

Ram Narain and ors. Vs. Cantonment Board Delhi and ors.

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Court : Delhi

Decided On : Aug-17-1972

Reported in : AIR1973Delhi84

Judge : Prithvi Raj, J.

Acts : Cantonments Act, 1924 Sections 181 (6)

Appeal No. : C.W. No. 1287 of 1971

Appellant : Ram Narain and ors.

Respondent : Cantonment Board Delhi and ors.

Advocate for Def. : C.M. Oberoi, ; R. K. Mehra and ; Keshav Dayal, Advs.

Advocate for Pet/Ap. : P.N. Lekhi, Adv

Judgement :

ORDER

1. The petitioners who are the joint owners of free-hold land comprised in Khasra No. 1066, Survey No. Cb 34 (Old) situate in village Naraina through this writ petition seek a declaration that the sanction applied for by them in their notice dated 29th June, 1970 (Annexure No. I), under Section 179 of the Cantonments Act, 1924 (hereinafter to be called 'the Act') served on the Executive Officer of respondent No. 1 intimating the intention of the petitioners to erect cinema house

on the land in question, is deemed to have been unconditionally granted under section 181 of the Act and that resolution No. 32, dated the 7th October, 1970, Annexure 5, passed by respondent No. 1 is illegal, unauthorised and without jurisdiction. A further declaration is sought that respondent No. 1 is legally obligated to consider the application dated the 12th August, 1971, Annexure No. 6, seeking extension of time for construction of the cinema house as the statutory sanction for construction of the building was deemed to have been accorded to the petitioners under Section 181(6) of the Act which was valid for a period of one year which period expired on 16th August, 1971, as respondent No. 1 had neglected and omitted to consider the said application, Annexure No. 6.

2. The petitioners further pray that an order, direction or writ in the nature of 32, dated 7th October, 1970, be issued and a further order, direction or writ in the nature of mandamus directing respondent No. 1 to consider in accordance with law petitioners' application dated 12th August, 1971, for extension of period of time, is also sought to be issued.

3. The case of the petitioners is that they applied to respondent No. 1 on 29th June, 1970, by giving a valid notice in writing as envisaged under Section 180 of the Act, Annexure No. 1, seeking sanction for construction of a cinema house on their plot, referred to earlier; that respondent No. 1 received the said notice in its office on the same date i.e., the 29th June, 1970; that respondent No. 1 was obliged to consider the aforesaid notice within one month after its receipt and if the Board neglected or omitted to consider the notice within one month after its receipt, the plan submitted was deemed to have been sanctioned under the provision of Section 181 of the Act as the petitioners after serving the notice dated 29th June, 1970, sent by registered post to respondent No. 1, sent another notice dated 30th July, 1970, Annexure No.9, which was duly received in the office of respondent No. 1 on 31st July, 1970, copy of the postal acknowledgment being annexure No.3, calling attention of the Board to the neglect and omission and that despite the receipt of that notice, the neglect and omission to make and deliver to the petitioners order under Section 181 of the act, continued for a further period of 15 days from the date of receipt of notice dated the 31st July, 1970. It is accordingly averred by the petitioners that the consequence of the neglect and

omission by respondent No. 1 to make and deliver to the petitioners any order on the notice is that respondent No. 1 was deemed to have unconditionally given sanction to the erection of the cinema building applied for by the petitioners by notice in writing Annexure No.1.

4. However, the petitioners aver, sometime in the last week of October, 1970, beyond the period of 15 days from the date of receipt of the registered Acknowledgment Due communication by respondent No. 1, they received letter dated 20th October, 1970, Annexure No. 4, intimating that notice for erection of cinema was rejected by respondent No. 1 by resolution No. 32 dated 7th October, 1970. The petitioners accordingly contend that the aforesaid communication is unauthorised, illegal, unwarranted and beyond the power and authority of respondent No. 1 and that the petitioners are within their right to disregard the above said resolution. Further submission of the petitioners is that every sanction for erection or re-erection of building given or deemed to have been given by respondent No. 1 is available for one year from the date on which it is given; that in case of the petitioners the sanction was deemed to have been given on 17th August, 1970, and the period of one year expired on the 16th August, 1971; that by application dated 12th August 1971, Annexure No. 6, the petitioners requested respondent No. 1 to allow extension of that period of one year; that respondent No. 1 vide its letter dated 25th August, 1971, Annexure No. 7, informed the petitioners that the petitioners' letter dated 12th August, 1971, was 'not understood' as notice of the petitioners for construction of cinema stood already rejected by resolution No. 32 dated 7th October, 1970.

5. The petitioners, therefore, aver that respondent No. 1 is in error and is legally obliged to consider the application of the petitioners for extension of the period for construction of the cinema house.

6. The grievance of the petitioners is that in resolution No. 32, Annexure No. 5, reasons for rejecting the notice are stated to be, (a) the land where the proposed cinema house is to be constructed falls within the limits for which the Delhi Development Authority has already published notifications for acquisition of the land under Section 4 and 6 of the Land Acquisition Act, 1894, and (b) and M.E.O.,

Delhi Cantt., has also raised an objection that the land in question is required for further expansion of C.O.D., but respondent No. 1 has sanctioned the building plans of other persons vide resolutions, Annexures Nos. 11 to 16 although he notifications for acquisitions of land under Ss. 4 and 6 of the Land Acquisition Act, 1894, and the inclusion of the land in question in the expansion of the C.O.D. are applicable to many of them. In the circumstances, the petitioners allege that their notice and the plan submitted for erection of a cinema house on the plot in question have been rejected by respondent No. 1 on a totally irrelevant and extraneous consideration. Accordingly the present writ petition has been filed seeking the relief, as already stated in an earlier part of this judgment.

7. Shri D.R. Paul, Cantonment Executive Officer, Delhi Cantonment field reply-affidavit on behalf of respondents Nos. 1 and 2 stating that in August, 1969, the petitioners had given notice of their intention to erect a cinema building under Section 179 of the Act which notice was not sanctioned by the respondent No. 2 and the plans were rejected vide resolution No. 8 dated 10th October, 1969; that from the record it appeared that the petitioners had re-submitted the said plans which were rejected along with a notice of intention to erect a building, vide application dated 22nd April, 1970, purporting to be under Section 179 of the Act; that on 10th June, 1970, the petitioners had sent a notice purporting to be under Section 181 of the Act for delivery of the plans within 15 days; that the petitioners, vide communication dated 18th June, 1970 Annexure 'A', were informed that the plans had already been rejected in October, 1969, and that the petitioners should not proceed with any type of construction on the said site; that having regard to Section 178-A to Section 186, no valid notice of intention to erect a building was given to the Board; that if the petitioners had any grievance against the refusal of the Board to sanction any building plans, they ought to have had recourse to the provision of the Act for appeal to the Competent Authority as provided in Section 274 of the Act.

8. Shri Ram Murti, Military Estate Officer respondent No. 3 in his reply affidavit has resisted the writ on the ground that the petition discloses no causes of action against the said respondent and neither any relief is sought against him; that the petitioner is precluded to invoke the extraordinary jurisdiction of this Court under

Article 226 of the Constitution of India having failed to avail of the remedy by way of an appeal as envisaged under the provisions of the Act; that the land where the proposes cinema is to be constructed falls within the limits of the notification made under Sections 4 and 6 of the Land Acquisition Act; that it is incorrect on the part of the petitioner to say that the user of the plot in question is not restricted; that land is being acquired for the use of military authorities and the land in question along with other land is earmarked for transfer to the military authorities for exercises/maneuvers of the armed forces and expansion of the Central Ordnance Depot for which purpose the land in question is being acquired by respondent No. 4 and that the land in question as shown in the Master Plan cannot be used for any purpose other than the purpose earmarked in the said Master Plan.

9. A reply was filed by Shri H.N. Fotedar, Secretary, Delhi Development Authority, respondent No. 4 . It is alleged by the said respondent that since no relief is sought against the answering respondent the writ petition against the answering respondent be dismissed; that the land has been notified for acquisition by the Delhi Administration who is necessary party to the said writ petition; that the zoning regulations of the Master Plan provide that the cinemas be located only in District Centres, Sub-District Centre or in Community Centre and have to form the part of the comprehensive approved scheme duly sanctioned under the provisions of the Master Plan as well as under the building bye-laws of the local body concerned; that in the circumstances no haphazard construction of a cinema can be permitted on a land notified for the planned development of Delhi; that the plan was rightly rejected by the Delhi Cantonment Board because the land in question has been notified for acquisition for the planned development of Delhi and plan submitted by the petitioner was not located either in an area where a cinema could be permitted nor does it form a part of any of the comprehensive scheme and that it is wrong on the part of the petitioner to contend that the land in question has no use in the Master Plan. On the contrary the use specified in the Master Plan is for Govt. purposes and the specific purpose of the Government can be determined on a later stage according to the need of Government.

10. The petitioners in their rejoinder affidavit have stated that the notice to erect a cinema building in August 1996, which is alleged to have been rejected by

Resolution No. 8 of the October 10, 1996 is not the subject matter of the petition and is not relevant that there is no bar against subject f a fresh plan that the petitioners were not able to being the erection of the building on account of the paucity of the building material adopted by the Cantonment Boarder that the building involved an expenditure of about Rs.25 lacs and further formalities a under the Cinematorgraphic Act Rules made there under that it also involved application for power to the Delhi Electric Supply Undertaking which it would not be possible to procure without first showing a sanction or even a deemed sanction and in the circumstances it does not lie with respondents Nos. 1 and 2 to blame the petitioners for not starting the construction as much a huge outlay or expenditure would not be done without first ensuring that it would not go waste while the attitude of respondents Not. 1 and 2 was and it that expenditure should have gone waste.

11. Mr. P. N. Lekhi the learned counsel appearing for the petitioners vehemently contended that the plan submitted by the petitioners for sanction for constructing a cinema building vide notice a dated June 29, 1970 is deemed to have been sanctioned and in that view of the matter the petitioners are within their right to invoke the extraordinary writ jurisdiction of this Court of seeking the relief sought on the write petition. The learned counsel further contended that it is obligatory on respondent No. 2 Cantonment Executive officer to allow an extension and that the petitioners cannot be discriminated against arbitration due to the unjustifiable action of reason No. 1 Cantonment Board Delhi Cantonment, can be compelled to consider the application of the petitioner for extension of time as the sanction deemed to have been granted has not lapsed under the provisions of Section 183 of the Act.

12. With a view to appreciate the contentions of the parties is would be relevant here to refer to the various provisions of the Act. Sub-section (1) of Section 179 of the Act enjoins that whoever intends to erect or re-erect any building in a Cantonment shall apply for sanction by giving notice in writing of his intention to the Board. Section 180 of his Act prescribes the condition of a valid notice. Sub-section (1) of Section 180 prescribes that a person giving the notice required by Section 179 a shall specify the purpose for which it is intended to use the building

to which such notice relates. According to the sub-section (2) of the said section no notice shall be valid until the information required under sub-section (1) and any further information and plans which may be required under by laws made under the Act have been further to the satisfaction of the Board along with the notice. Section 181 of the Act sets out the powers of the Board to sanction or refuse a plan. The said section lays down that the Board may either reuse to sanction the erection or re-election as the case may be of the building or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the matters enumerated in sub-section (1) of the said section. Sub-section (2) of the said section empowers the Board to reuse to sanction the erection or re-election of any building on grounds stated in the sub-section which are not relevant for the purpose of this petition. Sub-section (3) empowers the Board before sanctioning the erection or re-erection of a building a on land which is under the management of the Military Estates Officer to refer the application to the Military Estates Officer for ascertaining whether there is any objection on the part of the Government to such erection or re-election ; sub-section (5) enjoins that if the Board decides to refuse of sanction the erection or re-erection of the building it shall communicate in writing the reasons for such refusal to the person by whom notice was given. Sub-section (6) lays down that where the Board neglects or omits for one month after the receipt of a valid notice to make and to deliver to the person who has given the notice any order of any nature specified in Section 181 and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission then if such neglect or omission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection as the case may be unconditionally. Proviso the sub-section however prescribes that in any case to which provisions of the sub-section (3) apply the period of one month therein specified shall be reckoned from the date on which the Board had received report referred to in that sub-section.

13. Mr. P. N. Lekhi the learned counsel for the petitioners strongly relying upon the provisions contained in sub-section (6) of Section 181 of the Act vehemently urged that the petitioners applied to respondent No.1 on June 1970 by giving valid notice

(annuexre No.1) in writing as required by Section 179 and 180 of the Act whereby the petitioner should sanction for construction of cinema house on the plot and since the said notice was received by respondent No.1 in their officer, on the same date the said respondent was obliged to consider the aforesaid notice within one month after its receipt since the respondent No.1 it was urged, neglected/omitted to consider the notice within one month after its receipt the petitioners sent another notice by registered post (annexrure No.2)dated 30th July 1970 which was duly received in the office of the respondent No.1 on 31st July 1970 as is borne out from the copy of the postal acknowledgment receipt (annexure No.3) whereby he attention of respondent No.1 was drawn to the neglect/omission committed by it in not considering the notice annexure No.1 within one month of its receipt and since neglect and omission on the part of respondent No.1 continued for a further period of 15 days form the date of the receipt of the notice viz. on the 31st July, 1970 the requisite sanction is to be deemed to have been unconditionally given for the erection of the cinema building. In respect of the above contention the learned counsel for the petitioners relied on Smt. Kamla Bhadari v. Chief Commr., 1965 DLt 331 in which case ;petitioner No.2 t the 4 for sanction of a layout plan but the same was not sanctioned within the stipulated period of 60 days as provided in Section 313 of the Delhi Municipal Act, 1957 which Section envisages that not person shall utilise, sell or otherwise deal with any land or layout or make any new structure without or otherwise then in conformity with the order of the sanding committee. Proviso to the said section however imposes an obligation on the concerned authority that the passing of such order shall not be in any case delayed for more then 60 days. It was accordingly contended in that case that in terms of Section 313 and particularly in terms of delay of more than 60 days on the part of respondent No.3 the petitioners cannot be stopped from utilising or otherwise dealing with their lands . The contention of the petitioner was upheld and it was observed.

'There is not doubt that the provision of law relied upon the petitioners does support their view point.'

Reliance was also placed on P.K. Ramaswamy v. Municipality of Coimbatore (1986) 1 MLJ 199. In that case the petitioner applied to Municipal on 27th April,

1961 under Section 250 of the District Municipalities Act for permission to install machinery for stating a flour mill in his premises. No order was communicated to the petitioner within 30 days by the Municipality. No order was communicated to the petitioner within 30 days by the Relying upon the provision in Section 321 (11) of the District Municipalities Act, the petitioner assumed that this application had been allowed and put up the machinery. Subsequently on July 31 964 the concerned authorities passed orders rejecting the application. The petitioner challenged that order. In that connection the Court observed that in the circumstances of the case the petitioner was justified in contending that his application must be deemed to have been granted by the Municipality under Section 321 (11) of the Act. Reliance next was placed on Municipal Committee Hoshiarpur v. Darshan Lal. Air 1946 Lah 413. In the case respondent made an application on December 14, 1942 for necessary sanction to erect a 'tharra' and 'Amanchas' on his land. No orders were passed on his application for more than 2 months. The application was however rejected by a Resolution passed by the Municipal committee on February 22 1943. Not having received a reply within the time prescribed by law, the respondent completed the construction. The Municipal Committee gave a notice to the respondent to demolish the construction erected after February 13, 1943. the respondent instituted a suit for an injunction restrain the Municipal Committee from enforcing its notice taking the plea that since his application was not rejected within the stipulated period it is presumed that the same was deemed to have been sanctioned. Dealing with the contention the court observed.

'..... there is not doubt that the Municipal Committee has no power left to issue a notice under Section 195 Punjab Municipal Act after a sanction to build was either given by it or is deemed to have been given by the lapse of the statutory period of sixty days fixed by section 193 (4), Punjab Municipal Act After the expiry of that period the application must be deemed to have been sanctioned.'

14. The contention of the learned counsel for the petitioners that the plans submitted the petitioners were deemed to have been sanctioned appears to be well founded and is fully supported by the well founded and if full supported sub-section (6) of the Section 181 of the Act. The petitioners served a notice in terms

of Section 179 of the Act on June 29, 1970 (annexure No.1) and the Board elected to make or deliver to the petitioners any order within one month after the receipt of the said notice. The petitioners thereafter by a registered letter dated June 30, 1970 (annexure No. 2) called the attention of the Board. This written communication was received by the Board in its office on July 31, 1970 as is borne out from the copy of the acknowledgment receipt annexure No.3. The neglect/omission to make an order on the notice of the petitioners (annexure No.1) continued for a further period of 15 days from 31st July 1970. That being so the Board was deemed to have given sanction to the erection of the cinema house in terms of sub-section (6) of Section 181. The legislature in sub-section used the words deemed to have given sanction if the neglect or omission continues for a further period of 15 days from the date on which the attention of the Board is invited in writing to the neglect/omission committed by the Board for not making an order within one month of the receipt of notice from a party intimating his intention to erect or re-erect a building. Since the words used in sub-section (6) of Section 181 are 'deemed to have given sanction' there is no option but to carry the deeming provision of the law to its logical conclusion and hold that in the absence of any orders passed by the Board rejecting the application within the statutory period the sanction stood granted by operation of law as is implicit in the language of sub-section (6) of Section 181. This view finds support from the cases already noted above.

15. No support can be drawn by the Board from the assertion made by it that notice (annexure No.2.) is not for the coming from its record. If the said notice has been lost in the office of the Board the petitioners cannot be penalised for it as admittedly the notice was received in the office of the Board on July 31st, 1970 vide annexure No.3. In this connection all that respondent No. 1 in para 5 or its affidavit has said is 'from the records relating to the building application maintained in that the officer of respondent No.1, no notice dated July 30 1970 is traceable and I am not in a position to deal with the same'. It may however be noted that the petitioners in para 8 of their petition have categorically averred:--

'..... the petitioner thereafter seen by registered post to it (respondent No.1) notice dated July 30, 1970 true copy annexured is annexure No.2 which was duly

received in the office of the said respondent on 31st July 1970 true copy of the postal acknowledgment copy whereof is annexure No.3. The respondent has not denied that the said notice was not received by it. All that respondent No.1 has alleged is that the said notice is not traceable from its record. For this lapse on the part of respondent No. 1 the petitioners cannot be made to suffer.'

16. Equally devoid of force is the other contention of the respondent to the effect that in August 1969 the petitioners had given notice of their intention to erect the cinema building under Section 179 of the Cantonments Act, 1924 which application was not sanctioned and the plans were rejected by Resolution No. 8 of October 10, 1969 and that the petitioners has resubmitted the rejected plans along with a notice of intention to erect the building vide their application dated June 29, 1970 purporting to be under section 179 of the Act that on July 30, 1970 the petitioners has sent a notice purporting to be under Section 181(6) of the Act for delivery of the plans within 15 days although vide communication date June 18 1970, the petitioners has already been informed that the plans has been reject in October, 1969 and that after refusal of the Board of sanction a he plans submitted by the petitioners in August 1969 re-submission of the same plans in 1970 is not valid. The petitioners during the course of argument placed on record letter No.4/BP-16/41 dated June 24 1970 from Shri V. K. Budhiraja, Cantonment Executive Officer, Delhi Cantonment sent under registered A.D. post to the petitioners in which the petitioners were informed that apart of the site for cinema falls within the proposed widening of Ring Road by Delhi Development Authority who has instructed a the Cantonment Executive Officer that to construction within the proposed area to be widened to sanctioned. the petitioners in view of the stand taken by the Delhi Development Authority were information in the above said letter that the plans for proposed cinema building be submitted afresh as the plans already submitted by the petitioners has been returned to them by the Cantonment Officer in his letter No. 4/BP-16/40 dated June 18, 1970. Respondent in the above said letter has asked the petitioners to submit fresh plans for proposed cinema building and it was in pursuance to the said advice that the petitioners gave notice on June 29, 1970. The respondent have not placed any materiel on the record to show that the fresh plan submitted was identical with the plan already submitted. Even if it was so the respondent No.1 was bound to take action on notice dated

June 29, 1970 and if respondent No.1 to pass an order rejecting the plan within the stipulated period of one month from the receipt of notice dated June 29, 1970 in terms of sub-section (6) of Section 181. Having failed to do so and further in neglecting to take action within receipt of notice annexure No.2 it is futile for the Board to contend that no valid notice was served as the plan submitted with notice dated June 29, 1970 was the same which was rejected earlier by Resolution No. 8 dated October 10, 1969. there is equally no merit in the submission of the respondent that the present petition cannot be entertained as the petitioners have not availed of the remedy available to them by way of an appeal as was open to them under Section 274 of the Act because the petitioners submitted fresh plan along with notice under Section 179 in pursuance to the letter NO. 4/BP-16/41 dated June 24, 1970.

17. As held in an earlier part of this judgment that the plan submitted by the petitioners with their notice dated June 29, 1970 was deemed to have been sanctioned on the expiry of 15 days after the receipt of notice annexure No.2 the petitioners were within their right to construct the cinema building within a period of one year from 16th of August 1970 which sanction lapsed on the expiry of one year by August 16, 1971.

18. It would be relevant here to refer to the provisions of Section 183 of the Act which are as follows:--

'Every sanction for the erection or re-erection of a building given or deemed to have been given by the Board as herein before provided shall be available for one year from the date on which it is given, and if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun unless the Board on application made thereforee has allowed an extension of that period'.

19. Now the contention of Mr. P.N. Lekhi the learned counsel for the petitioners is that it being open to the cinema house as required by Section 183, respondent No.1 is obliged to consider on merits the application dated August 12, 1971 submitted by the petitioners for extension of time and that the said respondent that as on irrelevant considerations not considered the application of the petitioners of

extension of time.

20. I am afraid there is no force in this contention. The reasons for not proceeding with there construction of the cinema building are given by the petitioners in para 10 of their rejoinder affidavit in rebuttal to the reply affidavit filed by respondent Nos. 1 and 2. The reasons given are as follows:--

' The petitioners were not able to being the erection of the building on account of the paucity of the building material and also in view of the strange attitude adopted by the Cantonment Board. It would be appreciated that the building involved an expenditure that the about Rs. 25 lacs and further formalities under the Cinematographic Act and Rules made there under. It also involved application for power to the Delhi Electric Supply Undertaking which it would not be possible to procure without first showing a sanction or even a deemed sanction in view of Annexure No. 5 already annexed to the petition. it does not lie with the answering respondent to blame the petitioners for not starting the construction as such a huge outlay or expenditure would not be done without first ensuing that it would not go waste and the attitude of the answering respondent was and is that such expenditure should have gone waste.'

21. From the above averment it is evident that the main and probably the only reason for not starting and completing construction of the building within the stipulated period of one year from 16th August, 1970 the date when the plan of the petitioner was deemed to have been sanctioned on account of the neglect/omission committee by the Board in not rejecting the plan within the prescribed period was because of the strange attitude adopted by the Cantonment Board' in considering that the plan has already been rejected in October 1969, although a feeble attempt was also made by the petitioners to contend that they were not able to being construction on account of the paucity of the building material. It may be state here that no material has been placed on the record by the petitioners to prove that despite their efforts they were not able to procure material for the construction of the building on the account of the paucity of the material in the market. If the contention regarding the paucity of the building material for want of evidence is ruled out then the only ground on which the

petitioners desisted from stating the construction was the strange attitude adopted by the Cantonment Board'. The petitioners were very well aware that the sanction to construct the building was deemed to have been given in terms of the provisions of sub-section (6) of section 181 and that being the main plank of their argument in this writ petition it is not open to the petitioners to blame the Cantonment Board for not string the construction in view of the alleged 'strange attitude adopted by the Board.' The petitioner having sat on the fence not availed of the sanction deemed to have been given cannot now urge that a writ of mandamus be issued directing respondent No.1 to consider the application dated August 12, 1971 for the extension of the period of time for putting up the cinema building. There is another reason as well for not granting the relief. The Military Estates Officer respondent No. 3 in para 31 and 31 and his reply affidavit has stated that the land in question along with other land is remarked for transfer to the military another for exercises/maneuvers of the armed forces and expansion of the Central Ordnance Depot and the land in question is being acquired by respondent No.4. That being so respondent Nos. 1 and 2 have rightly contended that the land in question has been notified for acquisition under by the Delhi Development Authority for acquisition under Section 4 and 6 of the Land Acquisition Act which acquisition is being sought for a public purpose. It may be noted here that the petitioners had challenged the Notification under Section 4 and 6 of the Land Acquisition Act in Civil Writ No.946 of 1970 which is pending in this court.

22. There is not merit in the contention of the learned counsel for the petitioners that the mere fact that the land has been notified for acquisition under Section 4 and 6 of the Land Acquisition Act is not a relevant consideration for not considering the application of the petitioners dated August 12, 1971 (annexure 6) seeking extension of time. The precise contention is that all that is required for the Board to consider is whether the application (annexure 6) is in conformity with the provisions of the Act or not. If the said application conforms to the provisions of the Act goes the argument there is not option of the board but to grant extension of the Act goes the argument there is not option for the Board but to grant extension of time and that the petitioners undertaking the construction would be doing so at their own peril because in case if the petitioners fail in the writ petition No. 946 of 1970 and Notification issued under Section 4 and 6 of the Land Acquisition Act in

respect of the land in question are sustained all that the authorities can do it to call upon the petitioners to remove the structure set up on the land in dispute after the date of Notification under Section 4 and 6 and give possession of the area to the Land Acquisition Collector. To adopt this course would be an exercise in futility. There is no bar on the petitioners to apply afresh seeking permission of the Board for erecting cinema house. If the contentions of the petitioner in Civil Writ petition No. 946 of 1970 are upheld and the notification under Section 4 and 6 of the Land Acquisition Act are struck down the land in question is released, the petitioners can very well apply again for seeking permission to construct the cinema building.

23. Another contention of the petitioners is that according to the Master plan the triangular area in which the plot of the petitioners is situated is shown as 'not use'. That being so it is urged by the petitioner that the land being of no use to the respondent it was proper to allow the petitioners to use the land by constructing cinema on it. Respondent No.4, Delhi Development Authority in its reply affidavit have submitted that the zoning regulations of the Master Plan provide that the cinemas be located only in district Centre sub-district Centre or in Community Centre and have to form the part of comprehensive approved scheme duly sanctioned under the provisions of the master plan and that not haphazard construction of the cinema can be permitted on a land notified for the planned development of Delhi. Further the said respondent has stated that the plans submitted by the petitioners was located neither in an area where cinema could be permitted nor does it form a part of any comprehensive approved scheme. Moreover it is further submitted by the respondent in para 38 of its reply that as per master plan the use of the land in question is specified for Government purpose and the specific purpose of the Government can be determined on a later stage according to the needs of the Government.

24. In view of the averments of the respondent as set out above, I am of the opinion that the allegation of the petitioners that the use of the land in question is shown as 'no use' is of no force and relevance. However this is a question which the petitioners have agitated in their writ petition No. 946 of 1970 where in they have challenged the Notifications issued under section 4 and 6 of the Land Acquisition Act in respect of this land and the court dealing with the said writ petition in my

opinion would be the proper forum for dealing with the this contention.

25. For the reasons stated above the writ petition is allowed to this extent that the plan for construction of the cinema submitted with notice dated June 29, 1970 (Annexure No. 1) would be deemed to have been sanctioned on the expiry of 15 days with effect from July 31, 1971 on the receipt of notice (Annexure No.2), and Resolution No.321 dated October 7, 1970 (Annexure No.5) is quashed. However the writ is dismissed in respect of other prayers. In the circumstances of the case, the parties shall bear their own costs.

26. Petition allowed.

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