

Ram Dhari Jindal Memorial Trust

v.

Union Of India

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.M. LODHA HON'BLE MR. JUSTICE H.L. GOKHALE

Civil Appeal No. 3813 Of 2007 & 10697 Of 2006 Etc. | 21-03-2012

R.M. LODHA, J:

1. The judgment of the Delhi High Court dated July 9, 2007 is impugned in this appeal.

2. It is the case of the respondents that there was requirement of houses for nearly 8 lakh persons within the reach of common man in Delhi. To meet the shortage of housing accommodation, the Delhi Development Authority (DDA) sought requisition of the land for its scheme known as "Rohini Residential Scheme" (hereinafter referred to as "the Scheme"). The said Scheme was initially planned in three phases - Phases I, II, and III. The three phases in the Scheme were developed. Even then, the acute shortage of houses in the city of Delhi continued. Accordingly, the plan for development of Rohini Phases IV and V was formulated.

3. On the requisition of the DDA, on October 27, 1999, a Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") was issued indicating that land stated therein was likely to be required by the Government of Delhi for the public purpose namely; Rohini Residential Scheme, Delhi. In the said Notification, it was also mentioned that Lt. Governor, Delhi was satisfied that provisions of sub-section (1) of Section 17 of the Act were applicable to the land mentioned in the Notification and he was pleased under sub-section (4) of Section 17 to direct that all the provisions of Section 5A of the Act would not apply.

4. On April 3, 2000, a declaration was made by the Government of Delhi under Section 6 of the Act stating that the land mentioned therein was acquired for the public purpose namely; Rohini Residential Scheme.

5. Another notification of the same date was issued under Section 7 of the Act directing the Land Acquisition Collector, Narela to take orders for acquisition of the said land and take possession of the land mentioned therein.

6. The appellant in the present appeal claims to be the owner of the land ad-measuring 14 Bighas 18 Biswas in Khasra Nos. 22 and 39 of Village Shahbad-Daulatpur after the said land came to be donated to it by the erstwhile owners. The appellant further claims that a school has been set up on the above land which imparts education to a large number of students. The appellant challenged the acquisition of the above land which forms part of the above notifications before the Delhi High Court. Large number of other Writ Petitions also came to be filed before the High Court challenging the above notifications.

7. Before the High Court, diverse grounds in challenging the acquisition of the subject land were set up; two of such grounds being that Lt. Governor has not applied his mind for dispensation of the enquiry under Section 5A of the Act and that resort to the urgency provisions contained in Section 17 of the Act was unwarranted and unjustified.

8. The respondents contested the group of Writ Petitions and justified their action including invocation of urgency clause and dispensation of the enquiry under Section 5A of the Act.

9. The Division Bench of the High Court, on hearing the parties, was not persuaded by the contentions of the appellant and the other writ petitioners which formed part of the group matters and dismissed the Writ Petitions being devoid of merit on July 9, 2007. It is from this judgment that the present appeal has arisen.

10. The High Court in the impugned judgment noticed the contentions of the Writ Petitioners in paragraph 2 as follows:

"The contention of the petitioners is that the Lt. Governor had not specifically authorised invocation of Section 17(4) of the stridently Land Acquisition Act and that this is all the more significant since the draft of the Notification placed before him adverts to Section 17(4). According to the petitioners, the only inference that can be drawn is that the Lt. Governor did not approve of dispensing with the petitioners valuable rights to object to the acquisition. The further contention is that since the petitioners have not been permitted to avail of their rights to file objections under Section 5A and have not been given an opportunity of being heard the entire acquisition should be struck down. It has also been argued on behalf of the petitioners that even assuming that Section 17(4) need not in terms have to be mentioned by the Lt. Governor while granting his approval to the Scheme and that reference only to Section 17(1) would suffice, the Lt. Governor has not properly exercised his mind in approving the waiver and withdrawal of the petitioners valuable right under section 5A of the Act. In other words, it is their stance that resort to the emergency provisions contained in Section 17 of the Act were unwarranted and unjustified in the facts of the present case."

11. The High Court noted the statutory provisions contained in Sections 4,5A,6,8,9,11,16 & 17 of the Act and referred to the decisions of this Court relating to the interpretation of Section 17 of the Act in the cases namely; Nandeshwar Prasad vs. The State of U.P. ((1964) 3 SCR 425); Sarju Prasad Sinha vs. The State of U.P. (AIR 1965 SC 1783);, Union of India vs. Mukesh Hans ((2004) 8 SCC 14); Munshi Singh and others Vs. Union of India ((1973) 2 SCC 337); Union of India vs. Krishan Lal Arneja (AIR 2004 SC 3582). With regard to decisions of this Court in Nandeshwar Prasad, Krishan Lal Arneja and Mukesh Hans, the High Court, observed as follows:

"We have carefully perused the judgments in Nandeshwar Prasad, Krishan Lal Arneja and Mukesh Hans and in order to ascertain whether it had been argued that a separate decision must be taken under Section 17(1) or (2) on the one hand and Section 17(4) on the other; or that even if Section 17(1) or 17(2) are resorted to objections under Section 5A must be invited and decided before an acquisition can be completed. Our research is that these contentions had not been raised. Therefore, the dictum in Quinn assumes great significance. We will nonetheless give due deference to all the observations made by the Apex Court, even though we find from the pleadings before us, that grounds predicated on

the above arguments have not been articulated in the petitions. Indubitably, these are legal contentions and we would be loath to ignore them solely for the reason that they have not been pleaded. But this state of affairs has obviously been occasioned because of the views ventilated in Mukesh Hans."

12. The High Court then considered the three decisions of that Court in Sri Ballabh Marbles vs. Union of India (117 (2005) DLT 387); Chaman Lal Malhotra vs. Union of India, W.P. (C) 4002 of 1997 decided on August 8, 2005 and Vasant Kunj Enclave Housing Welfare Society vs. Union of India (2006 (89) DRJ 406) and observed that they were not persuaded to follow the line of reasoning in the above three cases relied upon by the Writ Petitioners.

13. The High Court also considered the Act XXXVIII of 1923 whereby the Act came to be amended. The High Court indicated its opinion in the following words:

"In our considered opinion Section 17(4) is not a fasciculous of the Act, a sub-pandect or a self-contained code having its own realm of operation. Its sole purpose is to clarify that Sections 17(1) and (2) continue to operate as they did prior to 1923. If Section 17(4) is to function in its own field, the factual matrix attending thereto should be spelt out on the lines delineated in its preceding sub-sections (1) and (2). On a careful perusal of the provision of Section 17(4) it will be evident that it contemplates the formation of an opinion by the Government as to existence of the fact situation postulated either by Section 17 (1), thereby enabling possession to be taken over after fifteen days, or under Section 17(2) empowering the taking of similar action after only two days. Originally, neither of these provisions had Section 5A within their respective sights. Sections 17(1) and (2) predated the introduction of the rights of landowners/occupiers to object to the acquisition of their lands. Furthermore, we think it hallucinatory to visualize the taking over of possession in less than two days. We have not come across a case where a citizen is dispossessed instantaneously with the taking of a decision to acquire his land. If this is the practical reality, we are unable to conceive of a situation of such urgency as would justify or necessitate the formation of an opinion in respect of a decision to be taken other than in the factual matrix disclosed in sub-section (1) or sub-section (2) of Section 17 (i.e. signing and executing virtually instantly) reference to which would not have been necessary if there were other and even more extreme situations (in practical terms unthinkable to us), envisaged by

sub-section (4) alone. This is why we have said that Section 17(4) is not a self-contained sub code; if theoretically there is urgency which does not brook even a delay of forty-eight hours, it should have been articulated in painstakingly minute detail, so that its abuse is safeguarded against. It is equally unrealistic to expect that objections, which are normally numerous, can be decided in two days or even in fifteen days. The original intendment of Section 17 of the Act was merely clarified in Section 17(4) to continue even after the introduction of Section 5A, viz that in emergent situations acquisition proceedings could be concluded virtually instantly."

14. The High Court, thereafter again considered few decisions of this Court and held as under:

"The conclusion that we have arrived at as a result of the above discussion is that Section 17, as a composite whole, is a pandect within the Land Acquisition Act, in much the same manner in which Section 25B of the Delhi Rent Control Act has been viewed by the Hon'ble Supreme Court. Section 17 deals with the entire spectrum of emergencies which call for urgent action leading to expropriation of private property. It empowers the State to take possession of lands required for public purposes in two categories of contingencies - (a) in urgent circumstances as adumbrated in the first sub-section enabling dispossession after fifteen days and (b) situations specifically spelt out in the second sub-section empowering immediate dispossession, i.e. after two days. These provisions were available to the State from the very inception of the Act, and had the result of permitting the Government to take possession along with the publishing of a notification under Section 4, leaving the matter of computing and tendering compensation to follow. The introduction in 1923 of the right to file objections under Section 5A within thirty days of the Section 4 Notification required necessary clarification that where circumstances obtain necessitating urgent action, it could be taken. This was clarified by the simultaneous inclusion of Section 17(4), which notably does not have its own field of operation, distinct of sub-sections (1) and (2). Therefore, once the Government is subjectively satisfied that circumstances chronicled in the first two sub-sections exist, the effect is the suspension of the right to file Objections under Section 5A. In the present case Section 17(1) has been resorted to, it would not be open to the Authorities to take possession of the property till the expiration of fifteen days from the publication of the Notification. We have come to this conclusion respectfully and humbly mindful of observations made by their Lordships in

Nandeshwar Prasad, Krishan Lal Arneja and Mukesh Hans, in which cases the argument that separate orders under Section 17(4) are essential, were not raised.

Proceeding on the basis that no legal impropriety or infirmity has been committed in failing to make a mention of Section 17(4) of the Act, the controversy is still not set at rest. This is because it is axiomatic and uncontrovertable that the Lt. Governor must, on the basis of material available in the records placed before him, arrive at a soundly considered and informed decision that such grave urgency exists as justifies overriding the basic rights of the land owners, which partake the character of fundamental rights. In *State of Punjab -vs- Gurdial Singh*, AIR 1980 SC 319 it has been observed that - "it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Article 14 & 19 of the Constitution of India, brook an inquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency powers." It is also trite that the attitude of the Administration should be neither cavalier nor casual (*Dora Phalauli -vs- State of Punjab*, (1979) 4 SCC 485). While we prefer not to get bogged down by the semantics and syntax of Section 17, we are unwilling to dilute the stringent rigours which must be satisfied before the circumvention of Section 5A passes judicial muster."

15. While dealing with the question whether the decision of the Lt. Governor to dispense with Section 5A of the Act was properly taken or not, the Division Bench observed thus:

"It cannot possibly be over-emphasized that such a decision must be taken with due caution with even greater care than while deciding objections under Section 5A. Judicial review of such decisions would entail a jural investigation as to whether there was adequate material before the Authority concerned and whether the outcome was predicated on cogitation centered on such material. Courts will be loathe to substitute the subjective satisfaction of the authority with their own. Before Section 5A objections are disposed of, the objectors must be given an opportunity of being heard. In the present case it is palpably

clear that the Lt. Governor had looked into the ambit of Section 17(1) of the Act, and finding that the circumstances postulated therein exist, had approved of the draft notification which clarified that the provisions of Section 5A would not apply. We do not need to locate a reasoned order so long as the impugned administrative decision appears to have been taken on the basis of the material available on the record."

16. The High Court considered few other decisions of this Court and ultimately held as follows:

"We find that there was abundant material available for forming a subjective opinion that public purpose would be sub served through the acquisition and that there was sufficient urgency in invoking the provisions of Section 17 valuable but not unalienable of the Act fully mindful that the consequence was the deprivation of the rights of persons having an interest in the land of filing Objections under Section 5A of the Act."

17. In a recent decision of this Court in *Anand Singh and another vs. State of Uttar Pradesh and others*<sup>8</sup>, this court considered elaborately the power of urgency conferred upon the Government under Section 17 of the Act, its invocation and dispensation of enquiry under Section 5A of the Act. This Court speaking through one of us (R.M. Lodha,J.) in *Anand Singh* ((2010) 11 SCC 242) considered the previous decisions of this Court in *Raja Anand Brahma Shah vs. State of U.P.* ((1967) 1 SCR 373); *Jage Ram vs. State of Haryana* ((1971) 1 SCC 671); *Narayan Govind Gavate vs. State of Maharashtra* ((1977) 1 SCC 133); *State of Punjab vs. Gurdial Singh* ((1980) 2 SCC 471); *Deepak Pahwa vs. Lt. Governor of Delhi* ((1984) 4 SCC 308); *State of U.P. vs. Pista Devi* ((1986) 4 SCC 251); *Rajasthan Housing Board vs. Shri Kishan* ((1993) SCC 84); *Chameli Singh s. State of U.P.* ((1996) 2 SCC 549); *Meerut Development Authority vs Satbir Singh* ((1996) 11 SCC 462); *Om Prakash vs. State of U.P.* ((1998) 6 SCC 1); *Union of India vs. Mukesh Hans; Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai* ((2005) 7 SCC 627); *Mahadevappa Lachappa Kinagi vs. State of Karnataka* ((2008) 12 SCC 418); *Babu Ram vs. Statte of Haryana* ((2009) 10 SCC 115) and *Tika Ram vs. State of U.P.* ((2009) 10 SCC 689) and culled out the legal position as follows:

"When the Government proceeds for compulsory acquisition of a particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed

time under Section 5-A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public purpose etc. Moreover, the right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice.

The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it.

It is true that power conferred upon the Government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to

the purpose, the judicial review of such administrative decision may become necessary.

As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realizing that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.

The special provision has been made in Section 17 to eliminate enquiry under Section 5-A in deserving and cases of real urgency. The Government has to apply its mind on the aspect that urgency is of such nature that necessitates dispensation of enquiry under Section 5-A. We have already noticed a few decisions of this Court. There is conflict of view in the two decisions of this Court viz. *Narayan Govind Gavate v. State of Maharashtra*, (1977) 1 SCC 133, and *State of U.P. v. Pista Devi*, (1986) 4 SCC 251. In *Om Prakash v. State of U.P.*, (1998) 6 SCC 1, this Court held that decision in *Pista Devi* (supra) must be confined to the fact situation in those days when it was rendered and the two-Judge Bench could not have laid down a proposition contrary to the decision in *Narayan Govind Gavate* (supra). We agree.

As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A.

In a country as big as ours, a roof over the head is a distant dream for a large number of people. The urban development continues to be haphazard. There is no doubt that planned development and housing are matters of priority in a developing nation. The question is as to whether in all cases of 'planned development of the city' or 'for the development of residential area', the power of urgency may be invoked by the Government and even where such power is invoked, should the enquiry contemplated under Section 5-A be dispensed with invariably. We do not think so. Whether 'planned development of city' or 'development of residential area' cannot brook delay of a few months to complete the enquiry under Section 5- A? In our opinion, ordinarily it can. The Government must, therefore, do a balancing act and resort to the special power of urgency under Section 17 in the matters of acquisition of land for the public purpose viz. 'planned development of city' or 'for development of residential area' in exceptional situation.

Use of the power by the Government under Section 17 for 'planned development of the city' or 'the development of residential area' or for 'housing' must not be as a rule but by way of an exception. Such exceptional situation may be for the public purpose viz. rehabilitation of natural calamity affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation of persons affected by time bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for immediate possession of the land for carrying out the stated purpose, heavy onus lies on the Government to justify the exercise of such power.

It must, therefore, be held that the use of the power of urgency and dispensation of enquiry under Section 5-A by the Government in a routine manner for the 'planned development of city' or 'development of residential area' and thereby depriving the owner or person interested of a very valuable right under Section 5-A may not meet the statutory test nor could be readily sustained."

18. If the government seeks to invoke its power of urgency, it has to first form the opinion that the land for the stated public purpose is urgently needed. Such opinion has to be founded on the need for immediate possession of the land for carrying out the purpose for which land is sought to be compulsorily acquired. The use of power of urgency under Section 17(1) and (4) of the Act ipso facto

does not result in elimination of enquiry under Section 5A and, therefore, if the government intends to eliminate enquiry, then it has to apply its mind on the aspect that urgency is of such nature that necessitates elimination of such enquiry. The satisfaction of the government on twin aspects viz; (i) need for immediate possession of the land for carrying out the stated purpose and (ii) urgency is such that necessitates dispensation of enquiry is a must and permits no departure for a valid exercise of power under Section 17(1) and (4). In paragraph 51 of the case of Anand Singh<sup>8</sup>, it has been held that use of the power of urgency and dispensation of enquiry under Section 5A of the Act by the Government in a routine manner for the "planned development of city" or "development of residential area" and thereby depriving the owner or person interested of a very valuable right under Section 5-A may not meet the statutory test nor could be readily sustained (emphasis supplied). Ordinarily, therefore, invocation of urgency power by the government for a Residential Scheme - that does not fall in exceptional category as illustrated in para 50 of Anand Singh - cannot be held to be legally sustainable.

19. Adverting now to the Notification dated October 27, 1999, the statement made therein is to the effect "the Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of Section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said Section to direct that all the provisions of Section 5A shall not apply". For what has been stated just above in immediately preceding paragraph, the exercise of power by the Lt. Governor, Delhi under Section 17(1) and (4) has to be held bad in law. Moreover, except the above statement in the Notification, there is no other material available on record which indicates that there has been application of mind by the Lt. Governor, Delhi on the aspect that urgency was of such nature that necessitated dispensation of enquiry under Section 5A of the Act. The respondents have miserably failed to show that the stated purpose 'Rohini Residential Scheme' could not have brooked the delay of few months and the conclusion of the enquiry under Section 5A of the Act would have frustrated the said public purpose.

20. Where the government invokes urgency power under Section 17(1) and (4) for the public purpose like 'planned development of city' or 'development of residential area' or 'Residential Scheme', the initial presumption in favour of the government does not arise and the burden lies on the government to prove that the use of power was justified and dispensation of enquiry was necessary. In the

present case, the respondents have miserably failed to show to the satisfaction of the Court that power of urgency and dispensation of enquiry under Section 5A has been exercised with justification. The action of the Lt. Governor, Delhi, in the facts of the case whereby he directed that the provisions of Section 5A shall not apply, if allowed to stand, it would amount to depriving a person of his property without authority of law.

21. The power of urgency by the Government under Section 17 for a public purpose like Residential Scheme cannot be invoked as a rule but has to be by way of exception. As noted above, no material is available on record that justifies dispensation of enquiry under Section 5A of the Act. The High Court was clearly wrong in holding that there was sufficient urgency in invoking the provisions of Section 17 of the Act.

22. Consequently, the appeal is allowed. The Notification dated October 27, 1999 to the effect "the Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of Section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said Section to direct that all the provisions of Section 5(A) shall not apply" insofar as appellant's land is concerned is quashed. The declaration dated April 3, 2000 issued and published under Section 6 of the Act concerning the subject property is also quashed. The Competent Authority may now invite objections under Section 5A of the Act pursuant to the Notification dated October 27, 1999 and proceed with the matter in accordance with law. No order as to costs.