

Bhola Ram Vs. Gnctd

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Court : Delhi

Decided On : Sep-27-2013

Judge : Najmi Waziri

Appellant : Bhola Ram

Respondent : Gnctd

Advocate for Def. : Ms. Rachna Srivastava, Ms. Saroj Bidawat, Ms. Ferida Satarawala

Advocate for Pet/Ap. : Mr. Rakesh Tiku, Mr. Prakash Gautam, Mr. Vivek Ohja

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

01. 08.2013 Date of Decision :

27. 09.2013 + WP(C) No.6941/2011 BHOLA RAM Petitioner Through: Mr. Rakesh Tiku, Sr. Adv., with Mr. Prakash Gautam and Mr. Vivek Ohja, Advocates. versus GNCTD Respondent Through: Ms. Rachna Srivastava, Adv. for R1 Ms. Saroj Bidawat for UOI Ms. Ferida Satarawala, Adv. for PWD-R3 CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI MR. JUSTICE NAJMI WAZIRI 1 The petitioner seeks the quashing of Notification dated 9 th August, 2010 issued by the respondent, Government of National Capital Territory of Delhi (GNCTD) under sections 4 and 17 (1) and (4) of

the Land Acquisition Act, 1894 (Act) dispensing with the hearing under section 5A of the Act, as well as Notification dated 4 th August, 2011 under section 6 of the Act, declaring that the land was required for public purpose i.e. modification and improvement of the T- WP(C) No.6941 /2011 Page 1 junction of Anuvrat Marg and Aurobindo Marg. The petitioner also seeks quashing of the undated notice purported to have been issued under sections 9 and 10 of the Act.

2. The land in question is 4 biswas in Khasra No.169/2 in Lado Sarai, New Delhi (property), measuring about 200 square yards. The petitioner claims adverse possession of the property by virtue of being in continuous possession of it since 1948. To demonstrate his continuous possession, he relies upon an order of 22nd February 1979 passed by the Court of Sh. S.C. Poddar, SDM (Revenue Assistant) in a suit titled Kumari Keertika Vardhan v Bholu Ram, filed under section 84 of the Delhi Land Reforms Act, 1954, which order recorded under:

The evidence and documents on record therefor prove clearly that the defendant was in possession of the suit land for much longer than three years before the date of filing of the Application under section 84 of the Delhi Land Reforms Act and obviously the suit is barred by limitation and is decided in favour of the defendant.

3. The revision preferred against the said order was rejected by the Financial Commissioner on 13th March, 1980. The property is adjacent to a petrol pump and a ground floor structure has been built upon it. The petitioner has also annexed municipal records showing that he had WP(C) No.6941 /2011 Page 2 a cycle shop registered at the said address under the Delhi Shops and Establishments Act, 1954 vide a certificate dated 7th December, 1984 issued by the Chief Inspector, Shops and Establishments, Delhi. Documents of proceedings to assess property tax apropos 1A, Lado Sarai, New Delhi (being the property, identified by its postal address), are also annexed alongwith supporting receipts of payment of property tax for the years 2005 and 2010. The petitioner claims to be enjoying the property exclusively and in his individual right. Ms. Kanika Devi Verma, in whose name the land is recorded in the Revenue Records, was proceeded ex parte in these proceedings after service of notice.

4. The petitioner argues that his property alone is sought to be acquired, whereas the land immediately behind his property, which would necessarily be required for widening of the T-junction, has not been notified for acquisition. Therefore, the purported acquisition is evidently not for the professed public purpose. He contends that unless all requisite lands are acquired for widening of the road at the said Tjunction, including the area under the petrol pump adjacent to the property and also the area behind it, the project could neither be WP(C) No.6941 /2011 Page 3 initiated nor could it be viably completed. Therefore, he sought to contend, the section 4 notification would itself be without basis and a blatantly arbitrary exercise of power.

5. Evidently, the notification of 9th August, 2010 under sections 4 and 17 of the Act, was issued because the property was ostensibly required urgently for the stated public purpose. However, for almost 360 days of the year thereafter, the government did not take any action to demonstrate urgency in the acquisition of the property. Mr. Rakesh Tiku, learned Senior Advocate, submits on behalf of the petitioner that the notification under section 6 was issued on 4 th August, 2011, i.e., merely four days before the expiry of the one year statutory period for the section 6 declaration. He contended that the lackadaisical approach of the government shows that there was no real urgency for acquisition of the property, and it was only for denying a fair hearing under section 5A, that the notification under section 17 (4) was issued. He contended that the same was an arbitrary and a colourable exercise of power; it also resulted in denial of the valuable right of hearing under section 5A. Therefore it ought to be quashed WP(C) No.6941 /2011
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6. In its counter affidavit, as well as in its submissions before the Court, the government contends that over the years, like its population, the volume of traffic has increased manifold in the National Capital Territory of Delhi. One consequence of the profusion of vehicular traffic is a daily traffic bottleneck due to the narrow approach leading to the T-junction in question. This required urgent attention and a lasting solution, all-the-more-so in view of the then ensuing Commonwealth Games (CWG). It was further submitted by Ms. Rachna Srivastava, Counsel for the Land & Building Department/Land Acquisition

Commissioner, i.e., R2, that keeping the CWG in view, a requisition was sent by the Public Works Department (PWD) of the GNCTD on 9th February, 2009 for acquisition of the 4 biswas of land (the property). This requisition was supported by a recommendation of the Delhi Traffic Police. It is stated that on either side of Anuvrat Marg (the road concerned), approximately 250 square metres each were required for widening of the road under the guidelines for the CWG. Accordingly, the location plan for requisition was sent to the Land Acquisition Commissioner (South) (LAC) on 13th May, 2009 to WP(C) No.6941 /2011 Page 5 ascertain the availability of land and to elicit the relevant records of the Revenue for acquisition proceedings. It is further submitted that the latter took almost a year to send his joint survey report on 4th April, 2010 to the PWD, after computing 80% of the acquisition compensation amount. Thereafter, another four months were spent over drafting a notification, conducting survey, etc., with respect to issuance of the notifications under sections 4 and 17 on 9th August, 2010 and as aforesaid, about 360 days thereafter the notification under section 6 was issued. Thus, Counsel for the Respondent No.1 submitted, there was actually no delay in the matter and that the time taken in the processing of the file was on account of official movement of the same and issuance of notifications was in the ordinary course.

7. Learned Senior Advocate for the petitioner, placed reliance upon the judgement of the Supreme Court in *Anand Singh and Anr. v State of Uttar Pradesh and Ors.*, reported in (2010) 11 SCC 242. In that case, referring to various precedents on the issue, the Supreme Court held inter alia as under:

40. Eminent domain is the right or power of a sovereign State to appropriate the private property WP(C) No.6941 /2011 Page 6 within the territorial sovereignty to public uses or purposes. It is exercise of strong arm of the Government to take property for public uses without the owner's consent. It requires no constitutional recognition; it is an attribute of sovereignty and essential to the sovereign government. [Words and Phrases, Permanent Edn., Vol. 14, 1952 (West Publishing Co.)].

41. The power of eminent domain, being inherent in the Government, is exercisable in the public interest, general welfare and for public purpose.

Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though the right to property is no longer a fundamental right but Article 300-A of the Constitution mandates that no person shall be deprived of his property save by authority of law. That Section 5-A of the Act confers a valuable right to an individual is beyond any doubt. As a matter of fact, this Court has time and again reiterated that Section 5-A confers an important right in favour of a person whose land is sought to be acquired.

42. When the Government proceeds for compulsory acquisition of a particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time under Section 5-A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose, etc. Moreover, the right conferred on the owner or person interested to file WP(C) No.6941 /2011 Page 7 objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice.

43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

(Emphasis supplied) Dwelling further upon the issue of how mere likelihood of delay (in the acquisition proceeding) ought to not be the only consideration for dispensing with hearing under section 5A, the Supreme Court observed:

46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realising that an important and valuable right of the person interested in the land is being WP(C) No.6941 /2011 Page 8 taken away and with some effort enquiry could always be completed expeditiously.

8. Mr. Tiku further sought to rely upon the judgement of the Supreme Court in the case of Devender Kumar Tyagi and ors. v State of Uttar Pradesh, (2011) 9 SCC 164, wherein the observations made in Radhey Shyam v State of Uttar Pradesh, (2011) 5 SCC 553 were reiterated:

77 (iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the LA Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons. (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. WP(C) No.6941 /2011 Page 9 The Supreme Court further referred to its earlier dictum in Dev Sharan v State of Uttar Pradesh, (2011) 4 SCC 769, where it

had held as under:

37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the LA Act.

9. On the strength of the above judgements, Learned Senior Advocate sought to urge that the present case is clearly one where exercise of the power of judicial review of this Court is warranted, inasmuch as not only was there no urgency requiring the exercise of the powers under section 17 (4), but any urgency even if it did exist, would have long perished due to the delay - both pre and post-notification. This delay is exclusively by the governments own volition, inaction, indifference, lethargy, call it whatever one may.

10. This Court finds merit in the contentions of the petitioner. It is settled law that the right to hearing under section 5A is a valuable right and it WP(C) No.6941 /2011 Page 10 cannot be taken away from the citizen by merely recording in the file that the land is required urgently. The corresponding facts and circumstances of each case would have to be examined to establish that the invocation of section 17 (4) is just and fair.

11. This court notices that more recently the Supreme Court, in Darshan Lal Nagpal (Dead) by LRs. v Government of NCT of Delhi and ors., (2012) 2 SCC 327 had occasion to deal with a similar fact situation of emergency provisions under section 17 being invoked, interestingly again in the context of the upcoming CWG. Striking down the action of the government as being wholly unjustified in the facts of the case, given the undue delay both pre and post-notification, the Court, observed:

38. A recapitulation of the facts would show that the idea of establishing 400/220 kV substation was mooted prior to August 2004. For next almost three years, the officers of DTL and DDA exchanged letters on the issue of allotment of land. On

28-7-2008 the Secretary (Power), Government of NCT of Delhi-cum-CMD, DTL made a suggestion for the acquisition of land by invoking Section 17 of the Act. This became a tool in the hands of the authorities concerned and the Lieutenant Governor mechanically approved the proposal contained in the file without trying to find out as to why the urgency provisions were being invoked after a time gap of five WP(C) No.6941 /2011 Page 11 years. If the substation was to be established on emergency basis, the authorities of DTL would not have waited for five years for the invoking of urgency provisions enshrined in the Act. They would have immediately approached the Government of NCT of Delhi and made a request that land be acquired by invoking Section 17 of the Act. However, the fact of the matter is that the officers functionaries/concerned of DTL, DDA and the Government of NCT of Delhi leisurely dealt with the matter for over five years. Even after some sign of emergency was indicated in the letter dated 9-9-2008 of the Joint Secretary (Power), who made a mention of the Commonwealth Games scheduled to be organised in October 2010, it took more than one year and two months to the competent authority to issue the preliminary notification. Therefore, we are unable to approve the view taken by the High Court on the sustainability of the appellants' challenge to the acquisition of their land. (Emphasis supplied) 12. It is clear from the precedents cited above, that power under section 17 (4) to dispense with the hearing under section 5A must not only be exercised sparingly and only in cases where the public purpose for which the acquisition is sought brooks no delay, but the government ought to exhibit such urgency in its actions as well - during the process of acquisition - both pre and post-notification. While it cannot be held that delays by the government, whether pre or post-notification would, by itself be good ground for the courts to interfere with the States WP(C) No.6941 /2011 Page 12 invocation of the power under section 17 (4), the court would rightly exercise its power of judicial review and restore to the land owner his/her right to be heard under section 5A where the delay is of such a nature as to negate the very urgency claimed for invoking section 17 (4).

13. We have had the benefit of perusing the file pertaining to the property, and note that subsequent to a draft letter being prepared on 13 th May 2009 which admittedly was issued to the LAC on the same date, there is a perplexing silence of inactivity till 20th April 2010. This stares in the face of the professed urgency

which was otherwise vigorously emphasised by the respondent for the sake of invocation of section 17 (4). The records also reflect that indeed the PWD had requested the Delhi Development Authority (DDA) for acquisition of the aforesaid land way back on 14th January, 2009. Therefore, one could safely presume that the preparatory work for widening of the T-junction would have started some time towards the end of 2008 i.e. at least 2-3 months earlier. WP(C) No.6941 /2011
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14. From the aforesaid narration of facts, it is evident that although the acquisition was requisitioned in February 2009 to remove the perennial traffic bottleneck, coupled with the sense of urgency for a smooth flow of traffic especially in view of the then ensuing CWG in October, 2010 yet the respondent itself took about nineteen months to issue the section 4 notification. This, by no stretch of imagination, can be said to demonstrate any urgency.

15. Even thereafter, once the notifications under sections 4 and 17 were issued, the Government took almost a year (less four days) to issue the section 6 notification. Where both the requisitioning and the acquiring authority took almost twenty months to two years in issuing the section 4 notification and then another year in issuing the section 6 notification, it could hardly be said that there was any urgency. Allthemoreso when only one land owner was concerned for a small parcel of around 200 square yards.

16. There is no gainsaying the fact that when traffic causes bottleneck on a main traffic artery especially with the ever burgeoning traffic volume, the sense of urgency ought be of an immediate and an escalating degree WP(C) No.6941 /2011 Page 14 with every passing day. Neither the records, nor the actions of the respondent reflect any such urgency or responsible exercise of authority as would be expected in such cases. Therefore, the ground for invocation of powers under sections 17 (1) and (4) is untenable.

17. Whatever urgency there may be with respect to the need for the property and consequently the compelling reason for issuance of notification under section 17 (4) for dispensing with the section 5A hearing, had been frittered away by the lethargic and indeed lackadaisical approach in the processing of the file by both -

the requisitioning and acquiring authorities. The Lt. Governor, on 16 th July 2010, recorded his satisfaction for the urgent acquisition of the land in question and accordingly dispensed with the application of section 5A. The notification under sections 4 and 17(4) was issued three weeks thereafter. However, the same records before the Lt. Governor would have also borne out that for almost 18 months, since the requisition for land was made by the PWD by their letter-way back on 9th February 2009, no action would be found evidencing urgency in the acquisition proceedings. In the circumstances, the Lt. Governor's satisfaction would be without basis and not borne out from the records. The mere WP(C) No.6941 /2011 Page 15 statement of the urgent requirement of the land would itself not be sufficient reason to enable invocation of that provision of statute. The claim of urgency is further defeated by the fact that the LAC himself took almost a year simply to survey the lands (along with officials of the PWD) to prepare the aks shajra.

18. In view of the above discussion, this court is of the opinion that there was clearly no justification for the invocation of the urgency provision of section 17 (4) and the consequent denial to the petitioner of the valuable right of hearing under section 5A. Consequently, we quash the notification dated 9th August 2010 under section 17 (4), as well as the notification of 4th August 2011 under section 6, along with the undated notice purported to be issued under sections 9 and 10 of the Act.. The respondent would accord the petitioner his rights under section 5A. The GNCTD is at liberty to complete the acquisition proceeding, if advised, after the hearing under section 5A and after considering the Collector's report.

19. Before disposing off this petition this court notices, not without some concern, that in the present case, evidently, the action of the WP(C) No.6941 /2011 Page 16 government authorities both pre and post-notification was lackadaisical, even phlegmatic. The notification under section 6, issued on 4th August, 2011 appears to have been done so in a hurry possibly to meet the statutory limitation of one year. No explanation, however, appears either from the acquisition notifications file or from the submissions made before this court as to why the PWD had not taken any action since January 2009 or why the LAC failed to take any action between May 2009 and April 2010. Even assuming that urgency existed in early 2009 when

the PWD had originally requisitioned the land because of the emergent situation as then recorded, such urgency has perhaps been frittered away by the authorities by their lethargic and lackadaisical approach. The file languished. It holds no evidence apropos the professed urgent need of the property in public interest. While it is incontrovertible that the right or power of eminent domain cannot be abused by the government, so also is it indisputable that authorities charged with exercising such power ought to act with as much efficiency and promptitude as warrants the urgency and exigency of the situation. It would be a worthwhile exercise for a diligent administration to identify officials who, because of their slothful or WP(C) No.6941 /2011 Page 17 indifferent disposition or for other reasons, fail to accord the requisite attention to the provision of adequate remedies to acknowledged urgent needs of a people. This need is allthemore acute in the National Capital Territory bearing in mind its fast burgeoning population and traffic density and projected growth. Accountability ought to be fixed on such officers who let project files languish which in turn delays the creation of adequate civic infrastructure, thus compounding the problems of the city and subjecting the citizens to unwarranted sufferings.

20. The writ petition is allowed but in the abovementioned terms. There shall be no order as to costs. NAJMI WAZIRI (JUDGE) S. RAVINDRA BHAT (JUDGE) 27th September, 2013 WP(C) No.6941 /2011 Page 18

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