

Deepak Bhardwaj and Others Vs. Union of India and Others

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Court : Delhi

Decided On : Jul-24-2001

Reported in : 2001(60)DRJ514

Judge : Mr. Arun Kumar and; Mr. B.N. Chaturvedi, JJ.

Acts : [Constitution of India](#) - Articles 14 and 226; Land Acquisition Act - Sections 4, 5A, 6, 9, 11, 16, 17 and 17(1) and (2)

Appeal No. : CWP No. 4361/1998

Appellant : Deepak Bhardwaj and Others

Respondent : Union of India and Others

Advocate for Pet/Ap. : Mr. Ravinder Sethi, Sr. Adv. and; Mr. Subhash Mittal, Adv;

Judgement :

ORDER

Arun Kumar, J.

1.By this writ petition under article 226 of the [Constitution of India](#) the petitioners have challenged a notification No.F.7(7)/97/L& B/LA/4252 dated 24th June, 1998 issued under section 4 read with section 17(1) of the Land Acquisition Act (hereinafter referred to as the Act). By the impugned notification large tracts of land including the land of the petitioners falling in village Samalkha within the

National Capital Territory of Delhi are being compulsorily acquired. Section 17 of the Act has been invoked and the provisions of section 5A of the Act have been dispensed with. The notification has been challenged on various grounds. However, the first and foremost ground of challenge is that invocation of section 17 of the Act in the facts and circumstances of the case is wholly illegal and unjustified. According to the petitioners there is total non-application of mind on the part of the State Government in invoking section 17 of the Act as also in dispensing with section 5A of the Act. It is argued that it is a case of colourable exercise of power on the part of the State Government.

2. In support of his argument that there is total non-application of mind on the part of the State Government in invoking the provisions of section 17 of the Act the learned counsel for the petitioners argued that no material was placed before the Lt. Governor who exercises the power of the State Government so as to enable him to form an opinion about urgency so as to press in service section 17 of the Act. In view of the categorical assertion on the part of the petitioners that there is absolutely no material on record to justify resort to section 17 of the Act, the respondents were required to produce the relevant records. We have perused the records produced by respondents and we find that there is not a single document or noting on the file to suggest any urgency from any quarter in completing the acquisition or for making out a case for invocation of section 17. That is why the proposal received from the Rural Development Department by the land acquisition department in March 1997 was dealt with in a routine manner and the impugned notification was issued only in June 1998. However, the final note of the Dy. Secretary (LA) dated 9th June, 1998 reads as under:

'The proposal was received from Project Director, Rural Development vide her letter No.F.56/MMP/RD/96-97/3970-74 dated 26.3.97 for acquisition of land in village Samalkha under Mini Master Plan for construction of Growth Point at Page 3/C. The above proposal was sent to SDM/LAC (Vasant Vihar) for furnishing of draft notification and 80% estimated cost of acquisition etc. is at page 6/C. The draft notification for 453-18 bigha of land Along with 80% estimated compensation amount was furnished by SDM/LAC vide his letter dated 10.12.97 at page 49/C. On scrutiny of draft notification and other relevant documents by the Tehsildar (L&

B) certain discrepancies were noticed when compared with the proposal of RD department. In a meeting held in the Chamber of Secretary (Revenue/Land) on 8.5.98 when the Project Director of Rural Development was also present, after discussions about the discrepancies in the above notification and not tallying with the proposal of the RD department. The Project Director (RD) stated that in the proposal/cases of RD department the reliance should be made on the draft notification received from SDM/LAC. The revised draft notification for 377-07 Bighas of land at village Samalkha Along with 80% compensation amount has been furnished by SDM/LAC (Vasant Vihar) vide his letter dated 27.5.98 is at page 100/C which has again been checked by the Tehsildar (L& B) is at page 16/N and reported to be in order. The Joint Survey Report may kindly be seen at Page 67/C to 76/C.

3. In view of the above, if approved, we may request the Hon'ble L.G. to kindly accord his approval for issue of notification u/s 4, 6 and 17(1) of the L.A. Act, 1894. The draft notification are placed opposite in the file along with requisite certificate.

Submitted please.

(J.K. RAWAL)

DY. SECRETARY (LA)

JT. SECRETARY (LAND)

1. The proposal relates to acquisition of land for construction of Growth Centre at Village Samalkha.

2. Draft notifications u/s 4, 6 & 17 of the Land Acquisition Act for 377-07 Bigha Land are placed at 118/C, 114/C and 119/C respectively which may please be recommends to Hon'ble LG for his approval.

3. Order regarding urgency is also place at 110/C for his approval and signature.

As proposed.'

4. On the basis of this note the Lt. Governor of National Capital Territory of Delhi accorded his approval on 11th June, 1998 as under:

'I have gone through the records and requirement of the Rural Development Department and the draft notification prepared by LAC.

I am fully satisfied that the land measuring 377-07 Bigha at Village Samalkha is urgently required for a valid purpose, namely for Growth Point. I order that notifications under sections 4, 6 & 17(1) of the Land Acquisition Act, 1894, be issued immediately.

Sd/-

(V. K. KAPOOR)

LT. GOVERNOR, DELHI

Date: 11 June 1998.'

5. It was argued on behalf of the petitioners that the note dated 9th June, 1998 of the Dy. Secretary (LA) does not even refer to any urgency about acquisition of the land although at the end of the note it is mentioned that the Lt. Governor be requested to give his approval to the notification under section 4, 6 and 17(1) of the Act. There is no clue as to how suddenly section 17(1) crops up. The note also suggests that the order regarding approval of urgency as well as the draft notification containing mention of section 17 were put up to the Lt. Governor in their final shape only for obtaining his signatures and the Lt. Governor signed all the papers which had been prepared in advance. Thus it is argued that it is a classic case of total non-application of mind on the part of the acquiring authority regarding invocation of section 17 of the Act. Further though the impugned notification specifically dispenses with section 5A of the Act, there is nothing on record to show that such a suggestion was ever made to the Lt. Governor for his consideration. Nor there is anything on record to show that the Lt. Governor was alive to this aspect of dispensation of section 5A much less that he ever considered it.

6. Faced with these arguments the learned counsel for the respondents, Ms. Geeta Luthra relying on *Jai Narayan v. Union of India*, : AIR 1996 SC697 argued that when the purpose of acquisition which is mentioned in the notification itself shows urgency, one need not go into anything else and the notification under section 17 should be held to be justified on that account. For purpose of present case it was argued that the acquisition is for purposes of development of growth point in the area which is a matter of urgent need. Thus according to the learned counsel for respondents the object of acquisition itself fully supports invocation of section 17 of the Act.

7 . These are the rival contentions of the parties on the question of invocation of section 17 of the Act in the present case. Before further examining the rival contentions it would be appropriate to consider the legal position in this behalf.

8. It will be useful to reproduce the relevant portion of the impugned notification at this stage:

'Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at the public expenses for a public purpose namely for Growth Point under Mini Master Plan of Delhi. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

The notification is made, under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land in the locality and so all other acts required or permitted by the section.

The Lt. Governor is satisfied also that provisions of sub-section (1) of the section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said section to direct that all the provisions of section 5(A) shall not apply.'

9. As per the case of the respondents as set out in the counter affidavit the Government of National Capital Territory of Delhi took a policy decision in public interest to develop 1958 villages of Delhi. In pursuance of the said policy decision land is being acquired by the government in a phased manner. The entire development process has been divided into three tiers:

15 villages are to be developed as growth centres. 33 villages are to be developed as growth points and the remaining 147 will have basic village level facilities. This classification has been done by the Government after analysing and considering the need for the facility and has been done on the basis of surveys which has taken into account the population.

- a) growth of population;
- b) the physical infrastructure;
- c) available physical infrastructure;
- d) available social infrastructure;
- e) potential for development;
- f) transport and communication.

I. GROWTH CENTRE:

I. Each growth centre will serve an area between 40-50 sq.k.m. covering a population of 50-60 thousands. Each centre will have building of public and social utilities, shopping complex, industrial estates, educational vocational and recreational centres, medical and public health, banks, auditoriums, sport centres, mini forests, panchayat ghars, post offices, police stations, swimmings, libraries, hospitals, post terminals etc.

(GROWTH POINTS:

II. The government has decided that each growth point will serve an area of 20-25 sq.k.m. and would cover a lesser population than growth centres and would cover

population of 15-25 thousands. The said growth point will have the aforesaid facilities as in growth centre. The same would have facilities of schools, senior schools, shopping centre, libraries, educational centre, primary health centres, sport complex, multi purpose community centre, public parks etc.

III. BASIC VILLAGE:

c) The 3rd category namely the basic villages would cover an aim that each basic village will serve existing abadi area where each basic village will have a multi purpose community centre with adjacent shops kiosks/parks, primary schools, sports stadium, area for meals and fair, MTNL exchange, electricity sub station and sub post offices etc.'

10. It is also stated in the counter affidavit that the project is time bound and has to be implemented within the span of twelve years.

11. Coming to section 17 of the Act it is to be seen that the said section contains specific powers in cases of urgency. The normal course in acquisition proceedings are that the appropriate government issues a notification under section 4 of the Act in the first instance whereby land which is intended to be acquired is notified. Persons interested in such lands are given an opportunity of objecting to the acquisition of their land by filing objections under section 5A of the Act. The objections under section 5A are to be filed before the Collector. They are required to be in writing and the Collector is enjoined to give opportunity to the objectors of being heard in person or by authorised representative in this behalf. After hearing the objectors and after making any further inquiry, if so required, the Collector is required to make a report to the appropriate government containing his recommendations on the objections. The appropriate government thereafter takes a decision on the basis of report of the Collector and if it is satisfied that it has to go ahead with the acquisition of the land, a declaration is issued to this effect under section 6 of the Act. Thereafter under section 9 of the Act the Collector issues public notice about land in question being acquired by the government inviting parties to file their claims for compensation with respect to the land under acquisition. The Collector makes inquiry about the claims of compensation by the interested persons and makes his award under section 11 of the Act. Thereafter

the Collector is empowered under section 16 to take possession of the land. On Collector taking possession of the land the land vests in the government absolutely and free from all encumbrances.

12. Section 17 of the Act is an exception to the normal procedure of acquisition. By invoking this section the appropriate government may decide to dispense with the inquiry envisaged under section 5A of the Act. The Collector is authorised to straight way take possession of the land after issuance of notice under section 9 of the Act. In some cases under sub-section (2), 15 days notice period mentioned in section 9 can be curtailed to 48 hours notice. A bare look at the provisions of section 17 shows that it is intended to be invoked in cases of real emergency. The language of sub-section (2) provides a clue to the intendment. It refers to immediate possession being required for maintenance of railway traffic may be on account of sudden change in the course by a river or on the ground of any other such unforeseen emergency. Another type of emergency referred to is the setting up of a river side or ghat station and/or providing convenient connection with or access to any such station. Yet another type of emergency referred to is for purposes of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity. Thus most of the instances which are in contemplation for purposes of section 17 of the Act are works of public nature requiring immediate attention in order to maintain public services like electricity, communication system, drainage, water supply, irrigation, railway traffic etc. In cases of grave emergency possession may have to be taken after giving only 48 hours notice while in cases of a comparatively lesser gravity, possession may have to be taken within 15 days. In any case the object behind section 17 appears to be that in cases of grave urgency the government should have power to get immediate possession of land in order to ensure continuity of public services.

13. The power to acquire land is an exercise of sovereign power of the State which is also referred to as the doctrine of eminent domain. This power of the State gives a right to resume the possession of property in the manner directed by the Constitution or the laws whenever public interest requires it. This right of the State is regulated in this country by the Land Acquisition Act. The statute imposes

certain restrictions and obligations on the State in exercise of its power to compulsorily acquire land. However a land owner whose land is sought to be acquired is given a right to object to the acquisition by filing objections. Section 5A of the Act gives a further right of personal hearing on the objections. The right conferred on a land owner under section 5A is in consonance with the ethos of the [Constitution of India](#) imbining principles of natural justice. The least that can be done for a person whose land is sought to be acquired is to allow him to present his point of view. Even this much if it has to be curtailed by invoking section 17, a strong case has to be there for urgency. Section 5A allows time of thirty days from the date of publication of the notification under section 4 to file objections which is not much considering the serious consequences of compulsory acquisition of land for the person whose land is acquired. In view of the seriousness of the consequences of compulsory acquisition of land any action on the part of the State in this behalf has to be strictly construed. Failure on the part of the acquiring authority to observe any basic principles of law cannot be ignored. It has to be seriously viewed.

14. The first step in the process of compulsory acquisition of land is the issuance of notification under section 4 of the Act. Such a notification is a public announcement of the intention of the State to acquire particular land. It is also a public notice by the Collector of the area to the affected persons about the government's intention to acquire the land for a public purpose. In response to the public notice the affected/interested persons are given opportunity under section 5A of the Act to object to the proposed acquisition. They are given thirty days time from the date of publication of the notice under section 4 to file objections before the Collector and the Collector is required to give a personal hearing to the objectors on the basis of the objections and also he is allowed to make further inquiries, if any. On the basis of the objections and the inquiries, if any, made by the Collector, the Collector is required to make a report to the State Government to enable the government to make up its mind about the proposed compulsory acquisition of land. Section 5A provides the only opportunity under the Act to the persons whose lands are sought to be compulsorily acquired to object to the proposed acquisition of land. This is the only safeguard available under the Act for the affected parties. Doing away with this only safeguard is a very serious matter

and cannot be treated as a matter of mere routine. It is a basic principle of law that a man should not be condemned unheard. It is in consonance with this basic principle of law that section 5A opportunity is not denied to affected parties. If the acquiring authority is to dispense with the observance of this basic principle of law i.e. which as already said is the only safeguard contained in the Act for the person whose land is sought to be compulsorily acquired, the matter cannot be allowed to be treated lightly or in a casual manner. A strong case for invocation of section 17 and dispensing with section 5A has to be made out.

15. An inquiry envisaged under section 5A of the Act is a summary inquiry which need not take long. It has been commented upon that such inquiries take long and, therefore, the government may justifiably dispense with such an inquiry. Here it has to be seen as to who has to hold the inquiry. It is the Collector who has to hold the inquiry and the Collector is the acquiring authority's own man. For delays on the part of the Collector in completing the inquiry should the land owner whose land is sought to be compulsorily acquired suffer and be denied even the basic right of being heard before being condemned. So far as the land owner is concerned he is allowed only thirty days from the date of publication of the notification under section 4 of the Act to file objections. Thereafter whatever delay that follows is on account of the Collector. The acquiring authority cannot make the land owner suffer by depriving him of his statutory right under section 5A for the delays on the part of the Collectors in completion of inquiry which is envisaged only as a summary inquiry. The State Government must ensure that such inquiries are expeditiously completed. In this connection the following observations of the Supreme Court in *State of Punjab v. Gurdial Singh & Others*, : [1980]1SCR1071 are very relevant:

'16. The forth point about the use of emergency power is well taken. Without referring to the supportive case-law, it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities

should not, having regard to Articles 14 (and 19), broke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.'

16. This is the importance of section 5A right given to the land owners or interested persons.

17. Regarding section 17 of the Act a Division Bench of this Court observed in *Union of India v. Nand Kishore*, : AIR1982 Delhi462 .

18. Section 17 confers extraordinary power. The statutory power must be exercised subject to the conditions and limitations laid down by the statute. The major condition is that the Government must be satisfied that there is a situation, grave and sudden, which calls for an immediate action.

19. Para 19: What is the theory of section 17? The taker of the land has to be satisfied that there is an emergency, an unforeseen combination of circumstances, that calls for immediate action. Unless it is shown that there was an urgency created by a special situation the Government cannot resort to the extra ordinary power conferred by section 17.

20. Para 21: 'Section 17(2) vividly illustrates the principles of the section. 'Unforeseen emergency' cannot be anticipated. There is a concurrence of circumstances which no one can foresee. No one can be prepared for sudden happening.'

21. These observations lay down the law.

22. There is no dispute that the decision or satisfaction regarding urgency has to be that of the acquiring authority and it is the subjective satisfaction of the acquiring authority on which such a decision is based. It is also settled law that though the decision to invoke section 17 is based on subjective satisfaction of the concerned authority yet the decision can be challenged on the ground of absence of material or relevant material on record for arriving at the subjective satisfaction by the acquiring authority or on account of mala fides. Accordingly a reference to the relevant records becomes imperative for deciding whether the subjective

satisfaction of the acquiring authority was arrived at in accordance with law. In the present case as already noticed the material placed before the court does not show any reference to any alleged urgency. Neither in the noting sheets nor in the correspondence there is any mention that the land is urgently required or the acquisition should be urgently completed. One only finds a mention in the final note prepared by the Dy. Secretary (LA) that the proposal be placed before the Lt. Governor for seeking his approval for issuing a notification under section 4, 6 and 17(1) etc. This is for the first time one finds a reference to section 17 of the Act at all though there is nothing in the entire noting sheet about why section 17 be invoked at all. Similarly there is nothing regarding dispensation of section 5A. In fact the note of the Dy. Secretary shows that the draft notification along with the approval certificate was prepared in advance and placed on the file for obtaining the approval of the Lt. Governor. The Joint Secretary (Land) to whom the file was forwarded by the Dy. Secretary (LA) added in his note that the draft notifications under section 4, 6 and 17 of the Land Acquisition Act for 377.07 bighas land were placed in the file and be recommended to Hon'ble Lt. Governor for his approval. Further it is stated that order regarding urgency was also placed on the file for signatures of the Lt. Governor. This shows that all necessary approvals including final certificate etc. in this behalf were already prepared and were placed before the Lt. Governor for his signatures. The note of the Lt. Governor, which has already been reproduced earlier shows that the Lt. Governor signed the papers as put to him by the department.

23 Setting up of a growth point in the village may be a valid purpose of acquisition as stated by the Lt. Governor in his approval note dated 11th June 1998 but where is the basis for saying 'urgently required' in the said note by the Lt. Governor. There is not an iota of evidence or any word in the entire notings or letters exchanged expressing any urgency. On the contrary the counter-affidavit filed on behalf of the respondents disclosed that the scheme is to be completed within twelve years. In such a situation invocation of urgency provision of Section 17 cannot be upheld. It was observed by the Supreme Court in *Narayan Govind Gavate v. State of Maharashtra*, (1997) 1 SCC 133 that it is not just the existence of an urgency but the need to dispense with an enquiry under section 5A which has to be considered. In the present case although according to the impugned notification

section 5A has been dispensed with there is not a whisper anywhere on the record about need to dispense with inquiry under section 5A much less this being considered. As per the dictum of the Supreme Court the decision has in any case not only to be qua urgency, it has also to be considered whether section 5A inquiry is to be dispensed with which has in any case not been done in the present case. The note of the Lt. Governor shows that he was not at all alive to the question of invocation of section 17 of the Act particularly the fact that section 5A rights of the land-owners were to be dispensed with. Thus the impugned notification in the present case invoking section 17 and dispensing with the provisions of section 5A of the Act is clearly violative of law and cannot be sustained. The present appears to be a clear case of exercise of power in a routine and casual manner unmindful of the violation of law which it entails. When there is nothing on record to suggest urgency or to make out a case for dispensation of section 5A, it is a case of total non-application of mind. when a decision is taken in total absence of material on record it is nothing else but a colourable exercise of power which cannot be permitted.

24. The learned counsel for the respondents tried to justify the decision of the Lt. Governor i.e. the acquiring authority on the ground that urgency is inherent in the purpose of acquisition mentioned in the notification itself. In aid of this argument the decision of the Supreme Court in *Jai Narain v. Union of India* (supra) was relied upon. *Jai Narain* was a case where acquisition was for purposes of setting up of a sewage treatment plant in pursuance of an order of the Supreme Court in a Public Interest Litigation regarding environmental pollution. The object of the acquisition i.e. sewage treatment plant was held to be sufficiently conveying the urgency in the background of the fact that it was in pursuance of the orders of the Supreme Court in a case. The present case cannot be equated with *Jai Narain's* case. Here the public purpose for acquisition is the development of growth point. Development of growth point is a long-term scheme having a span of twelve years which is intended to improve the conditions in the rural areas of Delhi. This cannot be said to be a matter of such grave urgency as can be implied from the language of the notification itself. Moreover, there is total absence of material for a decision to dispense with section 5A.

25. The learned counsel for the respondents also relied on decisions of the Supreme Court in *State of U.P. v. Pista Devi*, : [1986]3SCR743 ; *Chameli Singh v State of U.P.*, : AIR 1996 SC1051 and *Meerut Development Authority v. Satbir Singh and Others*, : AIR 1997 SC1467 . On the basis of these decisions it was urged that housing projects of the Government including housing for the poor or weaker sections of the society were held to be matters of urgency and in cases of such schemes of the Government, invocation of section 17 of the Act was upheld by the Supreme Court. These cases are clearly distinguishable for the reason that present is not a case of housing scheme for the poor or weaker sections of the society. One can appreciate urgency for purposes of implementation of housing schemes of the Government because it is a question of providing shelter to the persons who do not have roofs above their heads. In the present case there are no housing schemes involved. The schemes are for improvement of facilities in rural areas by providing certain further amenities in an organized manner. Such schemes do not suggest emergencies or urgencies as envisaged under section 17 of the Act which may not even permit an inquiry under section 5A of the Act. If the Government cannot ensure that inquiry be expeditiously held by the Collector under Section 5A, it has to blame itself and it cannot thrust the adverse consequences in this behalf on the land owners by depriving them of their section 5A rights. Even in *Chameli Singh's case* (supra), relied upon by the government, the Supreme Court approved that it is not just existence of urgency which is sufficient to invoke section 17 and dispense with section 5A rights. The need to dispense with an inquiry under section 5A has to be independently considered and a decision has to be taken thereon which has not been done in the present case. We would also like to note here that the Supreme Court in *Om Parkash v. State of U.P.*, : [1998]3SCR643 took into consideration the delay on the part of the authorities in issuing the notification under section 4. There was no Explanation for the delay while the land owners were being deprived of their right to file objections. This was one of the grounds for quashing the impugned notification. In the present case also the government records show that the proposal of the rural development department for acquisition of land was received sometime in March 1997 whereas the impugned notification was issued on 24th June, 1998. *Om Parkash's case* was regarding acquisition of land for development of NOIDA in

Ghaziabad. The notification was quashed on the account of the absence of material for invoking Section 17.

26. The purpose of acquisition of land in the present case as mentioned in the impugned notification is 'for Growth Point under Mini Master Plan of Delhi'. Setting up of Growth Point is part of process of development of rural areas by creating necessary infrastructure keeping in view the growth in population. These are matters of development through planning which are on-going processes. Such works keep going on as the society grows. These are long term measures. In fact, that is why the span has been kept as 12 years as stated in the counter-affidavit of the respondents. It cannot be said that these are matters of such urgency which cannot brook even a summary inquiry as envisaged under Section 5A. The importance and need for giving section 5A opportunity to the land owners has already been stated and cannot be over-emphasised. In our view the present case cannot be said to be case of such urgency as to deny Section 5A rights to the affected land owners. The impugned notification in so far as it affects the petitioners is thus liable to be quashed.

27. The petitioners raised several other points to challenge the impugned notification. However, in view of our decision that the impugned notification has to be quashed on the ground of non-application of mind on the part of the acquiring authority in issuing the impugned notification invoking Section 17(1) and dispensing with Section 5A, we need not go into other questions raised by the petitioners. This petition is accordingly allowed and the impugned notification No. F.7(7)/97/L& B/LA/4252 dated 24th June, 1998 in so far as it affects the petitioners is hereby quashed. In the facts of the case there will be no order as to costs.