possession had remained with the petitioners. The clear and consistent stand of the NCT is that a major

portion of acquired land was handed over to MCD after -demolishing the structure on 29.08.2014. But some structures were not demolished on the occupants' request as they stated that they would demolish them and MCD also agreed to it. But the occupants did not demolish the structures leading the MCD to seek for demolition so that the work of Grade Separator could start.

20. The competence of an individual to challenge land acquisition proceedings arises, if it is shown that he has some interest in the lands proposed to be acquired. Thus, in *Rajinder Kishan Gupta v. Union of India*, (2010) 9 SCC 46 it was held as follows:

"23. Before considering this issue, it is our duty to point out that nowhere in the affidavit the appellants have specified the details regarding their holdings such as khasra number, extent, ownership details with reference to revenue records. The appellants have not disclosed anywhere in the petition as to how they are concerned with the suit land. Very vague pleadings have been made that the suit land belonged to their family. As per the revenue record, total area of land owned by their so-called family is 12-1-0 bighas only while the land in respect of which the acquisition is under challenge is 28-1-0 bighas. Land acquisition proceedings can be challenged only by the "person interested" and none else. On this ground also, their claim is liable to be rejected."

21. Similarly, in *Hanmantha Harijan v. State of Karnataka*, (2015) 10 SCC 469, it was held by the Supreme Court as follows:

"63. In view of the foregoing reasons recorded by us on the basis of the acquisition notifications issued by the State Government under the statutory provisions of the KIAD Act and therefore, we have to answer Points (i), (ii) and (iii) in favour of the landowners holding that the Company is neither the

beneficiary nor interested person of the acquired land, hence, it has no right to participate in the award proceedings for determination of the market value and award the compensation amount of the acquired land of the appellants. Hence, the writ petition filed by the Company questioning the correctness of the award passed by the Reference Court which is affirmed by the High Court is not at all maintainable in law. On this ground itself, the writ petition filed by the Company should have been rejected by the High Court, instead it has allowed and remanded the case to the Reference Court for reconsideration of the claims after affording opportunity to the Company, which order suffers from error in law and therefore, the same is liable to be set aside."

22. It is evident from the above discussion, that to maintain writ proceedings, to challenge acquisition under the old Act, the petitioners must demonstrate their interest in the lands. In this case, the petitioners have, in a tabular manner, claimed ownership and possession in respect of the premises under their occupation. Yet, to establish legal ownership and possession, they have not produced a single copy of any title document, or even revenue or municipal records, evidencing payment of tax or any revenue payments. Mere occupation, without the lawful right to possession (be it in the capacity as owner or lawful tenant or lessee) *per se* does not entitle the individual to claim that the acquisition through exercise of eminent domain is illegal or violates any statutory mandate. The petitioners' lack of any proof of ownership or lawful possession, thus renders their claim weak and liable to rejection.

23. In view of the foregoing findings that the petitioners lack standing and also that lands which were left over at the time of taking possession, but were nevertheless acquired lands, the present claim in this writ petition has

to fail. The petitioners' right to claim any benefit from any policy formulated by the NCT for allotment of land, etc. (if any, in accordance with law) however shall not be prejudiced. The writ petition is accordingly dismissed, without order as to costs.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 12, 2017



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