

Avinash Kaur Ahluwalia Vs Delhi Development Authority and Others

Court: Delhi High Court

Date of Decision: Aug. 31, 2009

Acts Referred: Land Acquisition Act, 1894 " Section 3

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Sumit Bansal, for the Appellant; Rajiv Bansal, for DDA, M.M. Kalra, for the respondent No. 2 and Shiv Kumar, for the respondent No. 3, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar, J.

The petitioner seeks a declaration that the taking over the possession of the land of the petitioner is illegal, arbitrary and against the policy decision and a mandamus directing the respondent No. 1/DDA be issued not to interfere with the peaceful possession and

enjoyment by the petitioner of the petrol pump site at No. 9/4, Mathura Road, Badarpur, Delhi.

2. Brief facts to appreciate the controversies between the parties are that the petitioner is the proprietor of M/s. Ahulwalia Highway Service

Station, which is stated to be a dealer of respondent No. 2/Indian Oil Corporation. Petitioner was granted dealership of respondent No. 2 outlet

by letter dated 22nd March, 1971 on the terms and conditions stipulated in the said letter. According to the petitioner, the said firm has continued

to run the petrol pump and an auto gas has also been installed. The husband of the petitioner who was running the petrol pump under the name

M/s. Ahluwalia Highway Service Station. had died and the firm was re-constituted which reconstitution was allegedly approved by Indian Oil

Corporation.

3. The petitioner asserted that she was shocked to receive a letter dated 30th January, 2009 from respondent No. 1 stipulating that the site of the

petrol pump was required by Delhi Metro Rail Corporation for construction of Metro Station and Traffic Integration/Parking for its Central

Secretariat - Badarpur Metro Corridor which project is of larger interest/convenience of public and cannot be delayed. Consequently, it was

conveyed to the petitioner that allotment of petrol pump at site No. 9/4, Mathura Road, Badarpur, has been cancelled, however, resitement of the

petrol pump will be considered by DDA as per policy and availability of petrol pump sites.

4. The petitioner replied to the communication dated 30th January, 2009, cancelling the petrol pump site of the petitioner by communication dated

11th February, 2009 stating that she has been running the petrol pump since 1971 and the time granted to the petitioner for vacation of the site is

too short. The petitioner also contended that she is a widow and has no source of income and in the circumstances she demanded sufficient time to

vacate the site and also sought arrangement of another plot/land to carry on the business of petrol pump.

5. Since the respondent No. 1 was threatening to take possession of the land where the petitioner has been running the petrol pump, the petitioner

filed the present writ petition. The petitioner contended that the site of the petitioner is not immediately required by respondent No. 3 for

construction work as the pillars which were required to be constructed in the area of the petrol pump have already been constructed. The

petitioner complained that the steps have not been taken by the respondents with promptitude for resitement of the petrol pump. The petitioner

also made a grievance that the letter dated 30th January, 2009, has been issued in violation of the principle of natural justice as the petitioner had

not been served with any notice. The petitioner also contended that running of the petrol pump at the present site would not in any manner hinder

the work of respondent No. 3.

6. The petitioner also raised the plea that the petitioner is a person interested in the land as the petitioner has rights in Petrol Pump on that land and

no proceedings have been initiated by respondents No. 1 and 3 to acquire the land or the rights of the petitioner and since the respondent No. 2

still hold interest in the land, therefore, the same cannot be acquired without proceedings under the Land Acquisition Act. The reliance has been

placed on behalf of petitioner on Sunder Lal Vs. Paramsukhdas,

7. The writ petition was taken up for hearing on 13th February, 2009, when relying on the fact that the documents placed on record show that the

petitioner is only an exclusive dealer of respondent No. 2/Indian Oil Corporation, which is in possession of the retail outlet, the respondent No. 1

was directed to consider the case of the petitioner and respondent No. 2 for resitement in terms of DDA (Commercial Land Branch) Revised

Policy of allotment of land for petrol pump/gas godowns.

8. Pursuant to the directions given by this Court, the case of the petitioner was included in the draw of lots and a computerized draw of the

available sites was held on 20th March, 2009 and site at Sector 16B, Phase II, at Dwarka, has been allotted to I.O.C. Limited. An affidavit dated

10th August, 2009 was also filed on behalf of respondent No. 1 contending that the computerized draw of lots was done in respect of available

sites and five sites were available and no other vacant petrol pump site is now available. In the circumstances, it is contended that Indian Oil

Corporation is only a licensee, therefore, it is required to surrender the existing site at 9/4, Mathura Road, Badarpur, New Delhi as the same is

required for the plan project of DMRC.

9. A short affidavit has also been filed on behalf of Indian Oil Corporation contending that the site at 9/4, Mathura Road, Badarpur, New Delhi,

where petitioner is running retail outlet is an "A" site and all investment on construction of petrol pump and the equipment has been made by Indian

Oil Corporation as per the policy. Respondent No. 2 admitted the letter sent by respondent No. 1. The respondent No. 2 has also contended that

the request was made to allot the alternate plot preferably near the land which is to be taken by the respondent No. 1. The alternate site allotted

under the resitment was alleged to be inspected and valued by Valuation Committee of respondent No. 2 and the site has been found to be

economically unviable due to low sales potential and on account of proximity of an electric sub-station and HT line in front of the plot and

consequently the respondent No. 2 is alleged to have sent a communication dated 10th August, 2009 to DDA.

10. The Delhi Metro Rail Corporation has also filed a counter affidavit dated 10th August, 2009 contending that 8903.80 square meter land was

requisitioned from DDA for Mohan Co-operative Industrial Metro Station and DDA has already allotted 7590 square meter land to the answering

respondent, leaving a portion of land measuring 1313.77 square meters, which is under the occupation of the petitioner who is running a petrol

pump allotted by Indian Oil Corporation. It is contended that the land is required for construction of Metro Station and Traffic Integration/Parking

for its Central Secretariat - Badarpur Metro Corridor.

11. A rejoinder affidavit is also filed by the petitioner contending that the petrol pump of the petitioner falls under Zone "F" under the Master Plan

of Delhi 2001 and the Master Plan of Delhi 2021. According to the petitioner, under the Master Plans, standard 74 petrol pump sites are required

under Zone "F" and the existing petrol pump sites are 46 and, therefore, there are still 28 petrol pump sites. Reliance has also been placed on the

zonal development plan. It is contended that on 7th February, 2007, the MPD 2021 was notified and in terms of said plan one petrol pump per

150 hectares of gross residential area is required and therefore, even for MPD 2021 there cannot be less than 74 petrol pump sites in Zone "F".

The petitioner claims an allotment of plot in Zone "F. and not in a different Zone especially since the petitioner has been carrying on the running of

petrol pump in Badarpur area since 1971. The petitioner also contended that under the direction of Ministry of Urban Development, another petrol

pump of Taneja Service Station has been relocated from Okhla to Ghazipur Highway after resitement on the ground of feasibility.

12. I have heard the learned Counsel for the parties and have also perused the documents filed by the parties. The contention of the learned

Counsel for the petitioner is that the land where the petitioner is running the petrol pump cannot be acquired without having recourse to the

provisions of Land Acquisition Act. Learned Counsel in order to substantiate that the petitioner is an interested person has relied on Section 3(b)

of the Land Acquisition Act. It is contended that since the petitioner is running her business from the said land, she has an interest in the said

property and, therefore, the acquisition without having recourse to the Land Acquisition Act will not be permissible.

13. This is not disputed that the petitioner has got the right to run the petrol pump pursuant to the dealership awarded to the husband of the

petitioner by letter dated 22nd March, 1971 stipulating the terms and conditions of dealership. The terms and conditions of dealership categorically

stipulate that the dealer will not have any right, title or interest in the outlet and the equipment belonging to the Corporation and installed therein and

the dealer will not claim any right of lessee, sub-lessee or as a tenant or any other interest in the aforesaid property. The relevant term 3 of the

dealership agreement is as under:

3. LICENCE FOR NO OTHER RIGHT: That you will have no right, title or interest in the outlet and the equipment belonging to the Corporation

and installed therein and you are not entitled to claim the rights of lessee, sub-lessee, tenant or any other interest in the property aforesaid.

14. If the dealership agreement does not confer any right as a lessee, sub-lessee, tenant or any other interest in the property, the petitioner cannot

claim that she has a right as contemplated u/s 3(b) of the Land Acquisition Act. Neither the petitioner has any right in the land on which the Petrol

Pump is run by her nor she has any rights in the equipment which is also of the respondent No. 2. Learned Counsel for the respondent No. 2 has

also contended that the petitioner does not have any right in the land on which the petrol pump with equipment has been made by respondent No.

2. The judgment relied on by the petitioner Sunderlal (supra) is also distinguishable. In case of petitioner, no right is created in the land or

equipment on the said land pursuant to the agreement between the petitioner and the respondent No. 2. The dealership agreement categorically

stipulates that the petitioner has no right of any type in the property which is sought to be acquired by DDA for the public purpose of construction

of Metro Station and Traffic Integration/Parking for its Central Secretariat - Badarpur Metro Corridor. In contradistinction, in the case of

Sunderlal (supra), a creditor of a person whose land was sought to be acquired had claimed himself to be a person interested. The Supreme Court

had held that the Section 3(b) of the Land Acquisition Act defines person interested which is an inclusive definition and, therefore, it is not

necessary that in order to fall within the definition of interested person, he should have interest in the land to be acquired. It was held that a person

will become a person interested, if he claims an interest in compensation to be awarded. The petitioner shall not be entitled for any share in

compensation, in case the land of the Petrol Pump is acquired under the provisions of Land Acquisition Act because the dealership agreement

does not create any right in favour of the petitioner in the property or compensation if any, in any manner. Consequently, the plea of the petitioner

that the land of the petrol pump cannot be acquired without having recourse to the provisions of Land Acquisition Act is not sustainable and is

rejected.

15. In the petition, the petitioner has only claimed that respondent No. 1 should not interfere with peaceful possession and enjoyment by the

petitioner of the petrol pump at 9/4, Mathura Road, Badarpur, Delhi. By order dated 13th February, 2009 relying on the dealership agreement, it

was observed that the petitioner is not the lessee of the petrol pump and what was given to her is only the dealership. Consequently, it was also

ordered that the case of the petitioner and respondent No. 2 be considered for resettlement in terms of DDA (Commercial Land Branch) Revised

Policy of Allotment. The resettlement policy of the respondent No. 1 contemplates that resettlement will be made only when the existing petrol

pump/gas godown is utilized for planned project/scheme which directly necessitate the closing down of the petrol pump/gas godown site. The

policy categorically stipulates that if the allottee does not find the business lucrative due to certain reasons, he can always choose to surrender the

site and in cases of resettlement the existing rate for the new site will be charged. The policy also lays down that alternative site will be allotted

through computerized draw from the available sites and for holding the draw at least three sites must be available on the date of holding the draw.

The relevant revised policy of allotment of land for petrol pump/gas godown is as under:

C. Commercial component at Petrol Pump sites:

1) There are no provisions in the Master Plan for commercial component at petrol pump sites. Hence Amendment in Master Plan is required to

allow commercial activities of departmental stores, convenios, ATMs etc at the pp site as at present no commercial component is permitted on the

FAR allowed at petrol pumps.

2) However, when such provisions are made DDA may allow commercial activity at Filling cum Service station only within the FAR permitted on

such petrol pump site i.e. 20. No commercial activities at Filing Station will be allowed.

3) The additional licence Fee for the commercial component will be kept at 255 of the License Fee for the area used for commercial purposes in

addition to the regular license fee of the petrol pump site. The commercial component/area that can be allowed within the permitted FAR shall be

decided after the amendment for permitting commercial exploitation at the petrol pump site is made in the Master Plan.

4) The license will be allowed to exploit the commercial area on payment of additional License Fee as mentioned below. The commercial

component will be part of the license deed executed for the petrol pump site and to be treated as part of the pp site.

III. Other important features

A. Resitement:

1) Resitement will be made only when the existing petrol pump/gas godown site is utilised for a planned project/scheme while directly necessitates

the closing down of the petrol pump/gas godown site. No resitement will be made on any other grounds. As the petrol pumps will be disposed on

annual license fee basis rather than on upfront payment, if an allottee does not find the business lucrative due to certain other reasons, he can

always chose to surrender the site.

2) In all cases of resitement, the existing rates for the new site will be charged and the possession of the old site will be handed over to DDA.

3) The alternative site will be allotted through computerised draw from the available sites. For holding the draw at least 3 sites must be available on

the date of holding the draw.

16. This cannot be disputed that when computerized draw was held on 20th March, 2009 more than three sites were available in accordance with

policy. Perusal of the writ petition reveals that the policy of resitement of DDA has not been challenged. The petitioner has filed a rejoinder to the

affidavit filed on behalf of DDA/respondent No. 1, however, has not challenged the policy rather a new plea has been taken that the resitement

should be in the same zone where the petitioner is running the present petrol pump. Pursuant to the order passed by this Court, name of the

petitioner was included for resitement in computerized draw of lots and no objection was taken prior to that that petitioner is to be heard before

the name of the petitioner is to be included in the computerized draw of lots or that the computerized draw of lots is to be done in the presence of

petitioner or respondent No. 2. Under the resitement policy, the petitioner is not entitled to have a site of her choice as the policy categorically

stipulates that if an allottee does not find the business lucrative due to certain reasons, the allottee can choose to surrender the site. The petitioner,

therefore, cannot insist for an allotment of a site other than that what has been allotted to her under the computerized draw of sites as per the policy

of resitement.

17. On behalf of petitioner, it was contended that there was change of site allotted to M/s. Taneja Service Station from Jhilmil Industrial Area, G.T.

Karnal Road, Shahdara to Okhla Phase I, near FCI godown and therefore the petitioner cannot be discriminated and another site should be given

to her. On behalf of respondent No. 1, it has been stated that the site of M/s. Taneja Service Station was allotted to Capt. T.R. Taneja who was

LOI holder of I.O.C. Limited, who was first allotted a petrol pump site at G.T. Karnal road, Shahdara in the year 1975 being a disable person in

the Indo-Pak War. Due to construction of flyover at Shahdara, the petrol pump site was resited in 1977 to Jhilmil Industrial Area and as even the

said site was required in Jhilmil Industrial Area for DMRC project, a computerized draw was held for its resitement as per existing resitement

policy and alternative petrol pump site had been allotted. Since the site at Okhla was not acceptable and he submitted a petition before the

Committee of Petitions in Lok Sabha, pursuant to the decision taken by the Ministry of Urban Development, the respondent No. 1 was directed to

allot a petrol pump site available on the National Highway No. 24 as an exception to existing procedure/policy of allotment through draw of lots.

The resitement policy carves out an exception in case of resitement of petrol pump sites operated by a war disable person or a war widow who

had been given petrol pump site on compassionate ground that the draw of sites will be from the Petrol Pump sites from the same zone, where

he/she is operating a petrol pump. The policy categorically stipulates that the concerned person will be given an opportunity to give option for these

sites from within the available sites in the same zone for inclusion in the computerized draw. The policy carves out further exception for war

disabled person or a war widow that in case number of sites available in the same zone are less than three even then the draw of lots will be held

amongst the available sites and in case only one site is available in the same zone then the same will be allotted to the concerned person with the

approval of DDA. The petitioner is neither a war widow nor can claim to be a war disabled person and therefore, cannot claim rights equivalent to

such persons. In the circumstances, the petitioner cannot claim that she has been discriminated.

18. The plea of the petitioner that there are 74 petrol pump sites in the Zone "F" and, therefore, she is entitled for a petrol pump site in the same

zone also cannot be accepted because the policy does not entitle the petitioner for resettlement in the same zone. In any case, the zonal development

plans for MPD 2021 which is alleged to have been approved on 17th December, 2008 does not show 74 petrol pumps sites. The copy of the

zonal plan rather earmark CNG station/petrol pumps and their numbers do not appear to be 74 as has been alleged. Learned Counsel for the

petitioner also states that 74 petrol pumps are not shown in the said zonal development plan. In any case, the zonal development plan gives the

details of development to be carried out in a particular area, however, that does not necessarily mean that the developed sites are available which

can be considered for allotment of sites for resettlement. In any case, as has been held earlier that under the policy, the petitioner is not entitled to

claim resettlement in the same zone from where the petitioner has been carrying on her business as a dealer of respondent No. 2, therefore, the

consideration as to how many petrol pump sites are available in zone 'F' will not be relevant.

19. The plea of the respondent No. 2 that the Valuation Committee of the respondent No. 2 has found the site to be economically unviable due to

low sales potential and also cannot be a ground for resettlement under the policy of DDA as the same categorically stipulates that in case the allottee

finds the business not lucrative due to certain reasons, he can always choose to surrender the site, however, that will not be a ground for resettlement

in any other area. The other plea raised by the respondent No. 2 about unsuitability for the site also cannot be accepted as the same has not been

established. If the site is not suitable, the respondent No. 2 is entitled to surrender it under the policy, however, the respondent No. 2 shall not be

entitled to keep on lingering with the matter and to delay the project of larger public importance. If the respondent No. 2 is not entitled to a site of

its choice, the petitioner shall also be not entitled to raise similar pleas. If the site allotted in draw of lots at sector 5, Dwarka is not acceptable, it

can be surrendered, however, that will not be ground to quash the letter dated 30th January, 2009 cancelling the allotment in respect of Petrol

Pump site at 9/4 Mathura Road, Badarpur, Delhi.

20. For the foregoing reasons, there are no grounds to set aside the letter dated 30th January, 2009 requiring the respondent No. 2 to handover

the site of the petrol pump at 9/4, Mathura Road, Badarpur, New Delhi, which is required by Delhi Metro Rail Corporation for construction of

Metro Station and Traffic Integration/Parking for its Central Secretariat - Badarpur Metro Corridor. The petitioner has been allotted an alternative

site in draw of sites under the resitment policy. The writ petition is therefore, dismissed. Parties are however, left to bear their own costs.