

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

% **Date of decision: 22nd July, 2021**

+ **W.P.(C) 5997/2021 & CM No. 18960/2021 (for interim directions)**

GURCHARAN SINGH & ORS.

..... Petitioners

Through: Mr. Gaurav Kochar, Mr. Anchit
Sharma & Ms. Anukriti Pareek,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vikrant N. Goyal, Adv. for UOI.
Ms. Padma Priya, Mr. Dhruv Nayar
& Ms. Shreya Sethi, Advs. for
NHAI.
Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advs. for LAC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The six petitioners have filed this petition, (i) impugning the undated notice issued by the Additional District Magistrate (ADM) / Land Acquisition Collector (LAC), District South-West, Kapashera, New Delhi, informing the general public that physical possession of land subject matter of Award No.08/2008-09 would be taken on 24th June, 2021, for construction of Urban Extension Road – II (UER-II); and, (ii) for declaring the Award No.08/2008-09 as null and void.

2. It is the case of the petitioners, that (i) the petitioners no.1 to 4 viz. Gurcharan Singh, Kanwaljeet Singh, Surjit Singh and Gurbax Singh are

brothers, and since about the year 2000, jointly own built up plot nos.7, 8 and 9 ad-measuring 554 sq.yds. out of Khasra No.625 situated in the revenue estate of village Roshanpura, Tehsil and District Delhi in the area abadi known as Shyam Vihar, Najafgarh, New Delhi; (ii) the petitioner no.5 viz. Tej Pal Singh was the earlier owner of the land aforesaid, whose name was reflected in the Khatoni / revenue records; (iii) the petitioner no.6 viz. Jagbir Singh purchased the land aforesaid from petitioner no.5 and subsequently sold it to the petitioner no.4, who sold 1/4th portions thereof to each of the petitioners no.1 to 3 and retained the remaining 1/4th portion with himself; (iv) the petitioners no.1 to 4 are in joint and continuous possession of the aforesaid 554 sq.yds. of land out of Khasra no.625 of village Roshanpura and have been enjoying the same; (v) the land of village Roshanpura, including the aforesaid land was sought to be acquired for a public purpose viz. construction of a 100 meter road / UER-II, with Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the “1894 Act”) having been issued on 7th April, 2006, declaration under Section 6 of the 1894 Act having been made on 4th April, 2007 and the award under Section 9 of the 1894 Act, being Award no.08/2008-09/SW, having been made in the year 2008; (vi) the actual physical possession of the land acquired was however never taken and compensation with respect thereto not paid; (vii) after the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “2013 Act”), several neighbours of the petitioners approached this Court under Section 24(2) of the 2013 Act and obtained orders to the effect that the acquisition proceedings had lapsed, as far as their respective land /

properties were concerned; (viii) the areas of Shyam Vihar and Roshanpura are densely inhabited, with concrete constructed houses having proper electricity and water connections; (ix) due to heavy litigation by occupants of the aforesaid land, the respondent no.1 Ministry of Urban Development and Poverty Alleviation and Ministry for Road, Transport and Highways decided to re-designate the road as a National Highway; (x) after the re-designation of the proposed road as the National Highway, the respondent no.3 National Highways Authority of India (NHAI) re-aligned the road to avoid as much as possible, portions of Shyam Vihar and Roshanpura; (xi) after such re-alignment, the respondent no.3 NHAI initiated its own process for acquisition of the land for construction of National Highway 344M, by issuing Notification dated 29th November, 2018 under Section 3A of the National Highways Act, 1956 (hereinafter referred to as the “1956 Act”) and by making award under Section 3G of the 1956 Act on 25th September, 2020; (xii) since the road had been re-aligned, only some portion of the land that was to be acquired under the 1894 Act, was acquired under the 1956 Act; (xiii) the land / property of the petitioners however did not form part of the acquisition proceedings under the 1956 Act; (xiv) in the meanwhile, several people whose land formed part of the acquisition proceedings under the 1894 Act but not of the proceedings under the 1956 Act, were recognized as the owners of their respective lands under the Prime Minister – Unauthorized Colonies in Delhi Awas Adhikar Yojana of February, 2021; (xv) however the petitioners no.1 to 4 are not being recognized as the owners of the land ad-measuring 554 sq.yds. under their property; (xvi) on 15th / 16th June, 2021, the ADM / LAC, District South-West, Kapashera, New Delhi pasted undated notices, informing the general public that

physical possession of land subject matter of acquisition under the 1894 Act proceedings shall be taken on 24th June, 2021 for construction of the UER-II; (xvii) the LAC is thus planning to acquire land for a project that had been shelved and acquisition proceedings whereof have been superseded; (xviii) pursuant to the acquisition proceedings under the 1956 Act, the earlier acquisition proceedings under the 1894 Act do not remain valid; (xix) the respondents are planning to take possession of the land of the petitioners no.1 to 4, which was acquired for construction of UER-II, but which project has been re-designated as a National Highway and the road re-aligned, leading to fresh acquisition proceedings under the 1956 Act; (xx) once the new acquisition proceedings have been undertaken, the old acquisition proceedings with respect to the subject land have become infructuous; and, (xxi) if demolition as threatened is permitted, the constructed house of the petitioners and their family would be demolished and the petitioners and their family members would be left with no residence.

3. The petition came up first before the Vacation Bench of this Court on 23rd June, 2021, when notice thereof was ordered to be issued, pleadings ordered to be completed and *status quo* with respect to Khasra numbers, which do not find mention in the award dated 25th September, 2020 under the 1956 Act, directed to be maintained; it was however clarified that the order of *status quo* was being granted so that the petition did not become infructuous and without expressing any final view in the matter and the petition ordered to be listed for today.

4. The counsels for the respondents state that they do not desire to file any counter affidavit and seek dismissal of the petition.

5. Finding, that the land with respect to which this petition has been filed was admittedly acquired under the 1894 Act, as far back as in the year 2008 and that the only claim of the petitioners in this petition was, that since the public purpose for which the land was acquired had ceased to exist, we at the outset only enquired from the counsel for the petitioners, the basis for the assumptions that (i) the acquisition proceedings, even if have attained finality, can be subsequently challenged on the ground of the land being not used / required for the public purpose for which it was acquired; and, (ii) if owing to subsequent developments, land including the land which was earlier acquired, is acquired, the earlier acquisition proceedings lapse.

6. We may in this context notice that it was the contention of the counsels for the respondents today, that this petition is liable to be dismissed in view of our order dated 5th July, 2021 in W.P.(C) No.6104/2021 titled ***Thakur Singh Vs. Land Acquisition Collector***, also filed with respect to the same village. However it is the contention of the counsel for the petitioners, that this petition is different from ***Thakur Singh*** supra. It is contended that ***Thakur Singh*** supra was under Section 24(2) of the 2013 Act but the petitioners herein are not claiming that the acquisition proceedings under the 1894 Act have lapsed owing to the provisions of the 2013 Act; on the contrary, the contention of the petitioners is that their land is no longer required owing to re-alignment of the road.

7. We may also notice that though the petitioners have pleaded that in the acquisition proceedings under the 1956 Act, part of the land which was already acquired under the acquisition proceedings under the 1894 Act and which already vested in the government has been again acquired but a perusal of the award of the acquisition proceedings under the 1894 Act shows, a total of 46 Bighas 13 Biswas of land in village Roshanpura comprising of Khasra Nos.623/2 (3-06), 624/2 (3-14), 625/2 (2-12), 626/2 (1-07), 627/2 (0-04), 628/2 (3-05), 629/2 (5-11), 630/2 (3-03), 633/2 (1-16), 634/2 (0-11), 635 (4-16), 636/2 (4-10), 637/2 (2-10), 632 (4-16) and 631/2 (4-12) to have been acquired. On the contrary, the documents filed by the petitioners with respect to acquisition proceedings under the 1956 Act show the land ad-measuring 12.9391 hectares and comprising of Khasra Nos.629, 630, 632 Min, 633 Min, 634 Min, 635 Min, 636 Min, 637 Min and 638 Min of village Roshanpura to have been acquired. Though some of the khasra numbers mentioned in the two proceedings are common but that alone does not lead to the conclusion that part of the land is the same as part of the land subject matter of acquisition proceedings under the 1894 Act inasmuch as, acquisition in the two is of specific areas out of Khasra number. The petitioners have failed to make out a case of any overlap. Not only so, the acquisition proceedings under the 1956 Act show the land of village Roshanpura acquired thereunder to be vesting in / belonging to Gram Sabha or to the government. Even if there is any commonality, no benefits / rights accrue in favour of the petitioners from the respondent no.3 NHAI, upon being entrusted with the project, while acquiring the land, also acquiring the land which vested in the government from the earlier acquisition proceedings.

8. As far as our queries recorded in paragraph 5 above are concerned, the counsel for the petitioners has no reply and states that the matter be adjourned to enable him to study the matter.

9. The study to be done in law, for pressing a claim, has to be done before presenting the claim to the Court and a litigant cannot start reading the law after presenting the case and especially after obtaining interim order. Though we have offered an adjournment to the counsel for the petitioners subject to the order of *status quo* granted by the Vacation Bench on 23rd June, 2021 being vacated but the counsel for the petitioners has stated that he would argue the matter today only, rather than have the stay vacated. Public projects, which are for the benefit of the entire citizenry, cannot be permitted to be so halted at the instance of a few citizens and particularly when the effort in that regard is made in such a frivolous and casual manner, without even checking the legal propositions.

10. As per our understanding, acquisition once concluded, does not lapse and / or does not become void for the reason of the land acquired being not used for the public purpose for which it was acquired and also does not become susceptible to challenge on a subsequent date on such ground.

11. This Court, in ***Adil Singh Vs. Union of India*** 171 (2010) DLT 748 (DB) [Special Leave Petition (Civil) No.33808/2010 preferred whereagainst was dismissed on 3rd January, 2011] held, that (i) where land is acquired for one public purpose and part of it is left unused, the same can be used for another public purpose; (ii) merely because the unused land is used for another public purpose, would not be a ground for challenging the original acquisition itself; (iii) once the land has vested in the State, there is no

question of the land being re-vested in the erstwhile owners; (iv) the government can withdraw from the acquisition only upto the point it does not take possession of the land sought to be acquired; (v) once possession has been taken, acquisition cannot be given up; and, (vi) even if part of the land is sought to be used for a commercial purpose, the land would not revert to the original owner. Similarly, in **V. Chandrasekaran Vs. Administrative Officer** (2012) 12 SCC 133, Supreme Court held it to be a settled legal proposition that once the land is vested in the State free from all encumbrances, the State cannot be divested of the land and the acquisition proceedings would not lapse; the said land, once acquired, cannot be restored to the tenure holders / persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. It was further held that the acquisition proceedings cannot be withdrawn / abandoned under the provisions of Section 48 of the 1894 Act. It was yet further held that how the State uses the land, is no concern of the original owner and cannot be the basis for invalidating the acquisition. It was clarified, that there was no principle of law by which a valid compulsory acquisition stands voided because the acquiring authority diverts it to a public purpose other than the one stated in the declaration. It was held to be no concern of the erstwhile land owner, whether land is / was being used for the purpose for which it was acquired or for any other purpose and it was held that the erstwhile owner becomes a *persona non-grata* once the land vests in the State. To the same effect is **Meena Devi Jindal Medical Institute and Research Centre Vs. Lt. Governor** MANU/DE/0279/2005 (DB) [Civil Appeal No. 1431/2008 whereagainst was dismissed on 29th March, 2017], **Pradeep Kumar Vs. Union of India**

MANU/DE/1555/2014 (DB) [Special Leave Petition (Civil) No.29393/2014 preferred whereagainst was dismissed on 28th November, 2014] and **S.S. Dahiya Vs. Union of India** MANU/DE/0762/2020 (DB). Furthermore, Supreme Court in **Union of India (UOI) Vs. Kushala Shetty** (2011) 12 SCC 69 has held that the Court can nullify the acquisition of land only in rarest of rare cases, if it is found to be *ex-facie* contrary to the mandate of law or tainted due to mala fides. In the case at hand, neither any violation of mandate of the 1894 Act or the 1956 Act has been established nor any charge of malice in fact has been alleged and/or proved. Therefore, no challenge can be sustained.

12. The counsels for the respondents have also contended that the petitioners are not the recorded owners of the land and even otherwise have no locus to file this petition. It is contended that the petitioners, as per their own documents produced before this Court, are subsequent purchasers and interlopers and cannot make any challenge to the proceedings for acquisition before they came into the picture.

13. Once the law is settled as aforesaid, the entire basis on which the petition has been filed i.e. of the acquisition lapsing owing to non-utilization of land and / or owing to acquisition of additional land, crumbles and the petition fails and is dismissed.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 22, 2021

‘gsr’..