

SUPREME COURT OF INDIA

Shanta Talwar & Anr.

Vs.

Union of India & Ors.

C.A.No.3072-73 of 2004

(Mukundakam Sharma and Anil R.Dave,JJ.,)

05.04.2011

JUDGMENT

Dr. Mukundakam Sharma,J.,

1. Since all these appeals involve identical issues, we propose to dispose of all these appeals by this common judgment and order.

2. All these appeals are directed against the judgments and orders passed by the High Court of Delhi, whereby the High Court has dismissed the Writ Petitions filed by the appellants herein. The Writ Petition Nos. WP(C) 8440-43/2003; 2329/04 and 2786/04 filed by Pawan Singh & Ors.; Shanta Talwar and Diwan Chand, respectively, were dismissed by the Division Bench of the Delhi High Court by its common judgment and order dated 07.04.2004, whereas, the Writ Petition (Civil) No. 716/08 filed by Neera Jain and Writ Petition (Civil) No. 573/08, in which Veena Kapuria was the second Petitioner, were dismissed by a common judgment and order dated 11.04.2008 passed by another Division Bench of the High Court of Delhi.

3. For the sake of brevity and convenience we propose to take the facts of the case in the Writ Petitions filed by Pawan Singh & Ors.; Shanta Talwar and Diwan Chand challenging the acquisition proceedings of their lands for the construction of Prem Nagar Station, which is a part of Mass Rapid Transit System [for short `MRTS'], which is a project undertaken by the Delhi Metro Rail Corporation [for short `DMRC']. The aforesaid land was sought to be acquired by issuing a notification under Section 4 of the Land Acquisition Act, 1894 [for short `the LA Act'] on 16.10.2003, but by the aforesaid notification, urgency provision under Section 17(1) read with Section 17(4) of the LA Act was also invoked dispensing with the enquiry inviting objections under Section 5-A of the LA Act, which was followed by issuance of Declaration under Section 6 and notice under Section 9 on 11.11.2003. There is no dispute with regard to the fact that the possession of the land was also taken by the DMRC on 24.12.2003 and thereafter construction of the metro station was started, which also stand completed as of now. An award was passed in respect of the aforesaid land by the

Land Acquisition Collector on 17.09.2004. Smt. Shanta Talwar and other appellants received the compensation as fixed by the Collector.

4. The Parliament of India, in the year 1978 had also enacted another legislation, namely, the Metro Railways (Construction of Works) Act, 1978 [for short `the Metro Railways Act'] which also contains the provisions for acquisition of land required for specific purpose, namely, for the construction of Metro Railways or other works connected therewith, like: -

“(a) make or construct in, upon, across, under or over any lands, buildings, streets, roads, railways or tramways or any rivers, canals, brooks, streams or other waters or any drains, water-pipes, gas-pipes, electric lines or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, ways or passages, as the metro railway administration thinks proper;

(b) alter the course of any rivers, canals, brooks, streams or water-courses for the purpose of constructing tunnels, passages or other works over or under them and divert or alter as well temporarily as permanently, the course of any rivers, canals, brooks, streams or water-courses or any drains, water-pipes, gas-pipes, electric lines or telegraph lines or raise or sink the level thereof in order the more conveniently to carry them over or under, as the metro railway administration thinks proper;

(c) make drains or conduits into, through or under, any lands adjoining the metro railway for the purpose of conveying water from or to the metro railway;

(d) erect or construct such houses, warehouses, offices and other buildings and such yards, stations, engines, machinery, apparatus and other works and conveniences, as the metro railways administration thinks proper;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead;

(f) draw, make or conduct such maps, plans, surveys or tests, as the metro railway administration thinks property;

(g) do all other acts necessary for making, maintaining, altering or repairing and using the metro railway; However, in the said Writ Petitions filed by Pawan Singh & Ors.; Shanta Talwar and Diwan Chand, the lands were acquired by the State Government under the LA Act for the establishment of Prem Nagar MRTS Station at the request of DMRC and not under the Metro Railways Act.”

5. Two Civil Appeals are also filed against the dismissal of two other Writ Petitions, viz., the Writ Petition (Civil) No. 716/08 filed by Neera Jain and Writ Petition (Civil) No. 573/08, in which Veena Kapuria was the second Petitioner, which were registered as Civil Appeal Nos.

3200/08 and 3199/08, respectively. The said cases involved lands which were acquired by issuing a notification dated 10.08.2007 under Section 4 of the LA Act. Declaration was also issued in the said cases under Section 6 by issuing a notification on 01.11.2007 followed by the notice under Section 9 issued on 01.11.2007. Not only possession of the said land was taken but also award was passed on 30.10.2010. The records disclose that some of the appellants in the said cases have also received the compensation.

6. Be that as it may, in all these appeals possession of land in question has already been taken and the purpose for which the land was acquired has also been completed/ achieved.

7. Contentions raised by all the appellants herein are that in view of the provisions of the Metro Railways Act, which is applicable to the city of Delhi, the land for the purpose of construction of Metro Railway could and should only be acquired under the provisions of the said Act and not under the provisions of the LA Act. Counsel appearing for the appellants reinforced their arguments by contending inter alia that no acquisition on behalf of the Metro Railways could be made under the general law, i.e., LA Act, as a special legislation called the Metro Railways (Construction of Works) Act, 1978 was enacted by the Parliament with the specific purpose and object of speedy and adequate acquisition of land by the Central Government. It was contended that in view of the enactment and aforesaid special Act of 1978, which is a complete and self-contained code providing for acquisition of land solely for the purposes of Metro Railways, applicability of the LA Act for the purpose of Metro Railways should be deemed to be impliedly repealed.

8. It was further contended by the counsel appearing for the appellants that the Metro Railways Act, which is a specific law on the subject, having specifically excluded incorporation of any law in the nature of Section 17(1) and 17(4) of the LA Act, which provides for dispensation of the enquiry as envisaged under Section 5-A of the LA Act, the respondents acted illegally and without jurisdiction in taking resort to the said urgency provisions of the LA Act for the purpose of acquisition of land of the appellants, particularly, when there is no such provision in the Metro Railways Act for dispensation of such enquiry and providing for an opportunity of raising objections by the appellants with regard to very act of acquisition.

9. The aforesaid submission of the counsel appearing for the appellants were countered by the counsel appearing for the respondents contending inter alia that despite the fact that there is an Act called Metro Railways Act in operation, yet the respondents are not denuded of the power of invoking the provisions of the LA Act which empowers the respondents to acquire land for the public purpose, i.e., construction of MRTS projects in the cases at hand. In support of the said contention counsel appearing for the respondents relied upon the decisions of this Court in the case of *Rajinder Kishan Gupta and Anr. V. Union of India and Ors. reported at¹* and also on the decision of this Court in *S.S. Darshan v. State of Karnataka and Ors. reported at²* .

10. We heard the learned counsel appearing for the parties who have elaborately taken us through the entire records.

11. In view of the ever increasing demand of urban population in Delhi, the existing service transport facilities were found to be inadequate and, therefore, a decision was taken by the Government for having a Mass Rapid Transit System. To undertake the said project DMRC was incorporated as a company under the Indian Companies Act. Thereafter, for the purpose of operation and maintenance of the Metro Railways in Delhi, an Ordinance was promulgated in 2002 by the President of India called 'the Delhi Metro Railway (Operation and Maintenance) Ordinance, 2002' which was replaced by an Act of Parliament, viz., Delhi Metro Railway (Operation and Maintenance) Act, 2002, in the same year. However, the fact remains that despite the enactment of the aforesaid two Acts of 1978 and 2002 whenever any land was required for the purpose of MRTS project, the same was acquired by the Land Acquisition authority from time to time under the Land Acquisition Act and the said acquired land was put at the disposal of the DMRC. In fact, in accordance with the project and planning undertaken for the said purpose, whenever a particular piece of land at a particular place was required by the DMRC, it had send a requisition to the land acquiring authority and on such request being made the land was acquired and put at the disposal of the DMRC. It is admitted fact that every time the machinery under the LA Act was put into motion, the provisions of the Metro Railways Act have never been invoked and the acquisitions in the present cases are no exception.

12. It is not in dispute that in Delhi land can be acquired by the Government, for public purpose, under the provisions of LA Act. The appellants are candid in accepting the importance of the MRTS project for the people of Delhi and also the fact that every time the machinery under the LA Act is put into motion, the provisions of Metro Railways Act have never been invoked.

13. The Metro Railways (Construction of Works) Act, 1978, was also made applicable to Delhi, which provides for acquisition of land required for specific purpose, namely, for the construction of Metro Railways or other works connected therewith as mentioned above. Our attention was drawn to the Statement of Objects and Reasons of the Metro Railways Act, 1978, which states that the Bill provides a speedy and adequate procedure for the acquisition of land, buildings, streets, roads or passage or the right of user in, or the right in the nature of easement on, such building, land, etc., by the Central Government to the exclusion of the Land Acquisition Act, 1894. The Preamble of the Metro Railways Act also states that the Act provides for the construction of works relating to metro railways in metropolitan cities and for matters connected therewith. Power to acquire land for construction of any metro railways or for any other works connected therewith was vested on the Central Government under Section 6 of the said Metro Railways Act. Section 9 of the Act provided for the procedure for hearing of objections filed by the persons interested in the land, building, street, road or passage. So far as declaration of acquisition of land is concerned, the provision made was Section 10 of the Act and the power to take possession was vested on the competent authority appointed by the Central Government as provided for under Section 11 of the Metro Railways Act. Our specific attention was drawn to Section 45 of the Metro Railways Act which was a provision of saving, providing as follows:

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"Section 45. Saving - Notwithstanding anything contained in this Act any proceeding, for the acquisition of any land, under the Land Acquisition Act, 1894 for the purpose of any metro railway, pending immediately before the commencement of this Act before any court or other authority shall be continued and be disposed of under that Act as if this Act had not come into force."

Section 40 of the Metro Railways Act also provides that the provision of the said Act or any Rule made or any notification issued thereunder would have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument having effect by virtue of any enactment other than the said Act.

14. Relying on the Statement of Objects and Reasons, the Preamble and the abovesaid provisions of the Metro Railways Act it was contended by the counsel appearing for the appellants that in view of the incorporation of the said provisions in the said Act, there was an implied repeal of the Land Acquisition Act so far as it concerns construction of Metro Railways or other works connected therewith.

15. Similar contentions were also raised before the High Court and the two Division Benches, who heard the matters in question dismissed the said plea holding that the two Acts are two independent Acts and it is for the authority to decide as to which Act would be made applicable in a given case.

16. However, in a situation, where recourse is taken to the provisions of the LA Act for acquiring a property for construction of Metro Railways or other works connected therewith, the provisions mentioned in the LA Act could and would only be made applicable and no provision of Metro Railways Act could be taken resort to or making use of. Similarly when recourse is taken for acquiring land under the Metro Railways Act, no provision of the LA Act would or could be made applicable as both the two Acts contain separate provisions, although they are similar in some respect.

17. The Metro Railways Act gives the detailed procedure as to how land for construction of Metro Railways or other works connected therewith could be acquired. The Act also lays down the procedure for payment of compensation. Section 17 of the Metro Railways Act specifically states that nothing in the LA Act would apply to an acquisition under the Metro Railways Act. However, in Section 45 a saving clause has been inserted, providing that any proceeding for the acquisition of any land under the LA Act for the purpose of any Metro Railway, pending immediately before the commencement of this Act before any court or other authority shall be continued and be disposed of under that Act as if this Act had not come into force.

18. However, it cannot be said that by inserting the said provision under Section 40 and Section 45 and also in view of the Statements of Object and Reasons of the Metro Railways Act, the applicability of LA Act for the purpose of acquisition of land for construction of Metro Railways or other works connected therewith would stand repealed and could not be taken resort to. There is no express provision in the Metro Railways Act repealing applicability of the provisions of the LA Act. So long as there is no specific repeal of applicability of the LA Act for the purpose of acquiring land for establishing metro railways it cannot be presumed that there is an implied repeal as sought to be submitted by the counsel appearing for the appellants. It also cannot be construed that the Metro Railways Act is a special Act, of such a nature, that with the enactment of the said Act the general law in LA Act would get obliterated and automatically repealed so far as acquisition of land for the purpose of Metro Railways is concerned.

19. A similar contention was raised before this Court in the case of Rajinder Kishan Gupta (supra). The counsel appearing for the appellants, however, submitted that although the said contention raised in the said case was rejected, but, according to them, the said decision needs reconsideration in view of the aforesaid specific provisions of the Metro Railways Act.

20. We are however unable to agree to and accept the aforesaid submission for the learned counsel for the appellants for we do not believe that it was intended by the legislature to do away with the applicability of the LA Act for the purpose of acquisition of land for construction of Metro Railways or other works connected therewith by enacting the Metro Railways Act. The aforesaid Metro Railways Act was enacted by the legislature, in order to provide additional provisions for construction of Metro Railways or other works connected therewith but it was not made obligatory by the legislature to invoke only the provisions of the said Metro Railways Act in case of acquisition of land for construction of Metro Railways or other works connected therewith. It was left upon to the discretion of the concerned competent authority to take recourse to any of the aforesaid provisions making it clear that if resort is taken to the provisions of LA Act, the said provisions could only be made applicable and no provision of the Metro Railways Act would then be resorted to. Similarly, if provisions of the Metro Railways Act is taken resort to, then only such provisions would apply and not the provisions of the LA Act.

21. One of the contentions of the counsel appearing for the appellants was that the decisions in the case of Nagpur Improvement Trust v. Vithal Rao and Ors. reported at (1973) 1 SCC 500 which was relied upon by the High Court, was referred in the context of the particular State Act wherein reference was made to the LA Act and the provisions of the LA Act were made applicable for acquisition of land under that particular State Act also.

22. Wherever a particular State Act incorporates the provision of the LA Act by way of reference or by way of incorporation by the legislation, the provisions of the LA Act automatically become applicable for the purpose of carrying out the object of the said particular State Act but wherever such power is not given there is no bar for taking recourse to any of the Acts which are available on the subject. There was no bar or prohibition for the authority to take recourse to the provisions of the LA Act which is also a self-contained Code

and also could be taken recourse to for the purpose of acquiring land for public purposes like construction of Metro Railways and works connected therewith. In all these cases no other provision except the provisions of the LA Act have been resorted to and, therefore, the appellants cannot have any grievance for taking recourse to the said provision.

23. Besides, the Metro Railways Act gives power to the competent authority to acquire land for the purpose of construction of Metro Railways and works connected therewith and in the said Act it is also provided that the possession can be taken immediately after issuance of the declaration as envisaged under the Act. The mode of compensation is almost identical with that of Section 23 of the LA Act which lays down the manner for determination of the compensation to be paid.

24. The only visible and specific distinction is absence of power of taking immediate possession in case of urgency as provided for under Sections 17(1) and 17(4) of the LA Act. As there was urgency for construction of the Metro Railways in Delhi because of various factors, urgency clause was invoked in the present case and consequent thereupon possession was taken and the construction work of the Metro Railways including construction of the stations is completed. Award has also been passed determining the compensation. Therefore, the appellants herein suffer no prejudice except for the fact that possession was taken in the instant case on an urgent basis. That plea has also been rendered infructuous in view of the fact that the entire project is complete.

25. We see no reason to quash the notification issued under Section 4 of the LA Act so as to postpone the date of acquisition to a later period thereby allowing the appellants an opportunity of getting higher compensation. Instead, we feel it appropriate that the policy and guidelines issued by the Government of NCT of Delhi could be best utilized. The aforesaid policy was issued by the Government of NCT of Delhi on 25.10.2006 by way of a Circular, which provides that the persons of all categories, affected due to the implementation of Delhi MRTS projects can be relocated and rehabilitated for which the Government of India has communicated its decision on 28.08.2006 intimating that the DMRC has already relocated the persons affected by Line-III of Metro Phase-I project and that Delhi Development Authority should provide necessary number of units for the rehabilitation of remaining project affected persons.

26. Counsel appearing for the DMRC informed us that any such project affected person could submit their application in a format prescribed, a copy of which was placed before us. We are informed that all the appellants herein have filed their applications in the appropriate format to the concerned authorities. If the applications have been filed by the appellants herein in the appropriate format, those are required to be considered by the concerned authorities as expeditiously as possible. If any of the appellants has not filed any such application in the format prescribed, it shall be open to such appellants also to file such applications in appropriate format within three weeks from the date of this order, in which case, their applications shall also be considered along with the applications already filed by the other applicants/appellants and a decision thereon shall be taken within eight weeks from the date of receipt of such applications. Needless to say that in case, any of the appellants is

aggrieved by the decisions taken by DMRC or by the other competent authority, such a decision could be challenged by taking recourse to appropriate remedy as provided for under the law.

27. With aforesaid observations and directions we, find no merit in these appeals which are dismissed but giving right to the appellants herein to take recourse for their rehabilitation in terms of the circular issued by the Government of NCT of Delhi, leaving it open to the competent authority / Government to decide their cases in accordance with law.

¹(2010) 9 SCC 0046

²(1996) 7 SCC 0302