

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
PRAVEEN GUPTA & ORS.

DATE OF JUDGMENT: 04/10/1996

BENCH:
K. RAMASWAMY, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the Division Bench of the Delhi High Court made on July 14, 1992 in L.P.A. No.36/92 dismissing the L.P.A. The learned single Judge had allowed the Writ Petition No.936/89 on the ground that there was no justification for invoking the urgency clause in Section 17(4) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act'). Accordingly, the learned Single Judge quashed the declaration Under Section 6. The Division Bench dismissed the L.P.A. on the ground that there was inordinate delay of more than 200 days in filing the appeal. Thus, this appeal by special leave.

When the matter had come up before us and the respondents pointed out that the land involved is only two bighas and, therefore, it is not a case warranting interference. We directed the learned counsel for the Union of India to find out as to why they are insisting upon decision on merits. A statement was made by Shri K.T.S. Tulsi, learned Additional Solicitor General that there are number of cases of the similar nature pending in the High Court awaiting the decision of this Court and, therefore, decision on merits was necessary. We accordingly set the case for hearing on merits. The learned counsels for the parties have filed their written submissions.

We have heard Shri N.N. Goswami, learned senior counsel for the appellants and Shri G.L. Sanghi, learned senior counsel for the respondents. The admitted position is that the notification under section 4(1) of the Act was published on February 9, 1989 acquiring 1328 Bighas of land situated in Siraspur & Libaspur. The enquiry under Section 5A was dispensed with. Declaration under Section 6 was published on February 7, 1990. The writ petition was filed on March 5, 1990. Two awards No.8 and 9 of 1991 come to be made on February 7, 1992 in respect of the land except these two bighas of land which are subject matter in this case. Since the learned Judge had quashed the notification, two questions have been raised and argued by the learned counsel for the parties. The first question relates to the delay in

filing the L.P.A. It is seen that learned single Judge passed the order on March 5, 1990 and certified copy of the judgment was obtained by the counsel appearing for the Government on July 12, 1990 and a letter was addressed immediately on July 31, 1990 directing the Government pleader to file the appeal. Instead of filing the appeal, he had given the opinion two months thereafter on November 4, 1990 that it was not a fit case. Accordingly, he did not file the appeal. When the matter was re-examined since a large number of cases were involved, new Government pleader opined on April 16, 1992 that it was a fit case for filing the appeal. Accordingly, L.P.A. came to be filed. Shri Sanghi, learned senior counsel for the respondents, contended that delay has not been properly explained. The question is: whether delay on the part of the appellants in filing the appeal has been explained? It is seen that as soon as the copy of the judgment of the learned single Judge was received by the Government within 18 days from the date of the receipt of the judgment, letter was written to the Government pleader to file the appeal. He had no business to give opinion at that stage that it is not a fit case for filing the appeal. After the lapse of two months, he sent the letter. Obviously, relying upon that opinion, no further action was taken. When the matter reached the Government of India, it got the same re-examined and the Government pleader gave his opinion. Unless this matter is challenged, all the other cases would follow the suit and law being laid down in the appeal would be applicable and the notification would get quashed. Resultantly, the decision was taken to file the appeal. Under these circumstances, we are of the view that though there is considerable delay in filing the appeal, the Division Bench of the High Court was not justified in refusing to condone the delay and examine the matter on merits. Accordingly, we condone the delay in filing the appeal.

Two courses are open to be considered are whether it is a fit case for remitting the matter for consideration by the High Court or whether this Court could decide the matter on merits. Having regard to the facts that more than 200 cases are pending disposal in the High Court, remitting the matter again after years for decision of the High Court would not be justified and we feel it expedient to avoid any further delay that the matter could be decided on merits in this Court. Accordingly, we requested the learned counsel for the parties to argue the case on merits. We have considered the written submissions and heard the arguments elaborately addressed by the counsel.

Shri Sanghi, learned Senior Counsel has pointed out that there is no real urgency in this matter and the respondents could have been given an opportunity to contend that land is not needed for any public purpose. In support In support thereof, he placed strong reliance on the judgments in Narayan Govind Gavate & Ors. vs. State of Maharashtra & Ors. [(1977) 1 SCC 133]; Dora Phalavli vs. State of Punjab & Anr. vs. Gurdial Singh & Anr. [(1980) 2 SCC 471]. The decision in Narayan Govind's case, has been distinguished by this Court in several cases. In the light of the ratio in catena of decisions, this Court has consistently held that acquisition of the property for the planned development of the housing accommodation is an urgent for acquisition and, therefore, dispensing with the enquiry under Section 5A, exercising power under Section 17(4) has been held to be valid. It is true that in Dora Phalavi and Gurdial Singh's cases the two Judge Bench of this Court in each of the cases held that enquiry under

Section 5A may not be dispensed with in a cavalier manner unless real urgency is shown, enquiry under Section 5A would not be dispensed with, denying the opportunity to file the objections under Section 5A. Each case has to be considered on its own facts. The very object of enquiry under Section 5A is whether the land proposed to be acquired is needed or is likely to be needed for the public purpose mentioned in the notification and whether any other suitable land other than the acquired land is needed for the said public purpose. In this case, the entire land in two villages was acquired. It is seen that timber business is being carried on in the walled city of old Delhi. It has become a source of traffic congestion and that it requires to be shifted urgently from the existing place to relieve the congestion by acquiring the concerned land for the public purpose namely, establishment of timber depots. It is true that a mention was also made that unauthorised construction has been made in the area proposed to be acquired. If the enquiry was conducted, delay would defeat the very public purpose of acquisition for shifting of timber business from the walled city and establishment of the timber depots outside the walled city. Therefore, the urgency mentioned in exercising the power under Section 4(1) was justified. Shri Goswami, learned senior counsel for the Union of India, has relied upon the judgment of this Court in *Jai Narain & Ors. vs. Union of India & Ors.* [(1996) 1 SCC 91]. It is true, as pointed out by Shri Sanghi, that the acquisition in this reported decision was made for the establishment of sewerage plan as per the direction of this Court and, therefore, there was urgency.

But, as stated earlier, since the acquisition is for shifting of timber business from the walled city to the outskirts of the city, shifting itself is for urgent purpose, viz., to relieve the traffic congestion in the walled city. Under those circumstances, the exercise of the power under Section 17(4) cannot be said to be unwarranted in this case. It is true that there was a delay, from the date of the notification under Section 4(1) of the Act in publication of the declaration under Section 6. When it was pointed out that no counter-affidavit was filed in the High Court explaining the delay, we directed the learned counsel for the State to produce the record. An averment has been made in the special leave petition that the delay was due to enquiry being conducted into the objections filed before Lt. Governor in this behalf and until the objections were over-ruled, declaration under Section 6 could not be published. The note in the office file and the running file do indicate that certain persons kept on making representations right from 1983 and as far as present notification is concerned, objections had been received on April 25, 1990 and, thereafter, they have been considered after the Lt. Governor directed to enquire into the matter and submit the report. Consequently, they conducted the enquiry and submitted the report. Consequently, they conducted the enquiry and submitted the report.

It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry under Section 5A in exercise of power under Section 17(4). It is then contended by Shri Sanghi that as per the revised Master Plan, only 37 hectares of land was needed for establishment of timber depots, though extensive land was

sought to be acquired. When that objection was taken, we passed the order directing the competent officer to file an affidavit. By our proceedings dated August 24, 1995, it was observed as under:

"In view of the specific averments made in the written submissions of the respondents regarding the location of the timber depots in terms of the master plan, it requires clarification by the Delhi Administration whether the lands in Siraspur & Libaspur are still required for the purpose mentioned in the notification, namely, planned development of Delhi and shifting of the timber depots from the Teliwara area into the new places"

One G.S. Meena, Under Secretary (L & B) of the Government of National Capital Territory of Delhi has filed the affidavit. Therein, he has stated that the acquisition of the land in the said village for shifting of the timber market is still exist as per the provisions scheme of MPD-2001, as notified by the DDA. Under these circumstances, the public purpose still subsists. Even under the revised Master Plan, the acquisition is valid in law and dispensing with the enquiry under Section 5A was justified. The learned single Judge, therefore, was not right in quashing the declaration under Section 6. Shri Sanghi, learned senior counsel, further contended that the notification discloses that the land is likely to be needed which would indicate that there is no real urgency. The language of the notification is not conclusive but the Court is required to consider the material whether there is any urgency to exercise the power under Section 17(4) of the Act. The same view taken by this Court in Jai Narain's case referred to earlier.

Accordingly, we are of the view that mere mention in the notification that the land is likely to be needed for the public purpose does not take away the power of the appropriate Government to exercise the power of urgency clause under Section 17(4).

The appeal is accordingly allowed. The order of the learned single Judge as well as of the Division Bench of the High Court are set aside. The declaration under Section 6 stands restored. The Land Acquisition Officer is directed to pass the award after issue of the notice to the respondents within a period of three months from the receipt of the order. No costs.