

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.02.2010

+ W.P.(C) 1597-1602/2004

**SARLA GOEL & ORS.** ..... Petitioner  
Through: Mr. Sumit Bansal with Mr. Manish  
Paliwal, Advocates

-versus-

**UNION OF INDIA & ORS.** ..... Respondent  
Through: None for respondent no. 1  
None for respondent no. 2  
Mr. Sanjay Poddar, Advocate for  
respondent no. 3-LAC  
Mr. Vivek K. Goyal with Mr. Manindra  
Dubey and Mr. Narendra, Advocates for  
respondent no. 4-DDA

**CORAM:-**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**  
**HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

**SANJAY KISHAN KAUL, J (ORAL)**

1. The petitioners 1 to 4 claim to have purchased land measuring 9 bighas and 4 biswas situated in Shahbad Daulatpur, Delhi in June, 1980 whereafter they obtained a sanction for a farm house from the Municipal Corporation of Delhi on 10.07.1984. The sanction was subject to an undertaking on behalf of the petitioners to make available the land required for land acquisition through the process under the Land Acquisition Act, 1984 as a condition of such

sanction. The petitioners 1 to 4 claim that they even started a free dispensary on the land in August, 1987.

2. A notification was issued under the said Act in respect of a large tract of the same village on 28.04.1995. Soon thereafter, petitioners 5 and 6 claim to have acquired rights in further 3 bighas in May, 1995.

3. The petitioners sought the release of the land from acquisition and the said request of the petitioners was acceded to on 06.09.1996 when the order of de-notification was issued. This was primarily on account of the fact that the land in question was sanctioned for a farm house and a policy decision had been taken by the respondents not to acquire the sanctioned farm houses. The notification dated 06.09.1996 de-notifying the land carried the following note:-

“Notification in respect of the land measuring 65-17 land in above mentioned khasra numbers is withdrawn on the condition that the land owners will get the plan approved and pay the development charges within one year from the date of issue of this notification and the land cannot be used by the land owner for any other purpose except as prescribed by the DDA.”

4. The petitioners also pointed out that on 17.03.1999, the concerned Director of DDA had addressed a letter to the Project Planner (Rohini), DDA on account of trouble faced by the petitioners over their land from the representatives of the DDA. The letter, inter alia, stated as under:-

“It is, therefore, informed that the land under reference does not belong to DDA after denotification and as such we have to take care of it while planning of the area.”

5. The petitioner claims that despite the caution extended aforesaid, a fresh notification came to be issued under Section 4 read with Section 17(1) and 17(4) of the said Act on 01.08.2003 in respect of the land of the petitioner once again for public purpose i.e. for widening of Bawana-Auchandi road, construction of 45 metre road, 12 metre road and development of plots for Rohini Residential Scheme in Sector-26. A declaration under Section 6 was issued on 22.12.2003 and the petitioners filed the present writ petition challenging the acquisition proceedings primarily on the ground of denial of opportunity to the petitioners to file objections under Section 5(A) of the said Act.

6. Learned counsel for the petitioners seeks to contend that the factum of the earlier notification issued under Section 4 of the said Act and thereafter de-notification on objections filed by the petitioners itself shows that there should be no question of again acquiring that land, more so, in view of the caution extended by the authorities that the planning should take due care to exclude the area of the petitioners in view of its denotification. In this behalf, learned counsel relied upon the judgment of a Division Bench of this court in **Maharishi Dayanand Co-operative Group Housing Society Ltd. v Union of India & Ors.; 51 (1993) DLT 554(DB).** In the given facts of the case, the Section 4 notification was quashed and the said order was not challenged further but instead a fresh notification was issued under Section 4 of the said Act. It is in those circumstances, it was held that the judgment was accepted by

not filing the appeal and the respondents could not issue successive notifications for the same purpose when the earlier notification had been set aside.

7. In our considered view, the factual matrix of that case was quite different as in the present case, there has been no adjudication in respect of the public purpose but, on the other hand, the respondents themselves accepted the request of the petitioners not to acquire the land in view of the then existing policy of not acquiring land where there was sanction for farm houses. It cannot be said that if there is a subsequent need for public purpose, a fresh notification cannot be issued and our view is fortified by the observations of the Division Bench in **Bharat Sewak Samaj v Lt. Governor; 2008 (155) DLT 453.**

8. The only other question on which elaborate arguments were addressed arises from the plea of the petitioners that the present case was not one where recourse should have been had to dispense with the right of hearing under Section 5(A) of the said Act by resorting to the provisions of Section 17 of the said Act. Learned counsel for the petitioners has emphasized that there has to be application of mind at two stages. Firstly, while deciding the issue of urgency under Section 17(1) of the said Act and thereafter resorting to dispensation with Section 5(A) in case of such urgency by invoking Section 17(4) of the said Act. This legal position is not doubted by the respondents but it is the stand of the respondents that this exercise has been undertaken by the respondents and, in fact, representations made by the petitioners in this behalf prior to

the issuance of the notification had been examined by the competent authority.

9. The legal position is not in dispute. In fact, the judgments cited both by the petitioners and the respondents of the Supreme Court lay down the same principle but the conclusion is dependent on the factual matrix of each case. We would like to refer to some of the judgments cited at the Bar. The petitioners refer to the observations of **Essco Fabs Private Limited & Anr. v State of Haryana & Anr.; (2009) 2 SCC 377.** In that case, the failure to complete proceedings in time resulted in lapsing of the notifications. Fresh notifications under the said Act were issued. Since the legal principle is succinctly set out in the said judgment, we consider it appropriate to reproduce the relevant paras:-

“39. It is in exercise of power of eminent domain that a sovereign may acquire property which does not belong to him. In the circumstances, as a general rule, before exercise of power of eminent domain, law must provide an opportunity of hearing against the proposed acquisition. Even without a specific provision to that effect, general law requires raising of objections by and affording opportunity of hearing to the owner of the property. The Land Acquisition (Amendment) Act, 1923 (Act 38 of 1923), however, expressly made such provision by inserting Section 5-A in the Act.

40. It is, therefore, clear that after issuance of preliminary notification under Section 4 and before final notification under Section 6 of the Act, the appropriate Government is enjoined to hear the person interested in the property before he is deprived of his ownership rights. But then there may be cases of “urgency” or “unforeseen emergency” which may brook no delay for acquisition of such property in large public interest. The legislature, therefore, thought it appropriate to deal with such cases of exceptional nature and in its wisdom enacted Section 17.

41. Whereas sub-section (1) of Section 17 deals with cases of “urgency”, sub-section (2) of the said section covers cases of “sudden change in the channel of any navigable river or other unforeseen emergency”. But even in such cases i.e. cases of “urgency” or “unforeseen emergency”, enquiry contemplated by Section 5-A cannot ipso facto be dispensed with which is clear from sub-section (4) of Section 17 of the Act.

42. Sub-section (4) of Section 17 is an enabling provision and it declares that if in the opinion of the appropriate Government, the provisions of sub-sections (1) or (2) are applicable, it may direct that the provisions of Section 5-A would not apply. It is, therefore, clear that the legislature has contemplated that there may be “urgencies” or “unforeseen emergencies” and in such cases, private properties may be acquired. But, it was also of the view that normally even in such case i.e. cases of urgencies or unforeseen emergencies, the owner of property should not be deprived of his right to property and possession thereof without following proper procedure of law as contemplated by Section 5-A of the Act unless the urgency or emergency is of such a nature that the Government is convinced that holding of enquiry or hearing of objections may be detrimental to public interest.”

10. It is, thus, obvious that in order to dispense with the provisions of Section 5(A) of the said Act, it should be in urgency of such a nature which can brook no delay. It has been emphasized that the exercise of power of eminent domain itself requires an opportunity of hearing against the proposal of acquisition and normally, it is such a procedure which ought to be followed.

11. Learned counsel also referred to a judgment **Babu Ram & Anr. v State of Haryana & Anr.; (2009) 10 SCC 115**. Once again referring to the principle that before resorting to Section 17(4) of the said Act, the competent authority has to satisfy itself that

there is an urgency of such a nature which could brook no delay whatsoever. Some further observations were also made that the right under Section 5(A) was not merely statutory in character but had a flavour of fundamental rights under Article 14 and 19 of the Constitution even though the Right to Property no more remained a fundamental right but was a constitutional right under Article 300-A of the Constitution of India.

12. Learned counsel for the petitioners lastly relied upon the observations in **Mahender Pal & Ors. v State of Haryana & Ors.; AIR (2009) SC 3220** where the purported public purpose for which land was sought to be acquired was for laying down a road. The Bench in the cited case observed that it was not unmindful of the fact that road connection is one of the purpose mentioned in sub Section 2 of Section 17 of the said Act in respect of which sub Section 4 thereof would apply but at the same time this will not mean that for purpose of road connection irrespective of nature of cases and/or irrespective of the nature of road to be constructed, sub Section 4 of Section 17 of the said Act could be invoked. The conclusion as set out in Para 16 is as under:-

“It is well-settled principle of law that an exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a human right, procedural safeguards laid down therefor must be scrupulously complied with. It being an expropriatory legislation deserves strict construction.”

13. Learned counsel for the LAC sought to emphasize that development of housing project itself requires an urgent attention

as people booked flats which have to be made available in time. The scarcity of housing being a factor is to be taken into consideration. Learned counsel referred to the observations of the Supreme Court in **Tika Ram & Ors. v State of Uttar Pradesh & Ors.; (2009) 10 SCC 689.** The same line of reasoning is given in **Chameli Singh & Ors. v State of U.P. & Anr.; (1996) 2 SCC 549** and **State of U.P. v Smt. Pista Devi & Ors.; (1986) 4 SCC 251.**

14. In the alternative, the submission of the learned counsel for LAC is that even if the notifications on facts are liable to be struck down, the public purpose should persuade us to take a view that the petitioner may be given an opportunity under Section 48 of the said Act rather than setting aside of the notifications and permitting the petitioners to raise objections under Section 5(A) of the said Act as was done in **Om Prakash & Anr. v State of U.P. & Ors.; (1998) 6 SCC 1.**

15. We have had the benefit of perusing the records of the DDA and the L & B Department of the Government of NCT of Delhi. The whole process began sometime in April, 2001 with the Planning Department of Rohini of the DDA insisting on a part of the land measuring 3 bighas falling under the alignment of Auchandi-Bawana road and about 3 bighas of land being required along the road for a green belt. One bigha was stated to be required for constructing a 45 metre road connecting Sector-11 to Auchandi-Bawana road and the remaining land measuring 5 bighas and 4 biswas was required for development of plotted area and other services and roads. It is

on the insistence of the Planning Department that the matter was again taken up with the L & B Department. We may notice at this stage that insofar as the 45 metre road is concerned, the same stands completed as at the inception of the writ petition itself, the petitioners did not raise any objection against the same. Insofar as the Auchandi-Bawana road is concerned, learned counsel for the petitioner states that as per the condition of sanction of the plan itself, there can be no dispute that the petitioner cannot object to the land being acquired in terms of the provisions of the said Act. Thus, the only two aspects which remain are the land which is stated to be required for development of plotted area and other services and roads. This plotted area is stated to be required as under a scheme of the Government of NCT of Delhi for allotment of plots in lieu of large scale acquisition of land, parties are entitled to be considered for such allotment and the plots to be developed are to be allotted for the said purpose.

16. A joint survey was directed to be undertaken by the DDA and the L & B Department again opined that the land was required for the Auchandi-Bawana road. The file, thereafter, kept on moving in the DDA as per its own pace and there was atleast no urgency shown in the movement of file by the DDA. In fact, in May, 2003, there is a noting about the slow pace of movement of file with the Officer observing "*When are we going to learn?*" Thus, on one hand, the DDA has taken its own sweet time in the movement of the file from 2001 till the issuance of the notification on 01.08.2003 after more than two and a quarter years and, on the other hand, the

petitioners are even being denied the right of hearing under Section 5(A) of the said Act. The aspect of urgency as recorded in the records really refer to only the aspect of roads and naturally so because the element of urgency was being shown in that behalf. Even in respect of such construction of roads, taking into consideration the time taken even at planning stage, the observations made in **Mahender Pal & Ors'** case (*supra*) seem to be apposite.

17. Insofar as the reference to the judgment in **Om Prakash & Anr's** case (*supra*) is concerned, we find that it does not lay down any hard and fast rule and in the facts of the present case, we are not inclined to accept the alternative submission of learned counsel for the LAC that the petitioners should be put to recourse only of Section 48 of the said Act.

18. In **Essco Fabs Private Limited & Anr's** case (*supra*), the authorities have been cautioned to keep in mind the broad principles while taking recourse to provisions of Section 17(4) of the said Act. Can we say that creation of a green belt or plots now to be carved out for a different scheme of the Government of NCT of Delhi to be given to people as an additional measure of amelioration on acquisition of large tracts of land can be a matter which would brook no delay and, thus, recourse was required to the provisions of Section 17(1) and 17(4) of the said Act? In our considered view, the answer to this question is emphatically in the negative.

19. We also take note of the fact that in respect of the two main roads, the stand of the petitioners has been more than reasonable.

Land has been made available for the 45 metre road and there is willingness to make land available for Auchandi-Bawana road as per the conditions of sanction of the farm house itself. It is, thus, the issue of these plots, the green belt and the internal 12 metre road which is sought to be agitated and for which the petitioners want to exercise the valuable right given under Section 5(A) of the said Act. We are clearly of the view that the petitioners could not have been deprived of this opportunity taking into consideration the use to which the land was to be put and the own time taken by the respondents for this process. The existing policy decision had, in fact, persuaded the respondents to release this very land at the time when the housing project of Rohini was being developed and, thus, the decision to once again plan and provide for additional plots under the scheme for large scale acquisition of land and for keeping a green belt apart from the two roads to be made, is stated to be the reason for once again resorting to acquisition proceedings. The petitioners have every right to be given an opportunity to persuade the authorities to desist from doing so while exercising their rights under Section 5(A) of the said Act.

20. The consequence is that we find that there was no urgency existing and, thus, quash the notification dated 01.08.2003 insofar as it seeks to invoke the provisions of Section 17(1) and 17(4) of the said Act as also the declaration under Section 6 of the said Act dated 22.12.2003 with the concession of the petitioners that they will not object to the acquisition in respect of the 45 metre road which already stands constructed and in case the Auchandi-Bawana

road has to be made, the same would be made available in terms of the conditions of sanction of the farm house on taking recourse to the provisions under the said Act.

21. The petition is allowed to the aforesaid extent, leaving the parties to bear their own costs.

22. The petitioners to now file their objections under Section 5(A) of the said Act within a period of 30 days from today.

**SANJAY KISHAN KAUL, J.**

**VEENA BIRBAL, J.**

February 9<sup>th</sup>, 2010  
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