

Om Prakash

Vs

Union of India, Through Its Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi and Others

Kesho Ram

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Union of India, Through Its Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi and Others

Special Leave Petitions (Civil) Nos. 3631 and 4321 of 1987

(E S. Venkataramiah, S. Ranganathan JJ)

03.11.1987

JUDGMENT

RANGANATHAN, J. –

1. In both these matters, notice was given to the respondent on a limited point : whether the Lt. Governor of Delhi is competent to issue a notification under Section 4(1) of the Land Acquisition Act, 1894 ('the 1894 Act'), to acquire lands "for the planned development of Delhi". That is the ground on which, inter alia, the petitioners unsuccessfully challenged before the High Court the validity of a notification dated January 27, 1984 issued by the Lt. Governor of Delhi (as the Head of the Delhi Administration) for the acquisition of about 3550 hectares of land situated in Delhi. We have, therefore, heard counsel on this limited question.

2. Section 4(1) of the 1894 Act, insofar as it is relevant, reads as follows :

4(1) 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 . . . .

3. Section 3(ee) of the same Act defines "appropriate Government" as follows :

In this Act, unless there is something repugnant in the subject or context, -

(ee) the expression "appropriate government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

4. A reference should also be made in this context, to notifications issued under Article 239(1) of the Constitution of India by the Ministry of Home Affairs of the Government of India on August 19, 1954, November 1, 1956 and September 7, 1966. The cumulative effect of these notifications is that the Lt. Governor of the Union Territory of Delhi is entitled to exercise the powers and discharge the

functions of the Central Government under the provisions of the 1894 Act within the Union Territory of Delhi. There is no doubt, considering the provisions of the 1894 Act and the above notifications, that the Lt. Governor of Delhi was fully competent to issue the notification dated January 27, 1984.

5. The argument addressed on behalf of the petitioners, however, is that, after the enactment of the Delhi Development Act, 1957 ('the 1957 Act'), the provisions of the 1894 Act are no longer relevant in the present context. It is submitted that the expression "planned development of Delhi" can and does envisage the development of Delhi only in accordance with the provisions of the Master Plan and the Zonal Plans drawn up under the 1957 Act. Under the said Act, the full responsibility of drawing up plans for the development of Delhi as well as executing the same in several phases is vested in the Central Government. Section 15 of the Act, makes it clear that this takes in also the acquisition of lands for such planned development. It reads :

15. Compulsory acquisition of land. - (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 (1 of 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.

6. It is argued that while the notification under Article 239 of the Constitution may have delegated the power of acquisition under the second part of Section 15(1) to the Lt. Governor, they do not affect the Central Government's jurisdiction under the first part to take a decision that certain lands are needed for the purposes of the Act. The argument that land acquisition in Delhi for planned development is the 'business' of the Central Government is sought to be reinforced by reference to the Allocation of Business Rules, 1961, made by the President under Article 77(3) of the Constitution of India. These rules enumerate the following items as falling within the purview of the Ministry of Works and Housing in the Union Government :

(16) Schemes of large scale acquisition, development and disposal of land in Delhi.

(17) Delhi Development Authority.

(18) Master Plan of Delhi, co-ordination of work in respect of the Master Plan and slum clearance in the Union Territory of Delhi.

(20) Administration of the Delhi Development Act, 1957.

7. All this shows, according to the learned counsel, that the Lt. Governor has no jurisdiction or competence to issue the impugned notification.

8. There is ex facie, a very plausible reply to the petitioner's arguments based on Section 15 of the 1957 Act. It is this : that the expression "Central Government" in Section 15 of the 1957 Act has to be understood in the light of the definition contained in Section 3(8) of the General Clauses Act, 1897. That definition reads :

3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context, -

(8) 'Central Government' shall -

#(a) \* \* \*##

(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President;

and shall include -

(i) in relation to functions entrusted under clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

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(iii) in relation to the administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution.

9. It, therefore, follows, it can be said that, even under this provision, the jurisdiction to acquire lands rests only in the Lt. Governor of Delhi. Anticipating this reply counsel for petitioners urges that the definition in the General Clauses Act is inapplicable in the context of the Delhi Development Act. It is said that throughout this Act there runs a clear demarcation between the Central Government on the one hand and the Administrator of the Union Territory on the other. Reference is made to Sections 30, 41 and 52 of the 1957 Act and it is urged, in the light of these provisions, that the reference to the Central Government in Section 15 should be construed as a reference only to the Central Government and not to the Administrator (i.e. Lt. Governor) of the Union Territory.

10. A counter-affidavit had been filed on behalf of the Delhi Development Authority (DDA) which contained an annexure which would have provided a direct answer to the contentions urged on behalf of the petitioners. This answer is a notification dated February 14, 1969, issued by the Central Government under Section 52(2) of the 1957 Act. By this notification, the Central Government directs that the powers of that government under the provisions of the 1957 Act mentioned in the Schedule thereto annexed would, subject to the control of the Central Government and until further orders, also be exercised by the Administrator of the Union Territory of Delhi. 11 items are mentioned in the Schedule. Of these, the powers in regard to item 2 of the Schedule alone have to be exercised by the Administrator with the prior approval of the Central Government. The others, which include powers in regard to Section 15 (item 6), can be exercised by the Administrator even without such prior approval. This notification places it beyond doubt that the powers of the Central Government under Section 15 can be exercised by the Lt. Governor of Delhi. Both the power to form an opinion under the first part of Section 15(1) and the power of acquisition under the second part are comprehended by this notification. This notification, therefore, would have furnished a complete answer to the contentions urged on behalf of the petitioners. Unfortunately, it appears, the notification was only at the draft stage and was never gazetted. We have, therefore, to leave this notification out of account.

11. But, even otherwise, we are of the opinion that Lt. Governor was quite competent to issue the notification in question. It is no doubt true that the 1957 Act makes separate mention of the Central Government and the Administrator and demarcates some functions between the Central Government on the one hand and the State Government or the Administrator on the other. But, whatever may be the position in regard to other provisions, there can be no doubt that, in the context of Section 15, it would not be correct to understand these two expressions in different senses. We say this because on reading two of Section 15(1) it is the obvious intention of the legislature that the same authority should exercise its functions under both the parts of the sub-section. If the sub-section is read in the manner in which the petitioners seek to read it, the working of the section would become impracticable and cumbersome. According to them, the Central Government will first to have form an opinion that certain lands are required for the purposes of planned development of Delhi under the Act; thereafter this opinion has to be communicated to the Lt. Governor who, in view of the delegation of powers under Article 239 of the Constitution which we have referred to earlier, will have to apply his mind once again to the same question before he can issue a notification under Section 4 of the 1894 Act. This is a duplication of functions which could not have been within the contemplation of the legislature. The provision requires the satisfaction of only one authority and since the powers of the Central Government under the 1894 Act have been delegated to the Lt. Governor, the expression 'Central Government' will have to be understood in the same sense for the first part of the sub-section as well. The Allocation of Business Rules relied on by counsel, have no relevance in this context. They only provide that, when any of the items mentioned (such as DDA, master plan, the 1957 Act, or acquisition etc. of properties in Delhi) comes up for the consideration of the Central Government, it will have to be dealt with in the Ministry of Works and Housing. They are quite consistent with the position that even the powers delegated to the Lt. Governor are exercisable by him only subject to the control and further orders of the President. They cannot be understood as negating the competence of the Lt. Governor to deal with the subject matter in question.

12. Even assuming that the petitioners are right in their interpretation of Section 15(1), the competence of the Lt. Governor to issue the impugned notification can be upheld on another ground. The provisions of the 1894 Act clearly empower the Lt. Governor to acquire the lands for the planned development of Delhi, which, it is now settled law, is clearly a public purpose. That competence cannot be denied without some express provision in some statute. Both the 1894 Act and 1957 Act are central enactments. Granting that the 1957 Act desired to empower the Central Government to acquire lands in Delhi for the purposes of the said Act and even granting that such power has to be exercised through the Lt. Governor because of the notification under Article 239(1), such power can also stand side by side with the wider power of the Lt. Governor to acquire lands for a public purpose. There is nothing in the 1957 Act which prohibits the Lt. Governor taking such steps as he desires, under the powers available to him, to carry out the planned development of Delhi in consonance with the plans approved or finalised under the 1957 Act. Viewed in this light, the powers of the Lt. Governor under Section 4 of the Land Acquisition Act can be read as additional to the powers of the Central Government under the Delhi Development Act. The 1957 Act does not destroy but only supplements the 1894 Act. This is the view taken by the High Court and we agree with it.

13. Both counsel referred to certain decisions. We do not think it is necessary to refer to them in detail except to say that the decision in the *Express Newspapers Pvt. Ltd. v. Union of India* (1985 Supp 3 SCR 382 : (1986) 1 SCC 133) relied upon for the petitioner is clearly distinguishable and it related to a case regarding the powers of the Delhi Administration in regard to lands belonging to the Union.

14. For the reasons discussed above, we reject the contention urged on behalf of the petitioners. The special leave petitions fail and are dismissed. We, however, make no order as to costs.

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