

Dalchand & Ors.

Vs

Delhi Improvement Trust (Now Delhi Development Authority) New Delhi

Civil Appeal No. 1107 of 1963

(K.N. Wanchoo, M. Hidayatullah, J. C. Shah JJ)

24.03.1966

JUDGMENT

SHAH, J.-

By a notification issued on March 2, 1937 under s. 7 of the Delhi Laws Act, 13 of 1912, the Government of India extended, subject to certain modifications, the United Provinces Town Improvement Act, 8 of 1919, to the territory of Delhi, and thereafter set up an Improvement Trust under the Act for that territory. The Trust prepared an industrial development scheme with the object of relieving congestion by inducing a flow of population from the crowded parts of the town of Delhi to certain other areas. Under the scheme land in those areas was to be developed and after construction of roads, storm water drains, street-lighting, refuse and sewage disposal works, schools, parks, playgrounds, dispensaries, welfare centres and police-station a part of the land was to be allotted to industrial concerns for construction of industrial buildings and the rest for construction of residential and other buildings.

The scheme was sanctioned under s. 42 of the Act by the Government of India, and was duly promulgated. Thereafter the Trust resolved in June 1942 to make a supplementary scheme as the land covered by the original scheme was inadequate. It appeared that the Trust had agreed to provide under the original scheme a block of land comprising 268 acres of land to the Delhi Cloth & General Mills Co. Ltd. - hereinafter called 'the Company' - on certain terms and conditions embodied in a resolution dated January 9, 1942, but the Trust was able to offer to the Company under the lay-out of the original scheme only 174.84 acres. It was therefore proposed by the Trust to modify the scheme as sanctioned and to provide for acquisition of an additional area of 103.16 acres under a supplementary scheme.

On July 18, 1942 notice under s. 36 of the Act was published in respect of the supplementary scheme for development of the industrial area, specifying the boundaries of the land in which the scheme was to be worked and inviting objections to the scheme within one month from the date of publication. No objections were, it appears raised to the proposed supplementary scheme, and it was finally approved by resolution dated July 31, 1944, and was notified under s. 42 of the Act on June 28, 1946. Land acquisition proceedings were then commenced under s. 58 of the Act and awards were made assessing compensation to be paid to the owners of the land for compulsory acquisition. In the scheme so notified was included an area of 13 bighas of land belonging to the appellants and that land was acquired.

On May 3, 1949 the appellants sued the Delhi Improvement Trust for a declaration that the awards were "wrong and illegal and did not result in acquisition of the suit property" and for an order

restraining the Trust from taking possession of their lands under the awards and from interfering in any way with their enjoyment of the lands. The appellants in support of their claim contended that the notification extending the United Provinces Town Improvement Act, 8 of 1919, was invalid, that the Improvement Trust was not lawfully constituted, that the industrial development schemes were invalid, that the Trust had no power to acquire lands for the purposes mentioned in the scheme, and that the resolutions and proceedings of the Trust being procedurally defective, the scheme "was illegal". The appellants also contended that the scheme was framed at the instance of and solely for the benefit of the Company, since the land was intended to be given after acquisition to that Company or to other industrialists for development by them for their own benefit. The Subordinate Judge, Delhi, held that the Act was properly extended to the Delhi territory, that the scheme was valid and the Trust had power to acquire the land, but in the view of the Subordinate Judge there was "nothing on the record to show that the area in suit" was "necessary for or" was "affected by the execution of this scheme," and that "the Act does not authorise compulsory acquisition for purposes of recoument or for allotment to some company". The Subordinate Judge accordingly decreed the suit as claimed by the appellants.

In appeal to the Senior Subordinate Judge with appellate powers the decree passed by the Trial Court was affirmed. In second appeal to the High Court of Punjab, Falshaw, J., reversed the decree passed by the First Appellate Court. In the view of the learned Judge, since the original industrial area scheme framed in 1940, was a valid scheme, acquisition of an additional area of land for meeting the requirements of that scheme was a legitimate extension thereof and merely because the Trust had resolved to acquire land for sale to the Company after development, the scheme was not open to challenge. He also held that the acquisition not being for the Company, Part VII of the Land Acquisition Act had no application and that the supplementary scheme was not invalid merely because the plan for development was to be worked out not by the Trust directly but by the Company under the general supervision and control of the Trust, and in accordance with the town planning scheme framed under s. 192 of the Punjab Municipal Act. The decree passed by the Falshaw, J., was confirmed by a Division Bench of the High Court. With certificate granted by the High Court, this appeal has been preferred.

The arguments in this case have ranged over a wide field, but in the main three questions of law fall to be decided : (1) Whether acquisition of land of the appellants under the supplementary scheme was for the purposes of the Act; (2) whether for executing the supplementary scheme the Trust had power to compulsorily acquire land; and (3) whether land of the appellants could be acquired only in the manner provided by the Part VII of the Land Acquisition Act, 1894.

The Act as the preamble discloses was enacted with a view to make provision for the improvement and expansion to towns. Chapter II of the Act deals with the constitution of Improvement Trusts for carrying out the provisions of the Act. Chapter III deals with the proceedings of the Trust and Committees thereof. Chapter IV deals with different forms of improvement schemes. Section 23 described in cls. (a) to (p) matters which may be provided for in an improvement scheme. Clauses (a) & (g) thereof read as follows :

"(a) The acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme."

"(g) The sale, letting, or exchange of any property comprised in the scheme."

By s. 24 it is provided that an improvement scheme shall be one of the following types, or may

combine any two or more of such types, or of any special features of, that is to say, -

- (a) a general improvement scheme;
- (b) a re-building scheme;
- (c) a re-housing scheme;
- (d) a street scheme;
- (e) a deferred street scheme;
- (f) a development scheme;
- (g) a housing accommodation scheme; and
- (h) a town expansion scheme.

Sections 25 to 32 set out the conditions in which the different classes of schemes may be framed and provisions which may be made in those schemes. Provisions relating to development schemes in s. 30 and town expansion schemes in s. 32 alone are material. By s. 30 cls. (1) & (2) it is provided :

"(1) In regard to any area to which this Act is extended, the Trust may, from time to time, prepare a scheme of proposed public streets with plans showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

(2) When any such scheme has been notified under section 42 the street to which it refers shall be deemed to be a projected public street."

Restrictions are then placed upon the right of occupants of the buildings to erect, re-erect, add to or alter any building or wall, and provision is made for other related matters. Section 32 reads :

"(1) Whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion of a municipality in any area to which this Act is extended, the Trust may frame a scheme (to be called a "town expansion scheme").

(2) Such scheme shall show the method in which it is proposed to lay out the area to be developed and the purposes for which particular areas are to be utilized.

(3) For the purposes of a town expansion scheme the provisions of clause (a) of subsection (2) of section 40 shall not be applicable, but the Trust shall be required to supply such details as the State Government may consider necessary.

(4) When any such scheme has been notified under section 42, if any person desires to erect, re-erect, add to or alter any building or wall within the area comprised in the said scheme, he shall apply to the Trust for permission to do so.

(5) If the Trust refuses to grant permission to any person to erect, re-erect, add to or alter any building or wall on his land in the area aforesaid, and if it does not proceed

to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal."

Section 33 deals with the procedure to be followed in framing improvement schemes. Section 36, inter alia, deals with the preparation, publication and transmission of notices about the improvement schemes. Section 38 deals with notice of proposed acquisition of land. Section 40 authorises the abandonment of and submission of the schemes for sanction to the State Government with such modifications as the Trust may consider necessary after considering the objections or representations which may be received. Section 41 authorises the State Government to sanction with or without modification, or refuse to sanction, or return for reconsideration, any improvement scheme submitted to it under s. 40. Section 42 provides :

"(1) Whenever the State Government sanctions an improvement scheme it shall announce the fact by notification, and except in the case of a deferred street scheme, development scheme, or town expansion scheme, the Trust shall forthwith proceed to execute the same.

(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned."

Section 43 provides for alteration in an improvement scheme before it had been carried into execution, subject to certain conditions specified therein. Chapter V deals with the powers and duties of the Trust in respect of a scheme which has been sanctioned. Section 55 authorises the Trust to enter into an agreement with any person for the purchase, lease or exchange by the Trust of any land which the Trust is authorised to acquire or any interest in such land. Section 56 provides that the Trust may, with the previous sanction of the State Government, acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of the Act for carrying out any of the purposes of the Act. Section 58 provides that for the purpose of acquiring land under the Land Acquisition Act for the Trust, the Tribunal constituted under s. 57 shall be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge under the said Act subject to further modifications indicated in the Schedule, and that the award of the Tribunal shall be deemed to be the award of a Court under the Land Acquisition Act, 1894, and shall be final. At this stage, the material provisions of the Schedule referred to in s. 58 may be referred to. The Schedule amends the Land Acquisition Act in certain respects. The expression "local authority" in s. 3(ee) of the Land Acquisition Act includes a Trust constituted under the United Provinces Town Improvement Act, 1919. By cl. 2(1) the first publication of the notice of an improvement scheme under s. 36 of the Act is substituted for and had the same effect as publication in the Official Gazette and in the locality, of a notification under sub-section (1) of s. 4 of the Act, except where a declaration under s. 4 or s. 6 of the Act had previously been made and was still in force. By sub-cl. (2) of cl. 2, inter alia, publication of a notification under s. 42 is substituted for and had the same effect as a declaration by the State Government under s. 6 of the Act, unless a declaration under the last mentioned section had previously been made and was still in force. By cl. 6, s. 17-A is incorporated in the Land Acquisition Act, and it reads :

"In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust; and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

Section 65 of the Act deals with disposal of land. It provides :

"Subject to any rules made by the State Government under section 72 of this Act, the Trust may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act."

Broadly stated the scheme of the Act is that with a view to make improvements in towns the Trust may make certain order after framing an appropriate scheme of a type or containing special features of different types of schemes mentioned in s. 24. The scheme so framed may make provisions for matters which are prescribed by s. 23 and such other matters as are provided for specially in the appropriate sections dealing with the different classes of schemes.

The relevant resolutions adopted by the Trust for framing the original and supplementary schemes may be briefly noticed. On June 30, 1942 it was resolved by the Trust to acquire an additional area of 103.16 acres to be sold to the Company. The resolution reads as follows :

"A reference in invited to Boards' resolution No. 78 of the 29th March, 1940 relating to the Trust's Industrial Area Scheme. The scheme as approved by the Board and sanctioned by the Chief Commissioner covers an area of about 479.81 acres..... and provides for the acquisition and development of 271.21 acres of land..... at a cost not exceeding Rs. 6.84 lakhs, and the acquisition and development of the remaining 208.6 acres provided any one or more reputable industrialists deposit with or guarantee to the Trust the cost of acquiring and developing this additional area. As decided by the Board in their Resolution Nos. 108 and 109 of the 16th May, 1941 the scheme as regards block 'I' in sub-scheme 'A' has been held in abeyance and land in block II has been acquired and is under development for factory sites.

The Board have now agreed to sell 268 acres of land in the Industrial Area to the Delhi Cloth and General Mills Co. Ltd., on the terms and conditions embodied in Resolution No. 19 of the 9th of January, 1942 as amended by Resolution No. 50 of the 27th March, 1942.

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"The Trust can..... offer only 174.84 acres out of the land falling within the boundaries of the sanctioned scheme to the Company for the present..... It is therefore proposed to alter under section 43 of the Trust Law, the scheme as sanctioned so as to provide for the acquisition of this additional area of 103.16 acres to be sold to the Company..... As under the terms of the sale this additional area is to be developed by the Company, the Trust will have to incur initially expenditure only on acquisition of this land,....."

Pursuant to this resolution notices were issued under s. 36 of the Act in respect of the acquisition of the area. Thereafter a resolution was passed on July 31, 1944 and it was stated in the introductory part of the resolution :

"The present site of the industrial area was selected as being suitably located vis-a-vis the city and the newly developed Trust area. There was no other site available where such facilities for roads and railway lines existed. The sizes of the plots were fixed on the basis of the demand of different industrialists."

The scheme was then sanctioned under s. 42 of the Act.

The resolution of the Trust dated March 29, 1940, clearly indicated that the original scheme was intended to secure growth of an industrial area and thereby to relieve congestion in the over-crowded localities in the town of Delhi. Such a scheme was primarily a town expansion scheme within the meaning of s. 24(b) read with s. 32. In framing such a scheme the provisions of a development scheme were incidentally incorporated, and that the Trust, by express enactment in s. 24 was competent to do.

It appears that neither before Falshaw, J., nor before the High Court the validity of the original scheme of 1940 was challenged. Counsel for the appellants contended that no reliance was ever placed by the Trust before the Trial Court or the First Appellate Court upon the original scheme and the appellants had no opportunity for challenging the validity of that scheme, but we are unable to accept that contention. The appellants by their plaint challenged the application of the U.P. Town Improvement Act, the constitution of the Trust and the various steps taken by the Trust resulting in the acquisition of their land. The original scheme was tendered in evidence before the Court of First Instance. It is true that arguments in the Trial Court and the First Appellate Court were primarily directed to canvassing the validity of the supplementary scheme in enforcement of which the property of the appellants was acquired. But it cannot be said that the original scheme was not before the Court or that its validity was not challenged. In any event counsel for the appellants had not been able to suggest any ground on which that scheme is open to challenge. The supplementary scheme, as the resolution dated June 30, 1942 clearly indicates, was framed for the further progress of the original scheme. The scheme was one for town expansion, and acquisition of land for town expansion, i.e. providing for industrial development and making provision for the residence of employees in the industries and of others, would clearly fall within the terms of s. 24(h) read with s. 32. It is true that in the resolution dated June 30, 1942 it is recited that the scheme was to provide for the acquisition of "an additional area of 103.16 acres to be sold to the Company". But from a perusal of the primary scheme it is clear that the Company had expressed its requirement for a large area of land under the development scheme and the resolution dated March 29, 1940 had approved of that requirement. It was recited in the resolution that the Company was employing a large number of labourers and removal of the factory to the outskirts of Delhi would contribute in a substantial measure to relief of congestion and also because establishment of a big concern in the industrial area would afford great stimulus to the development of the area. It was found after Part 'A' of the original scheme was carried out that the area provided for the Company was inadequate for its requirements and the Company requested that a larger area may be provided, and accordingly the supplementary scheme was framed.

Resort to the provisions of the Act for acquiring land with a view to hand it over to an industrial concern for private gain may not fall within the terms of the Act. But in the circumstances already set out a scheme framed which contemplates acquisition of land for effectuating the object of the original scheme is not open to challenge on the ground that it is a device to acquire land to be disposed of for private gain of an industrialist. The original and the supplementary schemes must be regarded as one composite scheme conceived in the interests of industrial development and relief of congestion by inducing a flow of population from the congested areas. The object of the supplementary scheme was to effectuate the purpose of the original scheme and failure to frame that scheme may seriously have affected the utility of the original scheme.

There is no warrant for the contention raised by the appellants that the land was not to be developed by the Trust, but was to be acquired and handed over to the Company. It is clear from the scheme

that the general supervision and control over the execution of the supplementary scheme as over the original scheme was retained by the Trust and the Company was to develop the land subject to control under the Town Planning Scheme.

The argument that in a town expansion scheme under s. 32 read with s. 24(h) of the Act, there is no power to acquire land compulsorily is futile. Section 23(a) in terms authorises acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme. That provision may be incorporated in any of the improvement schemes of the types mentioned in s. 24. Again Section 32 clearly implies that in a town expansion scheme such a power would be reserved, for the Trust is statutorily declared liable to pay compensation when permission to alter any building or wall on the land in the area is denied, if the Trust does not proceed to acquire such land within one year from the date of such refusal. By s. 55 a general power to purchase or lease by agreement of any land which the Trust is authorised to acquire is granted and by s. 56 power to acquire land under the Land Acquisition Act, 1894, is expressly conferred. It is true that under the provisions relating to other classes of schemes, for instance, s. 26(2)(f), s. 28(2)(a), s. 29(3) and express provision with regard to acquisition of land is made, and there is no such express provision in s. 32. But that by itself is not sufficient to justify an inference that the provisions of s. 23(a) relating to acquisition of land necessary for or affected by the execution of the scheme may not be conferred in sanctioning a town expansion scheme. If the view contended for be correct, s. 23(a) will not have application to any scheme. We are unable to see any reason why s. 56 which authorises the Trust to acquire land is to be restricted only to those cases in which in the case of a specific scheme an express provision conferring power of acquisition apart from s. 23(a) is conferred.

Nor is there any substance in the contention that the provisions of Part VII of the Land Acquisition Act had to be resorted to by the Trust for acquiring land which was to be allotted to a Company after development. If the land is to be notified for acquisition under the Land Acquisition Act for a Company, the requirements of Part VII of the Land Acquisition Act must undoubtedly be complied with, and failure to do so would render the acquisition invalid. In this case land was not to be acquired for the Company : it was to be acquired for carrying out the industrial development and town expansion scheme of the Trust, and then it was to be allotted for carrying out the scheme to the Company for development. Power to include provision for sale of land comprised in the scheme may competently be conferred under s. 23(g) of the Act and may be exercised under s. 65. Mere inclusion of a power of sale of land acquired under a scheme does not therefore vitiate a scheme.

The argument that in passing the resolution for bringing into force the supplementary scheme one of the Directors of the Company had participated need not detain us. This argument was apparently not raised before the High Court, and having regard to the terms of ss. 42 & 100 of the Act has no force.

It is true that if the land of the appellants had been acquired under the Land Acquisition Act, the appellants may have become entitled to the statutory solatium in addition to the market value. But if the Act is valid, and could be resorted to for compulsorily acquiring land of the appellants, the awards made under the Act are not open to challenge on the ground that if another scheme of acquisition had been resorted to, the appellants may possibly have obtained more compensation.

The appeal must therefore fail. Having regard however to the circumstances of the case, we think that in this case there should be no order as to costs throughout.

Appeal dismissed.

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