Aflatoon and Others

Vs

Lt. Governor of Delhi and Others

Bahadur

Vs

Lt. Governor of Delhi and Others

Abdul Rashid and Others

Vs

Lt. Governor of Delhi and Others

Nuruddin

Vs

Lt. Governor of Delhi and Others

Bahadur

Vs

Lt. Governor of Delhi and Others

Aflatoon and Others

Vs

Lt. Governor of Delhi and Others

Writ Petitions Nos. 362 and 363 of 1972 and Civil Appeals Nos. 107, 969, 970, 971(N), 968(N), 1168(N) and 1185(N) of 1972

(CJI A. N. Ray, K. K. Mathew, A. Alagiriswami, P. K. Goswami, R. S. Sarkaria JJ)

23.08.1974

JUDGMENT

MATHEW, J. –

1. These writ petitions and civil appeals raise common questions and they are, therefore, disposed of by a common judgment. The civil appeals arise out of the decision of High Court of Delhi dismissing the writ petitions filed by the appellants challenging the validity of the proceedings for acquisition of the land in question for "planned development of Delhi". In the writ petitions, the

validity of the same proceedings is being challenged on certain additional grounds also.

2. A notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was issued on November 13, 1959, stating that an area of 34,070 acres of land was needed for a public purpose, viz., the planned development of Delhi. Between 1959 and 1961, about six thousand objections were filed under Section 5A of the Act. The objections were overruled. On March 18, 1966, the declaration under Section 6 of the Act was published in respect of a portion of the area. Thereafter, in 1970, notices were issued under Section 9(1) of the Act requiring the appellants to state their objections, if any, to the assessment of compensation. The appellants thereupon challenged the validity of proceedings for acquisition before the High Court of Delhi on the following grounds : (1) that the acquisition was not for public purpose but for companies and so the provisions of Part VII of the Act ought to have been complied with, (2) since no part of the compensation payable came from the public exchequer, the acquisition was not for a public purpose and (3) that the proceedings for acquisition violated the fundamental right of the appellants under Article 19(1)(f) as there was unreasonable delay between the publication of the notification under Section 4 and the issue of the notices under Section 9 of the Act with the result that the appellants were deprived of the benefit of the appreciation in value of the property after the date of the notification under Section 4. The High Court negatived the contentions and dismissed the writ petitions.

3. The main arguments addressed before us on behalf of the appellants and the writ petitioners were that the public purpose specified in the notification issued under Section 4, namely, the 'planned development of Delhi' was vague as neither a Master Plan nor a Zonal Plan was in existence on the date of the notification and as the purpose specified in the notification was vague, the appellants were unable to exercise effectively their right under Section 5A of the Act and that as the notification under Section 4 was published in 1959, the compensation awarded was wholly inadequate with reference to the market value of the property on the date when the appellants are to be deprived of their possession of the property. In other words the contention was that as there was inordinate delay in finalising the acquisition proceedings, the appellants were deprived of the benefit of the appreciation in the value of the property between the date of the notification under Section 4 and the date of taking possession of the property. Linked with this contention was the submission that the provisions of Section 23 of the Act which lay down that compensation should be determined with reference to the market value of the land as on the date of the notification under Section 4 was an unreasonable restriction on the fundamental right of the appellants to hold and dispose of property under Article 19(1)(f). It was further contended that as the acquisition of the property was for the purpose of planned development of Delhi, the only authority competent to issue the notification under Section 4 was the Central Government under Section 15 of the Delhi Development Act and since the proceedings were initiated by the Chief Commissioner of Delhi, the proceedings were ab initio invalid. The argument was that, as the acquisition was made for the planned development of the Delhi, it could be carried out only in accordance with the provisions of the Delhi Development Act, and that, under Section 15 of that Act, it was only the Central Government which could have issued the notification under Section 4, after having formed the opinion that the acquisition of the land was necessary for the planned development of Delhi and, since the notification was issued by the Chief Commissioner of Delhi, the notification was void ab initio. The last contention was that the acquisition was not for any public purpose, but for companies, as the major portion of the land acquired was allotted without any development to co-operative housing societies which were companies within the definition of the word 'Company' in the Act and as the provisions of Part VII of the Act were not complied with, the proceedings for acquisition were bad.

4. In influx of displaced persons in 1947 from West Pakistan into Delhi aggravated the problem of housing accommodation in Delhi. With the extension of industrial and commercial activities and the setting up of the foreign embassies, Delhi acquired enormous potential as an employment centre. The consequent increase in the population was not accompanied by an adequate expansion of housing facilities. There was haphazard and unplanned growth of houses in different areas; land also was not available at reasonable price as substantial portion of the available land, suitable for development, had passed into the hands of private enterprisers. The Government found it necessary to take effective steps to check the haphazard growth of houses and to prevent sub-standard construction. Therefore, the Government framed a scheme for "planned development of Delhi". It was in order to implement the scheme of planned development of Delhi that the Government decided to acquire planned 34,070 acres of land in 1959 and published the notification under Section 4 specifying the public purpose as "the planned development of Delhi".

5. Section 4 of the Act says that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. According to the section, therefore, it is only necessary to state in the notification that the land is needed for a public purpose. The wording of Section 5A would make it further clear that all that is necessary to be specified in a notification under Section 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under Section 5A. Unless a person to told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under Section 5A. This Court has laid down that it is necessary to specify the particular public purpose in the notification for which the land is needed or likely to be needed as, otherwise, the matters specified in sub-section (2) of Section 4 cannot be carried out. In Munshi Singh v. Union of India ((1973) 1 SCR 973, 975, 984 : (1973) 2 SCC 337, 342) the Court said : [SCC p. 342, para 6]

It is apparent from sub-section (3) of Section 4 that the public purpose which has to be stated in sub-section (1) of Section 4 has to be particularised because, unless that is done, the various matters which were mentioned in sub-section (2) cannot be carried out and if the public purpose stated in Section 4(1) is planned development, without anything more, it is extremely difficult to comprehend how all the matters set out in sub-section (2) can be carried out by the officer concerned.

6. We think that the question whether the purpose specified in a notification under Section 4 is sufficient to enable an objection to be filed under Section 5A would depend upon the facts and circumstances of each case.

7. In Arnold Rodricks v. State of Maharashtra ((1966) 3 SCR 885 : AIR 1966 SC 1788), this Court held that a notification under Section 4 of the Act which stated that the land was needed for "Development and utilisation of the said lands as an industrial and residential area" was sufficient specification of public purpose.

8. In the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area in needed.

9. Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time ? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in Munshi Singh v. Union of India (supra), it was observed : [SCC p. 344, para 10]

In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence at any stage.

We do not think that the appellants were vigilant.

10. That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued under Section 4, they were prejudiced in that they could not effectively exercise their right under Section 5A. As the plea was not raised by the appellants in the writ petitions filed before the High Court, we do not think that the appellants are entitled to have the plea considered in these appeals.

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Tilokchand Motichand v. H. B. Munshi ((1969) 2 SCR 824 : (1969) 1 SCC 110) and Rabindranath Bose v. Union of India ((1970) 2 SCR 697 : (1970) 1 SCC 84)).

12. From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to co-operative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.

13. As regard the second contention that there was inordinate delay in finalising the acquisition proceedings and that the appellants and writ petitioners were deprived of the appreciation in value of the land in which they were interested, it may be noted that about 6,000 objections were filed under Section 5A by persons interested in the property. Several write petitions were also filed in 1966 and 1967 challenging the validity of the acquisition proceedings. The Government had necessarily to wait for the disposal of the objections and petitions before proceedings further in the matter. Both the learned Single Judge as well as the Division Bench of the High Court were of the view that there was no inordinate delay on the part of the Government in completing the acquisition

proceedings. We are not persuaded to come to a different conclusion.

14. Linked with the above contention was the argument that the provisions of Section 23 of the Act impose unreasonable restrictions upon the fundamental right of the appellants and writ petitioners to hold and dispose of property under Article 19(1)(f) of the Constitution as compensation is awardable only with reference to the value of the property on the date of notification under Section 4 however long the proceedings for acquisition may drag on and not with reference to the market value of property when it is taken possession of. It was submitted that compensation should be paid with reference to the value of the property as on the date when possession of the property is taken and the section, as it lays down that compensation should be fixed with reference to the market value as on the date of the notification under Section 4, abridges the fundamental right of a citizen under Article 19(1)(f). We find that the argument is not persuasive. Article 31(5)(a) provides :

> (5) Nothing in clause (2) shall affect -
>
> (a) the provision of any existing law other than a law to which the provisions of clause (6) apply,

15. The Land Acquisition Act is a pre-Constitution Act. Its provisions are not, therefore, liable to be challenged on the ground that they are not in conformity with the requirement of Article 31(2). What the appellants and writ petitioners complain is that their properties were acquired by paying them compensation computed with reference to the market value of the land as on the date of the notification under Section 4 and that Section 23 is, therefore, bad. This, in substance, is nothing but a challenge to the adequacy of compensation. Such a challenge is precluded by reason of Article 31(5). In other words, the appellants and the writ petitioners cannot challenge the validity of Section 23 on the ground that compensation payable under its provisions is in any way inadequate because, such a challenge would fly in the face of Article 31(5).

16. It is noteworthy that Section 4(3) of the Land Acquisition Amendment and Validation Act, 1957, provides for payment of interest at 6 per cent of the market value after the expiry of 3 years from the date of the notification under Section 4 to the date of payment of compensation. Section 24 of the Act provides that any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under Section 4(1) shall not be taken into consideration by the Court in awarding compensation. This provision means that any outlay or improvement made with the sanction of the Collector after the date of the notification will be taken into consideration in awarding compensation.

17. In R. C. Cooper v. Union of India ((1970) 3 SCR 530, 577 : (1970) 1 SCC 248), this Court has observed that although a law for acquisition of property must pass the test of Article 19(5), the challenge to the law would ordinarily be limited to the question of procedural unreasonableness. This is what the Court said : [SCC p. 289, para 51]

> ..... Where the law provides for compulsory acquisition of property for a public purpose, it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Article 31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but

enquiry into reasonableness of the procedural provisions will not be excluded. For instance, if a tribunal is authorised by an Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Article 19(1)(f).

18. If follows that although Section 23 of the Act can be challenged on the ground that it violates the fundamental right of a citizen to hold and dispose of property under Article 19(1)(f), the challenge would practically be limited to the question of procedural reasonableness. But Section 23 does not deal with procedure and cannot, therefore, suffer from any procedural unreasonableness. When it is seen that Section 23 is not liable to be challenged on the ground that the compensation provided by its provisions is inadequate in view of the provisions of Article 31(5), there is no point in the contention that it can be challenged for that very reason on the basis that it imposes unreasonable restriction upon a citizen's right to hold and dispose of property.

19. It was argued that there could be no planned development of Delhi otherwise than in accordance with the provisions of the Delhi Development Act and, therefore, the notification under Section 4 of the Act should have been issued by the Central Government in view of Section 15 of that Act and not by the Chief Commissioner of Delhi.

20. Section 12 of the Delhi Development Act, 1957 provides :

12. (1) As soon as may be after the commencement of this Act, the Central Government may, by notification in the official Gazette, declare any area in Delhi to be a development area for the purposes of this Act :

Provided that no such declaration shall be made unless proposal for such declaration has been referred by the Central Government to the Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference or within such further period as the Central Government may allow and the period so specified or allowed has expired.

(2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless, -

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act;

(ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955, and in force immediately before the commencement of this Act :

Provided that the local authority concerned may, subject to the provisions of Section 53A amend these regulations in their application to such area.

> (4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.
>
> (5) Notwithstanding anything contained in sub-sections (3) and (4) development of any land begun by any department of Government or any local authority before the commencement of this Act may be completed by that department or local authority without compliance with the requirements of those sub-sections.

21. Section 15 of the Delhi Development Act, 1957 states :

15. (1) If in the opinion of the Central Government, any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894.

> (2) Where any land has been acquired by the Central Government, that Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

22. Counsel contended that on the date when the notification under Section 4 was published, the Government had not declared any area in Delhi as a development area under Section 12(1) of the Delhi Development Act, nor was there a master plan drawn up in accordance with Section 7 of that Act and so the acquisition of the property for planned development of Delhi was illegal. Under Section 12(3) of the Delhi Development Act, no development of land can be undertaken or carried out except as provided in that clause. Section 2(d) states : "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment. Section 2(e) states "development area" means any area declared to be a development area under sub-section (1) of Section 12.

23. The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see in decision in Patna Improvement Trust v. Smt. Lakshmi Devi). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. We do not think it necessary to go into the question whether the power to acquire the land under Section 15 was delegated by the Central

Government to the Chief Commissioner of Delhi. We have already held that the appellants and the writ petitioners cannot be allowed to challenge the validity of the notification under Section 4 on the ground of laches and acquiescence. The plea that the Chief Commissioner of Delhi had no authority to initiate the proceeding for acquisition by issuing the notification under Section 4 of the Act as Section 15 of the Delhi Development Act given that power only to the Central Government relates primarily to the validity of the notification. Even assuming that the Chief Commissioner of Delhi was not authorised by the Central Government to issue the notification under Section 4 of the Land Acquisition Act, since the appellants and the writ petitioners are precluded by their laches and acquiescence from questioning the notification, the contention must, in any event, be negatived and we do so.

24. It was contended by Dr. Singhvi that the acquisition was really for the co-operative housing societies which are companies within the definition of the word 'company' in Section 3(e) of the Act, and, therefore, the provisions of Part VII of the Act should have been complied with. Both the learned Single Judge and the Division Bench of the High Court were of the view that the acquisition was not for company. We see no reason to differ from their view. The mere fact that after the acquisition the Government proposed to hand over, or, in fact, handed over, a portion of the property acquired for development to the co-operative housing societies would not make the acquisition one for 'company'. Nor are we satisfied that there is any merit in the contention that compensation to be paid for the acquisition came from the consideration paid by the co-operative societies. In the light of the averments in the counter affidavit filed in the writ petitions here, it is difficult to hold that it was co-operatives which provided the fund for the acquisition. Merely because the Government allotted a part of the property to co-operative societies for development, it would not follow that the acquisition was for co-operative societies and, therefore, Part VII of the Act was attracted.

25. It may be noted that the validity of the notification under Section 4 and the declaration under Section 6 was in issue in Udai Ram Sharma v. Union of India ((1968) 3 SCR 41 : AIR 1968 SC 1133) and this Court upheld their validity.

26. We see no merit in the appeals and the writ petitions. They are, therefore, dismissed with costs.

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