

CASE NO.:
Appeal (civil) 5273 of 2005

PETITIONER:
Mandir Shree Sitaramji alias Shree Sitaram Bhandar

RESPONDENT:
Land Acquisition Collector & Ors.

DATE OF JUDGMENT: 24/08/2005

BENCH:
S. N. Variava & Tarun Chatterjee

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (C) No.2356 of 2004]

S. N. VARIAVA, J.

Leave granted.

Heard parties.

This Appeal has been filed against the Judgment dated 21/22 August, 2003 passed by the High Court of Delhi.

Briefly stated the facts as follows:

On 13th November, 1959 a Notification under Section 4 of the Land Acquisition Act was issued for acquisition of app. 35,000 acres of land. The said acquisition was for "planned development of Delhi". Amongst the lands, sought to be acquired, were Appellants' land of app. 68 acres. Clause 2(d) of the said Notification exempted lands of "Religious Institutions".

This acquisition was challenged by a number of parties including the Appellants. The Writ Petition filed by the Appellants was allowed by a Single Judge of the Delhi High Court on the ground that the Appellants were not heard in respect of their objections filed under Section 5A of the Land Acquisition Act. A Division Bench of the Delhi High Court allowed the Appeal and dismissed the Writ Petition. The Appeal filed by the Appellants in this Court was allowed by the Judgment reported in *Shri Mandir Sita Ramji vs. Lt. Governor of Delhi & Ors.* (1975) 1 SCR 597. This Court held that there had been no enquiry as to whether or not the Appellants' land belonged to a religious institution. Therefore, this Court quashed the Section 6 Notification and remitted the matter back to the Land Acquisition Collector to enquire into the objection of the Appellants.

It appears that the Government then decided not to pursue the earlier Section 4 Notification in respect of the Appellants' land. Another Notification dated 13th March, 1975 under Section 4 of the Land Acquisition Act, proposing to acquire app. 300 bighas for "planned development of Delhi" was issued. The Appellants again challenged the proposed acquisition by filing a Writ Petition. The Writ Petition was dismissed by the impugned order.

On behalf of the Respondents, it has been submitted that the Appellants are not entitled to maintain this Appeal as they have already sold off the land to a third party. It is submitted that the Appellants no longer have any right, title or interest in the said land. This has been denied by the Appellants who claim that they have only entered into a development agreement. In our view, it is not necessary for us to go into this controversy. It is preferable to decide the challenge to the acquisition proceedings on their own merits. We have, therefore, left this question open and heard the parties on the challenge to the acquisition.

On behalf of the Appellants, it was submitted that the acquisition is not for "planned development of Delhi". It was submitted that on 9th May, 1972 an Agreement has been entered into between the

President of India on one hand and the Ministry of Commerce and Industry Cooperative Housing Building Societies on the other. It is submitted that the Agreement is to allot to this Cooperative Society app. 217 bighas and 8 biswas of land. It is submitted that this is the land of the Appellants. It is submitted that in pursuance of this Agreement a sum of Rs. 26,37,245 has been received from the society. It is submitted that the acquisition is actually for the society yet it purports to show as if it is for "Planned development of Delhi". It is submitted that as the acquisition is for a cooperative society, the provisions of Part VII of the Land Acquisition Act and particularly Sections 39, 40 and 41 should have been complied with. It is submitted that those provisions have not been complied with and therefore the acquisition is bad and should be set aside.

On the other, on behalf of the Respondents it is submitted that the acquisition was effectively of 35000 acres of land in pursuance of Notification under Section 4 issued in 1959. It was submitted that because of the orders of this Court, the Appellants' land got excluded from the earlier Notification. It was submitted that land all around Appellants' land was acquired in pursuance of the earlier Notification. It was submitted that in order to avoid any further complication and delay the second Notification under Section 4 was issued on 13th March, 1975. It was submitted that the acquisition of Appellants' land was for purposes of "planned development of Delhi" and not for any Co-operative Society. It is submitted that acquisition for "planned development of Delhi" has been upheld by a Constitution Bench of this Court in the case of Aflatoon vs Lt. Governor of Delhi [(1975) 4 SCC 285]. It is pointed out that the Constitution Bench has in this Judgment upheld acquisition inter alia on the ground that when there is acquisition of such a large area of land, it is not possible to specify in detail what the exact purpose of acquisition is. It was pointed out that an argument identical to the one now made has been negated in that Judgment. Reliance was placed on para 24 of the Judgment which reads as under:

"24. It was contended by Dr. Singhvi that the acquisition was really for the co-operative housing societies which are companies within the definition of the word 'company' in Section 3(e) of the Act, and, therefore, the provisions of Part VII of the Act should have been complied with. Both the learned Single Judge and the Division Bench of the High Court were of the view that the acquisition was not for company. We see no reason to differ from their view. The mere fact that after the acquisition the Government proposed to hand over, or, in fact, handed over, a portion of the property acquired for development to the co-operative housing societies would not make the acquisition one for 'company'. Nor are we satisfied that there is any merit in the contention that compensation to be paid for the acquisition came from the consideration paid by the co-operative societies. In the light of the averments in the counter affidavit filed in the writ petitions here, it is difficult to hold that it was co-operatives which provided the fund for the acquisition. Merely because the Government allotted a part of the property to co-operative societies for development, it would not follow that the acquisition was for co-operative societies and, therefore, Part VII of the Act was attracted."

It is submitted that the Delhi Development Authority, for whom the land has been acquired, cannot develop 35000 acres on its own. It

was submitted that it, therefore, becomes necessary to give various portions of land to various societies for the purposes of development. It was submitted that merely because land is given to societies does not mean that the acquisition is for the purposes of those societies. It was submitted that the Agreement dated 9th May, 1972 does not specify that the land to be allotted to that society is the Appellants' land. It was submitted that the Agreement is merely to allot some land out of the 35,000 acres being acquired. It is submitted that the Constitution Bench of this Court has approved such a course of action.

In support of this submission, it was also pointed out that the planned development can only be in accordance with the Delhi Development Act and that this permitted the authority to allot land to various co-operative societies for the purposes of development.

We have considered the submissions of both the sides. In our view, there is no merit in the challenge to the proposed acquisition on the ground that the acquisition was for the purposes of the society covered by Agreement dated 9th May, 1972. The subsequent Notification is merely a follow up of the earlier Notification. The entire acquisition is for "planned development of Delhi". To be remembered that Appellants' land is in the midst of the 35000 acres which have been acquired pursuant to the Notification under Section 4 issued in 1959. The Agreement dated 19th May, 1972 does not specify that it is the Appellants' land which is to be allotted to that Society. The Society is to be allotted some land and even if Appellants' land is allotted to this Society, after acquisition, it will not mean that the acquisition was for this Society. Therefore, the provisions of Part VII of the Land Acquisition Act need not have been complied with.

It was next submitted, on behalf of the Appellants, that the Government has formulated a scheme by which parties are permitted to develop their own land. It was submitted that the acquisition of land of such parties was to be withdrawn as per the policy. In this behalf, reliance was placed upon a letter dated 3rd March, 1987 from the office of the Prime Minister, wherein it is stated that the Appellants may be permitted to develop the land in accordance with the norms given by Delhi Development Authority. Reliance was also placed upon a letter dated 4th April, 1991 from the Director, Delhi Development Authority, to one Shri Acharya Arun Dev (whom the Appellants claim to be their power of attorney holder) wherein also the Appellants' proposal to allot the land to them for development was stated to be approved. Reliance was also placed upon a letter dated 17th September, 1991 from the Additional Secretary to the Minister of Urban Development as well as minutes of a meeting held on 23rd September, 1991 in the chambers of the Lt. Governor to consider the Appellants proposal to develop the lands themselves. Relying on these documents, it was submitted that the Governments had decided to withdraw from the acquisition. It was submitted that the Government should be held bound by its commitment to so withdraw. It was submitted that for this reason also the acquisition should be quashed.

As against this, on behalf of the Respondents, it is pointed out that this very ground had been considered by the Delhi High Court on an earlier occasion. It was pointed out that after looking into the relevant records the Delhi High Court had recorded in paras 18 and 19 of its Judgments as follows:

"18. It also appears that there was a decision relating to denotification of land in favour of one Sita Ram Bhandar Trust. File thereof had been called for by the Prime Minister who ordered that no land was to be denotified without the previous approval of the Cabinet/Prime minister. When this file was sent to the Ministry, based on the decision contained in respect of Sita Ram Bahadur Trust, following noting was recorded in respect of the land in question on 17th June, 1999.

"Notes from page 38/N onwards may kindly be seen: The case of Denotification of village Kotla Mahigiran, Tehsil Mehrauli, New Delhi was examined without calling a fresh report upto date position of the case from DDA. The then Minister (UD) has ordered (P-41/N) for the denotification of the land.

2. Subsequently, DDA has informed that out of 615 Bigha acquired by the Govt. physical possession of land measuring 600 Bigha has already been taken over by the DDA.

3. In the mean time the file relating to denotification of land in favour of Sita Ram Bhandar Trust has been called for by the Prime Minister and the PM has ordered that no land is to be denotified without the previous approval of the Cabinet/PM. In view of this no further action is required in this case. Submitted please.

19. This file was placed before the Minister. It may be mentioned that in the meantime new incumbent had taken charge. This new Minister took the following decision on the basis of aforesaid noting dated 17th June, 1999.

"The file of Sita Ram Bhandar Trust has since been received back from the PMO and PM's instructions not to denotify the land have been noted.

2. On the Trust's file, I have recorded my observations. These observations apply in this case as well. There is no justification for denotifying land, particularly when 600 bighas have already been acquired and taken over."

This could not be denied by the Appellants. It is thus clear that letters and minutes relied upon are mere recommendations. No decision to release from acquisition had been taken. In any event the Prime Minister had turned out this proposal.

Even otherwise, we have seen the scheme sought to be relied upon. We find from the scheme that it only applies in respect of persons/agencies who own and possess the land. In this case possession of the land had already been taken. The scheme also categorically states that the scheme would not take away the rights of the Delhi Development Authority to acquire for development of Delhi. Thus the scheme was not applicable to lands of the Appellants. Even under Section 48 of the Land Acquisition Act once possession is taken the Government cannot withdraw from the acquisition. We thus see no substance in this contention also.

In view of the above, we see no merit in this Appeal. The Appeal stands dismissed with no orders as to costs.