

Ashok Kumar and Ors. Vs. uoi and Ors.

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Court : Delhi

Decided On : May-08-2017

Appellant : Ashok Kumar and Ors.

Respondent : Uoi and Ors.

Advocate for Pet/Ap. : Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Akanksha Kapoor, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Akanksha Kapoor, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Manpreet Kaur, Ms. Vanya Khanna, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Akanksha Kapoor, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Jyoti Tyagi, Ms. Mini Pushkarna, Ms. Vasundhara Nayyar, Ms. Anushruti, Ms. Jyoti Kataria Bajaj, Ms. Jyoti Tyagi

Judgement :

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

08. 05.2017 + W.P.(C) 2318/2014, C.M. APPL.6640-6641/2017 ARPIT BHARGAVA Through : In person. Versus GNCT OF DELHI AND ORS.

... Petitioner

Respondents Through : Sh. Anuj Aggarwal, ASC with Sh. Gaurav Singhal, Advocate, for GNCTD. Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. ASI Dharambir, ZO/Sadar Bazar Circle with ASI Virender Singh, Pairavi Officer (Traffic) in person. + W.P.(C) 5173/2014, C.M. APPL.10297/2014, 13946/2014, 7480/2015 & 4306-4307/2017 KRISHNA MANGLA

... Petitioner

Through : Sh. Tarun Sharma, Sh. Boudh Prabha and Ms. Akanksha Kapoor, Advocates. Versus UNION OF INDIA AND ORS. Respondents Through : Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. W.P.(C) 2318/2014 & CONNECTED CASES Page 1 of 13 Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. + W.P.(C) 5174/2014, C.M. APPL.10299/2014, 14144/2014, 4227-4228/2017 & 12600/2017 URMILA YADAV

... Petitioner

Through: Sh. Tarun Sharma, Sh. Boudh Prabha and Ms. Akanksha Kapoor, Advocates. Versus UNION OF INDIA AND ORS. Respondents Through : Sh. Bhagwan Swarup Shukla, CGSC with Sh. Santosh Kumar Chaurasiya and Sh. Shambhu Chaturvedi, Advocates, for UOI. Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. Sh. Sanjiv Dutta, Advocate, for applicant. + W.P.(C) 5362/2014, C.M. APPL.10669/2014, 7479/2015, 4308- 4309/2017 & 12498/2017 SITA RAM

... Petitioner

Through: Ms. Manpreet Kaur, Advocate. Versus W.P.(C) 2318/2014 & CONNECTED CASES Page 2 of 13 LAND ACQUISITION COLLECTOR AND ORS. Respondents Through : Sh. Vivek Goyal, CGSC with Ms. Vanya Khanna, Advocate, for UOI. Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. + W.P.(C) 5618/2014, C.M. APPL.13910/2014, 4304-4305/2017 SANDEEP SACHDEVA Versus UNION OF INDIA AND ORS.

... Petitioner

Respondents Through : Sh. Arun Bhardwaj, CGSC, for UOI. Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. + W.P.(C) 5657/2014, C.M. APPL.14008/2014, 11846-11847/2017 ASHOK KUMAR AND ORS.

... Petitioner

s Through: Sh. Tarun Sharma, Sh. Boudh Prabha and Ms. Akanksha Kapoor, Advocates. Versus UNION OF INDIA AND ORS. Respondents Through : Sh. Ajay Diggpaul, CGSC, for UOI. W.P.(C) 2318/2014 & CONNECTED CASES Page 3 of 13 Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. + W.P.(C) 5785/2014, C.M. APPL.4230-4231/2017 SANJAY KUMAR Versus UNION OF INDIA AND ORS.

... Petitioner

Respondents Through : Sh. Ajay Diggpaul, CGSC, for UOI. Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain,

Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. + W.P.(C) 5658/2014, C.M. APPL.14014/2014, 11842-11843/2017 HARISH CHAND GUPTA AND ANR. UNION OF INDIA AND ORS. Versus

... Petitioner

s Respondents Through : Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Sanjay Poddar, Sr. Advocate with Ms. Mini Pushkarna, Standing Counsel with Ms. Vasundhara Nayyar, Sh. Govind Chaudhary and Ms. Anushruti, Advocates, for North DMC. W.P.(C) 2318/2014 & CONNECTED CASES Page 4 of 13 + W.P.(C) 7480/2014, C.M. APPL.17707/2014, 11844-11845/2017 JOGINDER SINGH TALWAR.

... Petitioner

Through: Sh. N.S. Vasisht, Ms. Jyoti Kataria Bajaj and Sh. Vishal Singh, Advocates. Versus UNION OF INDIA AND ORS. Respondents Through : Sh. Sanjay Kumar Pathak and Sh. Sunil Kumar Jha, Advocates, for LAC/GNCTD. Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC. Sh. Rajan Sabharwal, Standing Counsel, for North MCD. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE YOGESH KHANNA MR. JUSTICE S. RAVINDRA BHAT % 1. The claim of the petitioners, in these proceedings under Article 226 of the Constitution of India, is that the acquisition in respect of their lands is bad in law and that they cannot be dispossessed. It is also urged that without providing an alternative plot or handing over possession of such land, the respondents (hereafter called Govt. of NCT) cannot dispossess them (i.e. the petitioners, hereafter called "the landowners").

2. In all these cases, the appropriate government, i.e. the Govt. of NCT of Delhi (NCT) issued a notification on 20.04.2010 under Section 4 of the Land Acquisition Act, 1894 ("the old Act") for acquiring Land for the purpose of constructing a Grade Separator at Rani Jhansi Road. On 29.07.2010, a Section 6 notification under the old Act, was issued to declare that the said land is required for a public purpose.

Another Notice under W.P.(C) 2318/2014 & CONNECTED CASES Page 5 of 13
Section 17(1) was also issued under the said Act to notify the acquisition of the land on an urgent basis. On 15.06.2010 the Award was pronounced by the Land Acquisition Collector- Central District on behalf of the

... RESPONDENTS

. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force in 2013, after the making of the award.

3. Complaining that no steps were taken to disburse the declared compensation or for taking-over possession of the acquired land and also that the promised alternate allotment has also not been made till date, it is alleged that the impugned notice was abruptly issued, to take-over possession during the festival season with the objective to snatch away the petitioners residence and source of livelihood. They are aggrieved and claim that their fundamental rights under Articles-14, 19(1)(g) & 21 of the Constitution of India are violated. They seek appropriate orders to quash the notices (proposing to take over possession).

4. The respondent/authorities argue, in their pleadings, that on 01.02.2007, the proposal to construct a grade separator was cleared by the Technical Committee of the Delhi Development Authority (DDA). It is argued that the land is needed for a valid public purpose, i.e. to reduce the traffic volume and time on other roads for the commuters coming from Dhaula Kuan to St. Stephen's Hospital near Tis Hazari Court. The length of the grade separator is 1619 mtr. long. It is an elevated corridor for smooth traffic movement and has ramps for local traffic at DCM Chowk and Baraf Khana Chowk. It is urged by the NCT and the MCD that physical possession of the entire lands in village Civil Station was taken over on 07.12.2009 and 18.10.2010 respectively and handed over to MCD on the spot. It is also W.P.(C) 2318/2014 & CONNECTED CASES Page 6 of 13 argued that possession of the entire suit lands was taken over on 30.11.2010 in village Delhi, to the extent of 411.16 sq. mtr and on 29.08.2014 to the extent of 3429.84 sq. mtr and handed-over the same to the officials of MCD on the spot. The total area under acquisition is 3429.84 sq. mtr, and the possession reports dated 30.11.2010

and 29.08.2014 are also relied on. Furthermore, the NCT states that it took physical possession of the lands in village Model Basti on 02.09.2014 and handed over the same to the officials of MCD on the spot other than the khasra numbers where this Court had granted stay from dispossession. The copies of the Award No.1/2012- 13 showing therein the total area under acquisition as 1244.63 sq. mtr, are relied on. The respondents say that 608.95 sq. mtr. land could not be taken due to the stay granted by this court.

5. At one stage in the proceedings, on the basis of submissions made, the court took note of the circumstance that some of the petitioners would be eligible for allotment of alternative premises, in accordance with a policy formulated for this purpose. The eligibility criteria, for allotment of land, in the policy, is as follows: (ii) (a) Those whose shops/residences or workshops/industrial units are affected in a manner that the said premises can not be utilized as a shop/residence, workshop/industrial unit on acquisition of this property shall be eligible for relocation and rehabilitation under the scheme. In case of premises where less than 50 percent has been acquired and the recorded owner can continue to reside/work from there, would not be eligible for rehabilitation under the scheme. (b) In case of shops the recorded owner will be eligible. (c) In case of residential units, the rehabilitation will cover only owner's residing in the premises. Tenants would not be eligible under the scheme. W.P.(C) 2318/2014 & CONNECTED CASES Page 7 of 13 The policy further required that a committee comprised of the following officers would be constituted: (a) ADM/LAC concerned. (b) Representative(s) of land requisitioning department. (c) Representative(s) of local body concerned. (d) Representative(s) of DDA.

6. The NCT, in its affidavit, dated 31.01.2017, states that separate individual notices each dated 27.12.2016 were issued to the petitioners by the ADM/LAC (Central). All the said notices were sent by speed post on 28.12.2016 except to Shri Arpit Bhargava, whose notice was sent by speed post on 30.12.2016. The notices were served by pasting and by serving the same individually as well. By the notices, the above petitioners were asked to appear on 02.01.2016 in person or by a pleader duly authorized and instructed and able to answer all material questions, or accompanied by some authorized person, able to answer all such

questions relating to their claim and indicating to them that they must be prepared to produce on that day all the relevant documents including ownership/title documents, in original.

7. Learned counsel reiterated their respective contentions; it was submitted on behalf of the petitioners, that unless these proceedings are kept pending and they are actually allotted alternative accommodation, in terms of the policy, their claims would never see the light of the day, as the respondents would continue to deny their liabilities. It is urged that this courts intervention has lent some measure of protection, or else the petitioners would not have been able to secure any property or continue their livelihood. Counsel highlighted that the respondents as State are duty-bound W.P.(C) 2318/2014 & CONNECTED CASES Page 8 of 13 to honor Articles 14 and 21 of the Constitution. Their wilful disregard of these provisions means that they have no intention of acting fairly.

8. In W.P.(C) 2318/2014, a public interest litigant (Arpit Bhargava) seeks direction that the respondents, i.e. the MCD and the NCT should immediately take steps in constructing the Rani Jhansi Grade Separator/flyover by removing all obstacles in construction within a time- bound manner. The main grievance here is that although there is a crying need for the grade separator which would de-congest traffic and despite the fact that this plan was conceived for the Commonwealth Games (which took place about 7 years ago) the respondents have not shown the will to take over possession and complete the project. It is argued by the public interest litigant that the repeated litigation which has been initiated by the landowners, to somehow stall the completion of the project and the respondents inability to ensure that those proceedings do not delay the project completion, show their complicity and lack of will. The public interest litigant, therefore, seeks appropriate directions.

9. The record would show that acquisition of land was concededly for the public purpose of constructing a grade separator. The materials also indicate that land acquisition proceedings were complete and award too was announced, in 2010. At that stage, W.P.(C) 4663/2010 was filed before this court, requiring intervention. The court had disposed of the writ petition, permitting the petitioners to approach

the authorities for de-notification of the lands. That request was turned down. Another petition - W.P.(C) 569/2013 [Anup Kumar Kamal & Ors. v. Union of India], was filed, questioning the rejection of the de-notification application; that petition was dismissed by a Division Bench (S. Ravindra Bhat and Najmi Waziri, JJ) on W.P.(C) 2318/2014 & CONNECTED CASES Page 9 of 13 22.07.2013. Thereafter, these petitioners have approached this court, seeking quashing of the notices proposing to take possession of suit lands.

10. The court is of the opinion that the pendency of these proceedings, and the interim orders, granted, have resulted in a situation where a concededly public purpose project, i.e. construction of a grade separator, has been held- up. This has also spawned a public interest litigation. All the petitioners do not question the acquisition of lands; some of them complain that the invocation of the urgency clause was not justified. Those of the petitioners who have interest in the properties and premises occupied by them, are also aware of the award and the amounts they are entitled to; some have even sought for enhancement of compensation. Yet, they demand that till alternative plots or lands are allotted, they cannot be removed and that doing so would infringe their constitutional rights. The petitions have also adverted to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013) to say that acquisition are no longer legal. The provision reads as follows: 24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, - a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed. (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made the five years or more prior to W.P.(C) 2318/2014 & CONNECTED CASES Page 10 of 13 provisions commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it

so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the Act: Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act. of this 11. The basic challenge to the acquisition did not succeed; the landowners who had sought for quashing of the acquisition were given liberty to approach the respondent authorities for de-notification of lands. That move did not succeed; the request was declined. Another petition [Anup Kumar Kamal (supra)]. was filed in 2013; that was rejected. Thus, the legality of acquisition proceedings could not be re-opened. It is also a matter of record that the respondents have taken possession of a major part of the acquired lands; compensation determination at the Land Acquisition Collectors stage too has attained finality. Many petitioners have of course approached the reference court for enhancement of the amounts payable to them. A few complain that their reference applications have not been forwarded to the court. All of them claim a right to continue in possession, till they are allotted and handed over alternative plots.

12. The petitioners right to claim the reliefs that they do, to put it mildly, is entirely misconceived. Once the land acquisition proceedings attained finality and even compensation stood determined, there could be no question W.P.(C) 2318/2014 & CONNECTED CASES Page 11 of 13 of resisting taking over of possession, on the basis of a right to alternative plots. The policy which is relied on nowhere postulates that without handing over alternative premises, the executive agency cannot take over possession. No such legal impediment exists. In the circumstances, the main claim of the petitioners in these proceedings (except W.P.(C) 2318/2014) is untenable and is, therefore, rejected.

14. In the light of the above discussion and analysis, the following directions are issued: (1) The claim for quashing of possession notices in these cases (except W.P.(C) 2318/2014) are rejected as untenable. (2) The respondent authorities are directed to complete the process of verification of the petitioners claims for alternative accommodation/plots within reasonable time, and in any case, not later

than 31st March, 2018; (3) The process of verification shall be on the basis of documents made available by the petitioners, in accordance with the policy or policies applicable for relocation or allotment of alternative plots. (4) The decision to allot or not to allot shall be communicated to the petitioners. In case, some or all of them are held entitled, the allotment shall be made within 2 months thereafter and possession of the plots/premises according to the entitlement under the policy shall be handed over within reasonable time. (6) Wherever the land owners or any petitioners have applied for enhancement of compensation, under Section 18 of the Land Acquisition Act W.P.(C) 2318/2014 & CONNECTED CASES Page 12 of 13 and wherever reference applications are not forwarded, the Land Acquisition Collector shall, after verifying that applications were received, refer them to the competent court. The issue of limitation, if any shall be considered by the reference court, in accordance with law. (7) Interim orders in all the petitions shall stand vacated. The respondents are at liberty to take possession of the lands which are the subject matter of all petitions except W.P.(C) 2318/2014. In view of the above directions in the petitions, no separate orders are called for in W.P.(C) 2318/2014.

15. All writ petitions except W.P.(C) 2318/2014 are dismissed but subject to the above directions; W.P.(C) 2318/2014 is, for the same reasons, allowed. MAY08 2017 S. RAVINDRA BHAT (JUDGE) YOGESH KHANNA (JUDGE) W.P.(C) 2318/2014 & CONNECTED CASES Page 13 of 13

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