
(2007) 136 DLT 703 : (2007) 94 DRJ 184 : (2007) 1 ILR Delhi 551

Delhi High Court

Case No: Writ Petition (C) No. 11933-36 of 2005

Ved Prakash and
Others

APPELLANT

Vs

Lt. Governor of Delhi
and Others

RESPONDENT

Date of Decision: Jan. 11, 2007

Acts Referred:

Constitution of India, 1950 " Article 161, 226#Delhi Municipal Corporation Act, 1957 " Section 343#Land Acquisition Act, 1894 " Section 10, 4, 48, 48(1), 48(2)

Citation: (2007) 136 DLT 703 : (2007) 94 DRJ 184 : (2007) 1 ILR Delhi 551

Hon'ble Judges: Swatanter Kumar, J; S.L. Bhayana, J

Bench: Division Bench

Advocate: R.K. Saini, for the Appellant; Gaurav Sarin, Charul Sarin and Sanjay Poddar, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.

The appropriate Government issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as

"the Act") being notification No. F. 15(245)/60-LSG/L & H dated 24.10.1961 acquiring 1 bigha 19 biswa of land situated in Village Nangloi Jat

for a public purpose namely "Planned Development of Delhi" at public expense, in furtherance to which notification u/s 6 of the Act being

notification No. F4 (5)/63 P & H dated 30.12.1968 was also issued. Notices under Sections 9 and 10 of the Act were issued to the interested

persons and after giving them hearing, the claims for compensation were settled vide award of the Collector dated 31.1.1984. Upon actual

measurement, the land was found to be measuring about 1 bigha and 19 biswas. This notification and award of the Collector was challenged by

Sh. Daya Shanker vide CW No. 405/1984 titled as Daya Shanker v. UOI. During the pendency of this writ petition, Sh. Daya Shanker died on

9.1.1992 and the present petitioners were brought on record as legal heirs of the deceased Daya Shanker. This writ petition questioning the

validity and legality of the notification and acquisition proceedings was dismissed on 26.3.2004. During the pendency of this petition, the court had

protected the petitioners and had directed the parties to maintain status quo in regard to possession and occupation. According to the petitioners,

despite dismissal of the writ petition, the possession of the demised land was not taken by the DDA and they continued to be in possession of the

property. On 20.08.2004, the petitioners made a detailed representation to the DDA requesting them for de-notification of the land from

acquisition. To this representation, the petitioners also submitted a reminder to the respondents on 8.12.2004 praying for early disposal of their

representation. Since the respondents failed to dispose of the representation, the petitioners were compelled to file another writ petition being

WP(C) No. 1733-36/2005 in this Court on 31.1.2005 praying for a writ of mandamus commanding the respondents to decide within a reasonable

time by way of a speaking order, the representation of the petitioners dated 20.8.2004. This writ petition was partially allowed by the court vide its

order dated 7.4.2005. The relevant part of the order reads as under:

The learned Counsel appearing for the respondents states that the Competent Authority/De notification Committee shall decide the representation

of the petitioner within one month from today.

We fail to understand as to why the appropriate body should not perform their obligations expeditiously in terms of the law, and why the citizens

should be compelled to approach the Court with such prayers? Once a representation is moved, it is obligatory upon the authorities concerned to

deal with the matter as expeditiously as possible and convey the decision so taken to the petitioner.

At present, we are restrained from commenting any further in view of the undertaking given on behalf of the respondents that the representation

shall be looked into and decided in accordance with law within one month from today.

Accordingly, the petition is disposed of in view of the undertaking given to the Court, while leaving the parties to bear their own costs, with the

observations that till that time the petitioner will not be dispossessed.

2. After passing of the above order, the competent authority vide its letter dated 11.7.2005 rejected the representation of the petitioners and

declined to de-notify the land in question from acquisition. Aggrieved from the rejection, the petitioners have filed the present petition.

3. According to the petitioners, Sh. Daya Shanker, their late father, had purchased land measuring about 2 bighas comprised in Khasra No. 14/1

and 9/2 and 13 situated in village Nangloi Jat, Delhi vide registered sale deed dated 29.9.1961. After purchasing the land, a building was

constructed thereupon and the business of sale and purchase of oil seeds, running of an oil mill and manufacturing and processing of pickles, jams

and chuttnay etc. was being carried out from the said premises. The petitioners had obtained a license for carrying on the business and on

28.10.1961, a notice u/s 343 of the DMC Act, 1952 for demolition of the structure raised was served upon the petitioners but the construction

was never demolished where after notification has been issued for acquisition of the land in village Nangloi Jat including the land in question. On 7th

December, 1962, the Land Acquisition Collector is stated to have announced an award being Award No. 1440 of village Nangloi Jat, Delhi

whereby the land was acquired for the purposes of remodeling of Nangloi drain, Delhi. Number of other awards were also made in relation to

acquisition of land in the same village. In the representation as well as in the present petition, it was pleaded by the petitioners that the passage to

the cremation ground and development of Maharaj Surajmal Stadium was completed long back and no purpose would be served by acquiring or

taking over the possession of the land. The land of the applicants was stated to be a small strip between built up Stadium and the Nalla on the

other side and if such a small piece of land is taken or structure is demolished, no useful purpose would be served as the surrounding area had

already been developed. It was also stated that nearly 150 families involving 600 persons were dependent upon the enterprise being run from the

demised land who would be affected and displaced and thus, there would be great hardship caused to the petitioners and those families dependent

upon the said business.

4. During the pendency of this petition, the petitioners filed CM No. 14760/2006 annexing copy of a plan showing development of the Stadium

and alleging that the road to the cremation ground had already been made and there was no occasion for disturbing the possession of the

petitioners. In these circumstances, the petitioners pray for a direction to the respondents to produce the records and even provide inspection

thereof to the petitioners. The court on this application had passed the direction to the respondents to produce the documents in the court as it was

averred in the application that the map was approved in the 236th Screening Committee Meeting on 9.12.2004 and it was shown in the map that a

9 mtr. road has been provided for entry to the proposed site for cremation ground behind the stadium. On this premise, it was contended that as

the purpose of acquisition has already been satisfied, there was no reason for the Committee to reject the representation of the petitioners.

5. While relying upon the judgment of the Supreme Court in the case of Murari and Ors. v. UOI 65 (1997) DLT 1001 (SC), it was stated that the

order of rejection is unfair, unreasonable and is a cryptic order without proper application of mind. According to the petitioners, the order, in fact,

is based upon the recommendation of the Committee which itself was not aware of the correct facts. The petitioners have also averred that the

respondents had framed a policy for de-notification of acquired lands and in the present case, the respondents have failed to uniformly apply the

said policy. In fact, they have not satisfied the parameters of the policy. As such, the action of the respondents at its face is arbitrary and the order

rejecting the claim of the petitioners is liable to be set aside.

6. There cannot be any dispute to the proposition of law that no indefeasible right is vested in any person to seek benefit of the provisions of

Section 48 of the Act. It is a matter in the discretion of the State/Competent Authority to examine the matters for de-notification of the land from

acquisition in accordance with the provisions of law and policy, if any, framed by the Government. There is no dispute to the fact that the policy

guidelines for de-notification have been framed by the appropriate authority and are annexed to the writ petition as Annexure-P9. These guidelines

notice that power to withdraw from acquisition is a power created under the Statute by way of Section 48. The discretion is with the State

Government but the same should be exercised on the basis of sound and judicial principles. These guidelines cannot be enumerated or made

exhaustive but can be laid down on the basis of broader principles and keeping in view the interest of the public at large. Under these guidelines, a

de-notification committee was constituted and the basic conditions for considering the cases of de-notification as well as the parameters thereof

were stated. Built up properties, religious structures, land with 50 meters of village Abadi were stated to be kind of cases in which lands belonging

to these institutions could be de-notified provided they satisfy the stated parameters in the opinion of the Committee. The scope for judicial

intervention in such a decision would be very limited. The court obviously would not examine such a decision as an appellate authority. Scope of

such judicial review cannot be expanded and it may not be permissible for the court to substitute its own view with the view taken by the

committee especially constituted for this purpose merely on the ground that it was possible to take view other than the one taken by the authorities.

7. It will be useful to refer to some of the extracts of the guidelines which have heavily been relied upon by the parties and have some bearing on the controversy in issue in the present case.

3.0 COMMON CONDITIONS FOR CONSIDERING DENOTIFICATION

3.1 Possession of the land should not have been taken.

3.2 The persons interested in the land should not have received any part of the compensation toward acquisition of the land.

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4.2 LAND WITH 50 METERS OF VILLAGE ABADI

As per the decision of the Standing Committee in the meeting dated 3.6.93 land 50 meters from village abadi is not acquired. However, in case

any such land has been notified for acquisition, it may be recommended for de notification provided its absence will not materially affect the public purpose for which it is being acquired.

4.3 PROPERTIES BUILT-UP PRIOR TO ISSUE OF NOTIFICATION u/s 4 OF THE LAND ACQUISITION ACT, 1894

(1) Built-up properties existing at the time of notification u/s 4 of the Land Acquisition Act, 1894 may be recommended for de notification

provided:

(a) the absence of the land on which the build up portion exists will not materially affect the public purpose;

(b) the property was built-up after requisite approvals of the competent authority;

(c) when the public purpose can be satisfied by another viable land which would cause less financial burden to the Government.

8. In the representation made by the petitioners to the competent authority praying for de-notification of the land in question, it has been specifically

averred that after having purchased the property in the year 1961, a building was constructed thereupon and the petitioners or their predecessors

in interest have been in continuous possession and enjoyment of the said property. In this representation, it is nowhere stated that the building in

question was constructed after taking requisite approval of the competent authority. On the contrary, the petitioners in their representation have

admitted and in fact emphasized the fact that as back as on 28.10.1961, a notice u/s 343 of the DMC Act, 1952 was served upon them for

demolition of the unauthorized construction though the construction was never demolished. This itself shows that the petitioners do not satisfy the

parameters stated in the policy. In fact, it is directly in conflict with Clause 4.3(1)(b) of the policy. While relying upon Clause 4.3(1)(c) it was

contended that the purpose for which the land was sought to be acquired has already been achieved as the Stadium has been built up and the

passage to the cremation ground behind the Stadium is under construction. As such, the purpose of acquisition and taking over possession of the

demised land, hardly subsists and the petitioners are entitled to de-notification of their land.

9. The parties have placed photographs and the maps on record. As per these photographs, the passage to the cremation ground is under

construction. To that extent, the case of the petitioners can hardly be disputed. But the fact of the matter is that in the other photographs which

have been placed by the petitioners on record, it is clearly shown that the development activity is being carried on both sides of the Nalla and the

DDA also proposes to align the Nalla. The map which was produced by the DDA and copy of which was also filed by the petitioners shows that

the scheme was approved in the 236th Screening Committee meeting held on 9.12.2004. In this meeting, the name of the Stadium was approved

as "Maharaja Surajmal Playground". It has been shown in this map that there is an independent road giving entry to the existing burial ground as

well as the proposed site for cremation ground. This road goes in front of the acquired land while on its back there is a Nalla. The map primarily

reflects the development of the Stadium and does not state anything as to what developments are to be carried out at the other lands touching the

boundary of the Stadium particularly the land in dispute. According to the respondent-DDA as the land is not in their possession, they have not

prepared the exact plan for development of that area but it is to be developed for the purposes of facilities to be provided and/or associated with

the Stadium. We have already noticed that the photographs placed on record clearly show that the area even beyond the land of the petitioners is

being developed and construction activities are going on, on those portions of the land which are admittedly in the possession of the DDA.

10. At this stage, we may refer to the stand taken by the DDA in their counter affidavit where they have specifically dealt with this stand taken by

the petitioners:

8. That it is submitted that there has not been any deviation from the accepted policy in respect of examination of the petitioner's representation of

de notification and its consideration by the competent authority upon the recommendation of the denotification committee. The rejection letter

dated 11.07.2005 states that the denotification committee recommended rejection of the petitioner's representation as the land subject matter of

the present petition was required by the DDA for extension of stadium facilities. The land subject matter of the present petition is adjoining the

Surajmal Stadium in Village Nangloi Jat, Delhi situated on the Main Rohtak Road.

9. The petitioners through their counsel, as a consequence of the liberty given by the Hon"ble Court have gone through and examined the complete

records of the answering respondent. The underlying contention as advanced by the petitioner and urged on the basis of the material placed on

record by the petitioner, is an allegation that the answering respondent has rejected the representation for denotification at the behest of a certain

member of parliament. The said contentions are frivolous and devoid of any merit whatsoever. It may be noted that the concerned member of

parliament is a member of the Parliamentary Committee of the Ministry of Urban Development, under which the answering respondent functions.

Furthermore, the role of the said member of parliament is evident from the copy of the nothings in File No. F. 3 (91) 2001/MDCSC/DDA dated

12.10.2004 having page 17/N that has been placed on record by the petitioner vide a separate application. A bare perusal of the said nothings and

item (i) therein clearly establishes that the proposal was (a) to make available larger space for the development of sports facilities at Surajmal

Stadium would required readjustment of certain structures within the crematorium and the vacant portion of the land between the graveyard and

the crematorium; and (b) the request to the member of parliament to convince the people in the neighborhood about the necessity of relocation part

of the crematorium next to the graveyard. Item (iv) also therein states that a separate access should be provided for the crematorium and the

existing entry would be dedicated to the playfield, as at present the existing entry to the playfield is shared with the crematorium, which is certainly

not conducive to use of the playfield. Item (vi) also mentions regarding the possibility of increasing the width of the existing accesses to the

crematorium and the graveyard.

10. That the answering respondent had prepared plans in respect of the existing and proposed facilities at the Surajmal Stadium that are part of the

record of the Hon"ble Court. It is submitted that the answering respondent is competent to only make such plans for development by the

engineering department of area that is in the physical possession of the answering respondent. Therefore as the area presently occupied by the

achar factories, and other traders (timber, etc.) being the land subject matter of the present petition, the same has not been included in the present

plan due to non-availability of possession, and the same has not been marked as crossed out. The said marking is a consequence of the non-

availability of the possession due to the pending litigation and continued litigation as stated in the writ petition. The requirement of the answering

respondent as has been correctly stated before the denotification committee is for the extension of the stadium facilities, which are being developed

by the answering respondent and forms part of the stated public purpose of acquisition namely the Planned Development of Delhi.

11. Thus, the stand of the DDA is clearly reflected in the said affidavit and is to the effect that the exact development plans or drawings in relation

to the land in dispute which admittedly are not in possession of the DDA, have not been prepared as yet but the land is required for providing

facilities and for general development of the area adjacent to the Stadium. We are unable to trace any element of malafide or bias in this stand.

Obviously, if the entire Stadium is to be developed in its proper perspective, its surrounding areas would also need to be developed, particularly

when there is burial and cremation ground at some distance from the playground.

12. The de-notification Committee considered the representation of the petitioners in its meeting held on 31st May, 2005 and formed an opinion

that the land was required by the DDA for extension of Stadium facilities and thus it was not possible to denotify the land in question. This decision

of the Committee has to be examined by this Court within the established norms and legal principles governing judicial review of such

administrative action.

13. Various judgments of this Court have dealt with the scope of judicial review in such cases and the parameters for examining the pleas of

arbitrariness, malafides and discriminatory implementation of the policy of de-notification. In the case of Raheja Hospital and Psychiatric Research

Institute Vs. Lt. Governor of Delhi and Others, , the court discussed in great detail these principles. In fact, the learned Counsel appearing for the

petitioners heavily relied upon para Nos. 30, 33, 47 and 50 of the said judgment to contend that the court would interfere wherever the action of

the respondents is found arbitrary. This can hardly be disputed. But reference to the principles enunciated in this judgment would be necessary,

which are as under:

47. *Hochtief Gammon Vs. State of Orissa and Others*, was relied upon by learned Counsel for the Petitioner to contend that in law, irrelevant

material should not be taken into consideration by an executive authority while taking a decision, nor should relevant material be left out. In that

case, the Supreme Court quoted extensively from *Padfield v. Minister of Agriculture, Fisheries and Food* 1968 AC 997 and held, in paragraph 13

of the Report-

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor

should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a

decision will be lawful. The courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the

Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons.

If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the

propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient

to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.

48. Similarly, learned Counsel made reference to *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, which contains an illuminating discussion

on judicial review of administrative decisions as explained in *Council for Civil Service Unions v. Minister for Civil Service* (1984) 3 All ER 935 and

Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (1948) 1 KB 223.

49. *Satpal and Another Vs. State of Haryana and Others*, referred to by learned Counsel for the Petitioner is not all applicable since that dealt with

a constitutional power, under Article 161, of the Governor of a State to grant pardon. It is nobody's case that a statutory power of the appropriate

Government can be equated with a constitutional power - the principles applicable to both are entirely different.

50. There is no doubt about the legal position that while taking a decision, an administrative authority should eschew consideration of any irrelevant

material and should consider all relevant material. But what were the materials before the Denotification Committee?

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52. We are not at all impressed by this contention. It is entirely for the Denotification Committee to regulate its own procedure, and if the land

acquiring agency and the DDA did not respond to the letters sent by the Denotification Committee on 6th April, 2004 and 30th June, 2004, the

said Committee was entitled to proceed with its deliberations as if these two agencies have nothing to say. It is not that the Committee becomes

incapacitated from taking a decision in the absence of any comments from these two agencies. Apart from this, the Secretary of the land acquiring

agency chaired the meeting and a representative of the DDA was a member of the Denotification Committee. Surely, it can reasonably be assumed

that they were aware of the relevant facts and would have apprised the Denotification Committee of all the correct facts.

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56. That a comparative assessment of the purpose for which the land of the Petitioner is being used or can be used, as against the overall public

purpose is really for the appropriate Government to decide. There is nothing to suggest that the Lt. Governor was not aware that the Petitioner was

running a hospital or about the development plan of the area. It is difficult to say, on merits, and under these circumstances that the Lt. Governor

did not take a correct decision. It is not possible, or even advisable for us to substitute our opinion for that of the Lt. Governor. Indeed, learned

Counsel for the Petitioner did not even seriously argue this. Consequently, we are not inclined to entertain this contention on behalf of the

Petitioner.

14. In the case of Panchayat Mahajan Village Naharpur v. Lt. Governor, Delhi and Ors. 2006 VII AD (Delhi) 383, it was contended that right

in the centre of the developed colonies, a structure was existing in village Naharpur and they have made a Dharamshala and Piao etc. for serving a

public purpose and thus their land ought to have been denotified by the DDA rather than taking possession thereof for development purpose. This

petition was rejected by the court while holding as under:

8. The authorities concerned have passed the impugned orders after taking into consideration the various aspects. Section 48 does not vest any

indefeasible legal right in any person to claim denotification and release of his land from acquisition proceedings. It is primarily a discretion which

vests in the Government and only the Government can withdraw any land from acquisition, but this discretion is also restricted to the extent that the

provisions of Section 48 would not be applicable, where the possession had already been taken. In other cases, the competent authority has to

consider every application on its own merits and keeping in view the rules, if framed and the declared policy of the authorities in that regard. The

Government has been granted liberty by the Legislature in its wisdom to withdraw a land from acquisition proceedings which in the opinion of the

Government needs to be withdrawn, but for the reasons which are not arbitrary, discriminatory and/or which are not offending to public policy or

law. The purpose appears to be that by such withdrawal no irreparable loss is caused to the owners of the land and even if he has suffered some

damage in consequence of the acquisition proceedings, he can be compensated as contemplated u/s 48(2). The power of withdrawal is so wide

that it can be uniformly exercised by the State. The authorities in the present case have exercised their discretion and have given reasons for

exercise of such discretion. Reference in this regard can also be made to the judgments of the Supreme Court in the case of Amarnath Ashram

Trust Society and Another Vs. Governor of U.P. and Others, ; Special Land Acquisition Officer, Bombay v. Godrej and Boyce AIR 1987 2421.

9. As is clear from the above referred letters/orders of the respondents wherein it has been stated that the piece of land is surrounded by flats on all

sides and hence it is required for further construction of flats under the head "Planned Development of Delhi". The request of the petitioners for

denotification of the said land on the ground that it was being used for running a piano, night shelter for poor and drinking facility for cattle was not

considered a reason enough to denotify the land and it was also stated that recorded owner of this land was gaon sabha. The DDA persisted vide

its letter dated 9.6.2003 for taking possession of the acquired land.

10. Merely because it is a built-up area by itself necessarily need not bind the respondents to denotify and release the said land from the

acquisition. The policy framed by the respondents is merely a guideline which has to be applied keeping in view the facts and circumstances of a

given case.

15. Reference can also be made to a judgment of another Division Bench of this Court in the case of Radhasoami Satsang Beas Vs. Union of India

(UOI) and Others, wherein similar pleas like the ones raised in the present petition were raised including that the area was already developed and

no fruitful purpose will be served by dispossessing the petitioners and also that the purpose had been changed as in the present case the stadium

has been developed, road to the cremation ground is under construction and development for stadium facilities was a changed and in fact was no

public purpose. This petition was rejected by the court while holding as under:

23...The authorities can change or modify the plans keeping in view the development of the area and larger public interest. It may not be necessary

for the authorities to finalise their development plans prior to the issuance of the notifications but its right to alter the same in accordance with law

cannot be taken away. At this stage, we may refer to a judgment of a Division Bench of this Court in the case of Vasant Kunj Enclave Housing

Welfare Society v. Union of India and Ors. in W.P. (C) No. 4789/1995 decided on March 03, 2005, where the Court held as under:

40. It is true that once the acquisition is upheld, the Government has to make every effort to utilise land for the purpose for which it was acquired.

The utilisation of the land can be in a manner which the Government may finalise in terms of the notification even at a subsequent stage. The Delhi

Development Authority Act itself postulates grant of permission by the competent authority in relation to change in user as well as the manner of

development and as such it will be unfair to pre-determine the issue in that regard at a stage prior to issuance of notification u/s 4, in all events and

to bind the State by the same, leaving any leverage for the planned development or amended planned development of Delhi. In this regard

reference can be made to the judgment of the Supreme Court in the case of Bhagat Singh (supra), where the court held as under:

As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose

should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely

because the land proposed to be acquired is for a purpose other than the one permitted by the master Plan or Zonal Plan applicable to that

locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the master Plan or Zonal Plan in force

at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and

obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for

which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development

Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle

stated in *Om Prakash and Another Vs. State of U.P. and Others*, it is clear that acquisition for a public purpose and obtaining permission from the

competent authority under the Development Act concerned for change of land use are different from one another and the former is not dependent

upon the latter

24. In the modern times the Planned Development of Delhi is a very complex project and alterations or modifications in the plans for the purpose

for which the land is acquired initially, would be somewhat a necessary event. It may not be very fair to unnecessarily circumvent such

administrative power of the State, of course it essentially should be exercised free of arbitrariness and malafides colourable exercise of power in

any case would render the administrative decision liable for interference by the Courts in exercise of its power of judicial review. The petitioner

must specifically plead grounds of malafides or arbitrariness with some supporting material to show that the power was being exercised by the

authorities malafide and not in larger public interest. Private interest should tilt in favor of the public interest and merely because there is certain

divergence in the development plans which have been made in accordance with law, would no way call for judicial intervention....

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25. In this very case, the Division Bench discussed the scope of administration, change in policy and consequently legitimate expectation of the

owner of a land. Obviously, the objections of the petitioner must have been considered by the authorities in accordance with law. Re-agitating the

same issue would be of no consequence, and particularly in the light of the Division Bench judgment of this Court in the case of *Ramjas Foundation*

Vs. Union of India (UOI) and Others, where the Court discussed the limited scope of denotification proceedings and interference by the Court.

The court held as under:

Rejection of an application u/s 48(1) of the Act would mean that the need and public purpose, both continue to operate. In absence of proved

malafide can a decision of Lt. Governor be challenged, more particularly by a speaking order while rejecting the application, it is pointed out that

the land is required for development and before the Court beneficiary has pointed out to put the land to use for development strictly according to

Master Plan.

Aforesaid aspect we have referred with a view to indicate that on the basis of the material placed before the competent authority, which on

examination of the record arrived at a satisfaction that the land is needed for a public purpose. Then is it open on mere ipse dixit to ask the

Government to exercise the power u/s 48(1) of the Act to de-notify the land from acquisition? One should note that this Court is not required to sit

as an appellate Court to examine the decision rendered by the Lt. Governor. Power under Article 226 of the Constitution are required to be

exercised in furtherance of interest of justice. The Lt. Governor while passing an order was required to apply his mind to all relevant aspects and

was not required to be swayed away by irrelevant aspects. The Lt. Governor has arrived at a conclusion which cannot be said to be perverse. On

the basis of the material on record, when the Lt. Governor was satisfied that it is a case which requires no exercise of power u/s 48 of the Act, and

the land is required for development, it cannot be said that the Court is required to question the decision. As the respondents have pointed out that

the land is required for a public purpose and that purpose is not abandoned, then in such a case it would not be permissible to the applicant to ask

the authority to reopen the case by the State and in this situation it would not be open for this Court to interfere with the decision which is under

challenge. In the matter of land acquisition, the Court will have to consider public interest as the paramount interest. Private interest has no place in

the matter of land acquisition when a person is to be compensated. In the instant case, acquisition proceedings have been completed and

unsuccessfully the petitioner has challenged the proceedings twice which has caused delay in development of land in accordance with the

development plan. When the Lt. Governor has rejected the application after considering the material on record, Court should not interfere.

26. The court also affirmed the principle laid down in the case of Union of India (UOI) and Others Vs. Parshadi and Others, to say that the

petitioner has no locus standi to make an application u/s 48 of the Act once the land is vested in the Government. We have already noticed that

possession of the petitioner has been protected by the order of the Court and remaining proceedings under the Land Acquisition Act have already

been completed.

16. In the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, , the Supreme Court clearly stated the principle

that the State can be permitted to exercise its power of withdrawal unilaterally and no requirement that the owner of the land should be given an

opportunity of being heard before doing so, should be read into the provision. The discretion of the State to withdraw or not to withdraw the land

for acquisition was stated to be of great significance and the interference by the Courts in exercise of its writ jurisdiction, was stated to be a very

limited one.

17. Reverting back to the facts of the present case, the petitioners have also contended that the rejection order also suffers from the vice of

arbitrariness inasmuch as the possession of the land was not taken by the DDA for all these years and it is at the behest of the member of

parliament, Sh. Sajjan Kumar that the DDA has acted adversely to the interest of the petitioners. There cannot be a dispute that the possession of

the land has not been taken by the DDA even during the period when there was no order of status quo or stay in favor of the petitioners. But that

by itself would not entitle the petitioners for claiming de-notification of the land as a matter of right. Under the policy, it is one of the essential

conditions that the request for de-notification could be considered in the cases where the possession had not been taken (refer Clause 3.1 of the

guidelines). Thus, at best, the case of the petitioners was to be considered by the authorities which has been considered and the Committee vide its

minutes dated 31st May, 2005 has rejected the request on the ground that the land is needed for extension of Stadium facilities. If the possession

of the land had been taken, the authorities were not even obliged to consider the representation of the petitioners in terms of Section 48 of the Act.

From the documents placed in the court file, it appears that on 28.10.2004, the matters in relation to various developments were considered in the

meeting of the Vice-Chairman, DDA with a specific reference to the development of Suraj Mal Stadium. According to the DDA and as even

argued at the Bar that keeping in view the surrounding areas particularly the burial and the cremation ground, the Vice-Chairman had desired that a

meeting may be held involving Sh. Sajjan Kumar at the site, which was done and there the Chief Engineer, Director (Land Scape) and other

officers of the DDA were present and it was decided to have a complete re-development plan of the facilities to be prepared by the Director

(Land Scape) and Director (Sports) for the complex as well as a separate access to crematorium and graveyard. There, it was mentioned that the

unauthorized Achar factories are encroaching the land in the area and appropriate action should be taken with regard to unauthorized structures.

The participation of Sh. Sajjan Kumar cannot be disputed but as argued on behalf of the DDA, it was done to maintain public peace as he was the

public representative of that area. The petitioners in their arguments argued that it was an arbitrary whim of the said Member of Parliament that

weighed with the authorities in rejecting the request of the petitioners and as such, the action of the respondents was malafide, arbitrary and bias.

18. It may be noticed that the petitioners chose not to implead the said MP as a party to this petition and made no allegations of malafides,

personal or legal, against the said person. In absence of impleadment of a party and there being no specific averments or material on record, which

could persuade the court for accepting the plea of malafide or arbitrariness, the petitioners cannot succeed on this ground. We are unable to find

any merit in the contention raised by the petitioners and would be inclined to accept the stand of the DDA that it was primarily for the purpose of

keeping public and communal harmony in the area that he was made a party to the site inspection. The development was being carried on for a

larger public purpose which cannot be permitted to be defeated by the private purpose of the petitioners. The parameters stated in the guidelines

for de-notification of the acquired land have been correctly applied by the respondents to the case of the petitioners. It is pleaded by the petitioners

themselves that the structure was raised without sanction or approval of the competent authority. They had received notice for demolition of the

said structure as back as in the year 1961. This plea of the petitioners, in fact, would stare the petitioners in their face from claiming a plea that an

unauthorized structure constructed by them which they have enjoyed for all these years, should be permitted to be of advantage to them by de-

notification of the acquired land, which is needed for a public purpose namely providing of facilities and infrastructure for the Stadium and the

surrounding areas. We have already noticed that surrounding areas even beyond the Nalla are already being developed and it would be unfair to

set aside the action of the respondents even in the larger public interest. There is no discrimination much less a hostile discrimination in enforcement

of the policy by the respondents and no surrounding land of this village has been released by the respondents in exercise of their power u/s 48 of

the Act. There is no deviation in implementation of its policy by the DDA and they have followed the guidelines for de-notification of the land in its

correct perspective. Thus, we have no hesitation in dismissing this petition. The writ petition is accordingly dismissed while leaving the parties to

bear their own costs.