

Jai Narain and Others

Vs

Union of India and Others

T.Cs. (C) Nos. 73-75 of 1995,

(Kuldip Singh, S. Saghir Ahmed JJ)

29.11.1995

JUDGMENT

KULDIP SINGH, J. –

1. These transfer cases are the writ petitions under Article 226 of the Constitution of India which were filed before the Delhi High Court. The petitioners have challenged the notifications dated 6-1-1995 and 9-3-1995 under Sections 4, 6 and 17(4) of the Land Acquisition Act, 1894 (the Act) relating to the revenue estate of Village Nilothi, National Capital Territory (NCT) of Delhi.

2. This Court is monitoring the constructions of Sewage Treatment Plants (STPs) in various parts of Delhi in the public interest proceedings in M. C. Mehta v. Union of India under Article 32 of the Constitution of India. Pursuant to the directions issued by this Court in M. C. Mehta case the NCT Administration has issued the notifications dated 6-1-1995 and 9-3-1995 under the Act which have been impugned in the transferred cases. Since this Court is seized of the matter relating to the construction of STP at Keshopur on the land in dispute, it was deemed appropriate to transfer the writ petitions from the file of the Delhi High Court to this Court.

3. The land in dispute is being acquired for a public purpose namely for setting up of pumping station/sewerage treatment plant in Villages Jasola, Nilothi and Shaffipur Ranola for the planned development of Delhi. The provisions of sub-section (1) of Section 17 of the Act have been made applicable and as such the enquiry under Section 5-A of the Act has been dispensed with. The relevant part of the notification dated 6-1-1995 is as under :

"No. F. 9(46)/94-L&B/LA/298. - Whereas it appears to the Lt. Governor of Delhi that the land is likely to be required to be taken by Government at public expense for a public purpose; namely for setting up of pumping station/sewerage treatment plant in Village Jasola for the planned development of Delhi, it is hereby notified that the land in the locality described below is likely to be required for the above purpose.... The Lt. Governor being of opinion that provisions of sub-section (1) of Section 17 of the said Act are applicable to this land, is further pleased under sub-section (4) of the said section to direct that the provisions of Section 5-A shall not apply."

Section 4 of the Act to the relevant extent is reproduced :

"4. Publication of preliminary notification and powers of officers thereupon. - (1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purposes...."

4. Mr. N. S. Vashisht, learned counsel for the petitioners has challenged the acquisition proceedings on the following grounds :

(1) The notification under Section 4 of the Act uses the expression "likely to be needed" which means there was no existing need and the land was required sometime in the future. There was, thus, no urgency and as such the provisions of Section 17(4) of the Act could not be invoked and the right of the landowners to file objections under Section 5-A of the Act could not be taken away. It further indicates that there was no application of mind on the part of the Lt. Governor of NCT;

(2) The land in dispute is shown in the Master Plan and Zonal Development Plan as agricultural green whereas it is being acquired for the public purposes of setting up the STP. The acquisition is contrary to the Master Plan and the Zonal Development Plan.

5. The first contention raised by the learned counsel is based on the language of Section 4 of the Act. The power under Section 4 of the Act can be exercised when it appears to the Government that the "land in any locality is needed or is likely to be needed for any public purpose". It is no doubt correct that the expression "is needed" indicates the existing need whereas the expression is used in the notification under Section 4 of the Act it may be suggestive of the fact that there may not be emergency to acquire the land, but the question of urgency cannot be determined solely by the expressions used in the notification under Section 4 of the Act. The emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind. When a notification under Section 4 of the Act uses the expression "is likely to be needed" it may be necessary, in a given case, to examine the records or the attendant circumstances to satisfy that there was material before the Government justifying the order under Section 17, dispensing with the provisions of Section 5-A of the Act. If the public purpose on the face of it shows that the land is needed urgently, that by itself is a relevant circumstance for justifying the action under Section 17(4) of the Act. This Court in *State of U. P. v. Pista Devi* - where urgency provisions were invoked to acquire the land for housing schemes - held as under : (SCC p. 257, para 5)

"In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Sections 5-A of the Act."

6. The land in dispute is being acquired for the construction of STP. This Court in *M. C. Mehta* case, while directing the closure of the stone-crushers in the city of Delhi, on 15-5-1992 observed as under : (SCC p. 257, para 2)

"We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. We are

constrained to record that Delhi Development Authority, Municipal Corporation of Delhi, Central Pollution Control Board and Delhi Pollution Control Committee have been wholly remiss in the performance of their statutory duties and have failed to protect the environments and control air pollution in the Union Territory of Delhi. Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbier, most polluted and unhealthy city as per a study conducted by the World Health Organisation. Needless to say that every citizen has a right to fresh air and to live in pollution-free environments."

While dealing with the construction of STPs in Delhi, this Court in Mehta case passed the following order on 22-4-1994:

"The Delhi Development Authority has filed an affidavit through its Secretary, Mr. V. N. Bansal. It is stated that the Authority is ready and willing to provide land to the MCD for setting up of the sewage treatment tanks. Keeping in view the urgency of the matter, we request Mr. Subhash Sharma, Commissioner, MCD, Mr. S. P. Jkhanwal, Vice-Chairman, DDA. Mr. Ashok Kumar, Additional Commissioner, Water and Mr. J. K. Mathur, Chief Engineer of the Delhi Water Supply and Sewage Disposal Undertaking to be present in Court on May 6, 1994. We are requesting the officers to be present in Court so that we can have their viewpoints for taking appropriate decisions on the spot. Needless to say that with the increase of population in Delhi, it is of utmost urgency to set up the sewage treatment plants within the time-bound schedule." Therefore, on 13-5-1994 this Court issued various directions regarding the transfer of land to the Delhi Water Supply and Sewage Disposal Undertaking (the Undertaking) for the STPs in Delhi and finally directed as under :

"We direct the DDA through Mr. S. Roy, Commissioner, Lands to hand over the possession of the vacant land available for setting up of the sewage treatment plants in various colonies within four weeks from today. We further direct the MCD to make payment in respect of these lands simultaneously. Ms. S. Prakash, Engineer-in-Chief will be responsible for taking over the land and also for making payment to the DDA on behalf of the MCD. The work for setting up of sewage treatment plants shall be undertaken forthwith and shall be completed at war footing."

This Court on 1-8-1994, noticed the progress made in the construction of the STPs in the following words :

"Mr. Kapil Sibal, learned Senior Counsel appearing for the Delhi Water Supply and Sewage Disposal Undertaking, has produced before us a chart showing tentative schedule of completion and commissioning of sewage treatment plants in various areas in Delhi. It is stated that the first appraisal is the soil investigation. The soil investigations is to be done by the investigating team of the Undertaking within four weeks from today. In any case, we direct the Undertaking to complete it within four weeks. Thereafter, the Undertaking shall float and finalise the tenders within 6 weeks.

The progress report and the name of the company/person whose tender would be accepted shall be submitted to this Court by 24-10-1994. List it on 24-10-1994."

Regarding the STP in Okhla area it was found that the dispossession of the landowners in respect of large area of land under acquisition was stayed by the Delhi High Court in the writ petitions filed by them. This Court in M. C. Mehta case passed the following order on 14-12-1994:

"We directed the DDA to issue notices through newspapers consecutively for two days stating therein that the persons who have obtained stay orders from various courts be present in this Court at 2.00 p.m. on December 14, 1994. The notices were published by the DDA as directed by us. In response to the notices, Mr. S. M. Ashri, Dr. B. S. Chauhan, Mr. Maninder Singh and Mr. L. C. Chachi, Advocates are present on behalf of the landowners. The only contention raised by the learned counsel for various landowners in that the notification under Section 4 and 6 were issued in the years 1964 and 1966 respectively. According to them, the possession of land is still with them. It is further stated by the learned counsel that they are entitled to compensation at the rate of market value of the land today...."

Keeping in view the facts and circumstances of this case, we direct that 13 writ petitions mentioned in the public notice published in the Hindustan Times dated November 30, 1994, be transferred from the Delhi High Court to the file of this Court. These petitions be listed for final disposal in the 2nd week of February 1995.

Meanwhile, we vacate the stay orders granted by the High Court in all these writ petitions and direct the Delhi Administration to take over the possession of the land and hand over to the Delhi Water Supply and Sewage Disposal Undertaking."

7. Further directions were issued to the Delhi Administration on 14-12-1994 to take over the land from DDA and acquire where necessary for the STPs at various places in Delhi.

8. This Court has been issuing time-bound directions for the procurement of land for the STPs in various parts of Delhi. The impugned notifications regarding Keshopur STP were issued under the directions of this Court. On 23-1-1995 this Court passed the following order regarding the land in dispute :

"Notification under Section 4 read with Section 17(1) of the Land Acquisition Act has been issued. The land in the notification has been identified by way of a plan indicating boundaries and not by the khasra numbers. To issue notification under Section 6, exact khasra numbers of the land in dispute are required. Mr. Jaitley states that the DDA will give exact khasra number of the land within one week from today. The notification be issued within two weeks from today."

9. In Mehta case, this Court on 24-3-1995 observed as under :

"A very grim picture emerges regarding increase of pollution in the city of Delhi from the two affidavits filed by Shri D. S. Negi, Secretary (Environment), Government of Delhi. He has pointed out that the population of Delhi which was about 17 lakhs in 1951 has gone up to more than 94 lakhs as per the 1991 census. In fact, more than 4 lakh people are being added to the population of Delhi every year out of which about 3 lakhs are migrants. Delhi has been categorised as the fourth most polluted city in the world with respect to concentration of Suspended Particular Metal (SPM) in the ambient atmosphere as per World Health Organisation Report,

1989. From NEERI's annual report 1991 it is obvious that the major contributions, so far as air pollution is concerned, is of the vehicular traffic but the industries in the city are also contributing about 30% of the air pollution. So far as the discharge of effluent in Yamuna is concerned, the industries are the prime contributors apart from the MCD and NDMC which are also discharging sewage directly into the River Yamuna. We are dealing with the sewage problems in separate proceedings."

Thereafter, on 21-4-1995 this Court, regarding the construction of STPs observed as under :

"Treatment of sewage is of utmost importance for health and for supply of pure water to the citizens of Delhi. Any delay in this respect is a health hazard and cannot be tolerated."

The land for Keshopur STP was not being made available. There was considerable delay in completing the acquisition proceedings. This Court on 4-8-1995 passed the following order :

"So far as Keshopur is concerned, land has to be acquired by the State Government. Mr. Arun Jaitley, learned Senior Counsel, states that although he is not appearing for the Delhi Administration, yet he has information that some steps have already been taken by the State Government. There is nobody in the Court to assist us on behalf of Delhi Administration. We are told that Mrs. Suman Swarup is the Secretary in charge of the Land and Building Department. We are prima facie of the view that there is obvious inaction on the part of the Delhi Administration, in complying with our orders. Before we take any action in this respect we direct Ms. Suman Swarup to file an affidavit in this Court within one week giving overall action the Government has initiated in respect of acquiring land in setting up of sewage treatment plant in Keshopur. The affidavit be filed by 1 p.m. on 11th August, 1995. List the matter on 11th August, 1995 at 2 p.m."

Thereafter, on 11-8-1995 this Court issued the following directions regarding the STP at Keshopur :

"Pursuant to this Court's order dated 4-8-1995 Ms. Suman Swarup, Secretary, Land and Building Department, Government of National Capital Territory of Delhi has filed an affidavit. Ms. Geeta Luthra, learned counsel appearing for the Secretary, Land and Building, states that the necessary procedure for acquiring 106 hectares of land in Keshopur for the purpose of setting up of sewage treatment plant has already been completed. She further states that the advance compensation is to be disbursed to the landowners. Mr. Arun Jaitley, learned counsel states that the DDA shall hand over the compensation amount to the administration within three days from today. Learned counsel further states that about 30 hectares of acquired land is under the authorised/unauthorised possession of the various persons. According to her, the remaining 76 hectares of land can be handed over to the Undertaking with immediate effect. We request the Committee consisting of Mr. P. C. Jain, Mr. J. K. Mathur and Mr. S. P. Chakrabarti to visit the area and identify the 76 hectares of land which can be immediately surrendered to the Undertaking. This may be done within one week. We direct the Secretary, Land and Building Department to send Department's representative/representatives with the team for the purpose of identification of 76 hectares of land (as at present). Mr. Suman Swarup shall file an additional affidavit in this Court within three weeks from today indicating the progress made in this

matter."

Finally, on 8-9-1995 this Court issued the following directions regarding the STP at Keshopur :

"So far as the requirement of land for setting up STP in Keshopur is concerned, this Court issued directions to the Delhi Administration on December 14, 1994 to initiate proceedings within two weeks thereafter and hand over the possession to the Undertaking as early as possible. We are constrained to say that till date the possession of the whole of the land (106 hectares) has not been handed over to the Undertaking. As mentioned above, formal possession of 75 hectares has been handed over to the Undertaking. Ms. Suman Swarup is the Secretary in charge of the Land and Building Department and also of the Public Works Department of the Delhi Administration. We direct Ms. Suman Swarup to have the proceedings such as the assessment of the value of the structures on the spot etc. completely within four weeks from September 11, 1995. Thereafter, she would make a formal request to the DDA to demolish the structures and hand over the possession so that the DDA gets the land from the Delhi Administration on payment and thereafter hand over the same to the Undertaking. Ms. Suman Swarup shall file an affidavit indicating the compliance with our order before October 16, 1995."

10. Various orders and directions issued by this Court from time to time in Mehta case clearly show that the land in dispute - for Keshopur STP - is being acquired under the directions of this Court. Even the impugned notifications under Section 4 read with Section 17 and Section 6 of the Act have been issued under the directions of this Court. This Court repeatedly indicated in the orders/directions that there was urgency in taking over the possession of the land, under acquisition, for the construction of STP at Keshopur. The authorities were directed to take up the work of land acquisition and construction of STPs on war footing. 'Likely' in the background of this Court's orders passed from time to time for a time-bound programme for setting up the STPs means, for purposes of this case, 'certainly' and 'urgently'.

11. Delhi - the capital of India - one of the world's great and historic cities has come to be listed as third/fourth most polluted and grubbiest city in the world. Apart from air pollution, the waters of River Yamuna are wholly contaminated. It is a paradox that the Delhiites - despite River Yamuna being the primary source of water supply - are discharging almost totality of untreated sewage into the river. There are eighteen drains including Najafgarh drain which carry industrial and domestic waste including sewage to River Yamuna. Thirty-eight smaller drains fall into Najafgarh drain. The Najafgarh drain basin is the biggest polluter of River Yamuna. Eight of the drains including Najafgarh drain are untrapped, four fully trapped and remaining six are partially trapped. All these eighteen drains, by and large, carry untreated industrial and domestic wastes and fall into River Yamuna. The River Yamuna enters Delhi at Wazirabad in the North and leaves at the South after travelling a distance of about twenty-five kilometers. The water of River Yamuna till it enters Najafgarh is fit for drinking after treatment, but the confluence of Najafgarh drain and seventeen other drains makes the water heavily polluted. The water quality of Yamuna, in Delhi stretch, is neither fit for drinking nor for bathing. The Biochemical Oxygen Demand (BOD) level in the river has gone so high that no flora or fauna can survive. It is of utmost importance and urgency to complete the construction of the STPs in the city of Delhi. The project is of great public importance. It is indeed of national importance. We take judicial notice of the fact that there was utmost urgency to acquire the land in dispute and as such the emergency provisions of the Act were rightly invoked. We reject the first contention raised by the learned counsel.

12. So far as the second contention raised by Mr. Vashisht, the same is mentioned to be rejected. Whatever may be the user of the land under the Master Plan and the Zonal Development Plan the State can always acquire the same for public purpose in accordance with the law of the land. In any case the object and purpose of constructing the STPs is to protect the environment, control pollution and in the process maintain and develop the agricultural green.

13. We see no force in any of the contentions raised by Mr. Vashisht. We, therefore, dismiss the transfer cases (writ petitions) with costs. We quantify the costs at Rs. 10,000 to be paid by each of the petitioners in these cases.