

Shri Anup Kumar Kamal and Others Vs Union of India and Others

Court: Delhi High Court

Date of Decision: July 22, 2013

Acts Referred: Constitution of India, 1950 " Article 226
Land Acquisition Act, 1894 " Section 48

Hon'ble Judges: S. Ravindra Bhat, J; Najmi Waziri, J

Bench: Division Bench

Advocate: Ashish Bhagat, for the Appellant; Sanjay Poddar and Sh. Roshan Lal Goel, Advocate for NDMC, Sh. Sunil Kumar, Advocate for Resp. No. 1 and Ms. Rachna Srivastava, Advocate for Resp. Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

S. Ravindra Bhat, J.

In this petition under Article 226 of the Constitution of India, the petitioners, owners and in possession of the property

situated in Model Basti Village Sidipura are aggrieved by the refusal and inaction of the respondents in making any orders towards release and de-

notification of their lands (hereafter "suit lands"). The suit lands were notified for acquisition under the provisions of the Land Acquisition Act, 1894

("the Act"). The petitioners contend that they are in occupation of the suit lands, and that their properties exist since 1935. The Petitioners claim to

have been living there since. By Notification dated 20.04.2010, the Government sought to acquire the suit land for construction of Grade

Separator at Rani Jhansi Road, Delhi. Aggrieved by the notification, the Petitioners had sought to file a revised proposal to save their residential

houses. The Petitioners' challenge to the acquisition, through WP (C) No. 4663/2010 under Article 226 of the Constitution was unsuccessful; this

Court on 23.11.2010 recorded that the petition was not pressed. The writ petition was permitted to be withdrawn; however the order recorded

that the petitioners could move an application seeking de-notification u/s 48 of the Act.

2. The Petitioners moved an application on 26.11.2010 seeking de-notification, u/s 48. Complaining that no action had been taken for a long time

the Petitioners filed another Writ petition No. 7820/2012. In those proceedings, the Court by order dated 17.12.2012 held that the Petitioners

were protected by the order dated 23.11.2010 and further recorded that the second Respondents had in fact taken a decision regarding Section

48 on 22.02.2012. Being aggrieved by this decision of the competent authority, the Petitioner filed the present petition on the grounds of non-

application of mind and non-consideration of the representation for de-notification.

3. The petitioners impugn the decision dated 22.02.2012. It is argued that the minutes of the meeting of the De-notification Committee discloses

non-application of mind and is opposed to principles of natural justice. It is argued that the committee did not take into consideration the material

submitted by the Petitioners; and in a mala-fide manner failed to communicate the decision as had been categorically directed by the Court. It is

submitted that the alternative proposal mooted by the petitioners is viable, and would not in any manner sacrifice the safety or feasibility of the

project. It is argued that instead of continuing with the retaining wall till the point proposed, if the wall is shortened by some length, there would be

no compromise as regards any element of the project; besides the petitioners' houses would be saved.

4. The Petitioners contend that the fourth Respondent in its previous Affidavit dated 08.03.2013 had affirmed that it had conveyed its objection to

the de-notification of the Petitioners' properties without considering the representation and alternative plan submitted. It is argued that the Right to

Life includes the Right to Residence, and the respondents were duty-bound to consider reasonably the alternative plans. Without indicating how

such alternative plan is unfeasible or impracticable, the respondents cannot whimsically state that they stand rejected. Counsel argued that the

hallmark of every administrative decision is the need to be informed and also indicate, in the briefest possible manner, the justification for it. Here,

the respondents have repeatedly rejected the petitioners' requests, and no reasons are forthcoming.

5. While entertaining the present writ petition, this Court had observed, on 01.02.2013, as follows:

Learned counsel for the petitioners contends that a decision to reject the application u/s 48 of the Land Acquisition Act, 1894 has been taken

without considering the very basis of the representation made by the petitioner, i.e., that the Grade Separator could be made in such a manner

where it stops at a particular point which would not block the flow of traffic and yet save the residences of number of residents. Learned counsel

for respondents 2 & 3 fairly concedes that it is an aspect which the technical department of the MCD would have to examine and the competent

authority has only gone by the ultimate opinion of the MCD.

As to whether the MCD has applied its mind to this aspect or not would be available from the record of the MCD.

Let notice issue to the respondents to show cause as to why rule nisi be not issued returnable on 13-3-2013.

Learned counsels for the respondents accept notice.

We call upon respondent No. 4 LMCD to file a short affidavit setting out the consideration of the representation of the petitioners and the

alternative proposal annexing to it the opinion given by the technical department with the relevant material which resulted in the recommendation to

reject the representation of the petitioners. We would expect this to be available with the Project Division of the SP Zone.

The affidavit be filed within two (2) weeks, as prayed for by learned counsel for respondent No. 4. Response to the same, if any, be filed within

two (2) weeks thereafter.

It is directed that till the next date of hearing there will be status quo as to nature, title and possession of the land.

A senior technical officer dealing with the matter in issue should remain present in Court to assist the Court.

Dasti to learned counsels for the parties under the signatures of the Court Master.

6. In the first reply to the writ petition, the fourth respondent stated, inter alia, that:

10. In this regard it is to state that Planning and designing of grade separator is a specialized job and carried out by the competent traffic

consultants registered with M.O.R.T. & H. (Ministry of Road Transport and Highways) only. The alignment of Grade Separator at Rani Jhansi

Road so prepared has been approved by an expert body UTTIPEC (Unified Traffic Transportation Infrastructure Planning & Engineering Centre)

under the chairmanship of Hon"ble LG of Delhi considering all aspects concerning road geometries, road safety, traffic norms, right of way

(R.O.W.) as per master plan, traffic counts and various other data based on traffic studies. Now, MCD cannot consider any change or

modification in the alignment being the executing agency only.

7. The petition was adjourned on three dates of hearing; the writ petitioners' contention was that the respondents had not addressed the real

issues, and that there was in fact no meaningful consideration of their proposal, which could have led to de-notification. In the interregnum, the

fourth respondent filed an additional affidavit, on 15.05.2013. The relevant part of the said affidavit reads as follows:

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That in terms of the liberty granted by this Hon"ble Court the petitioners alongwith others filed their representation u/s. 48 of LA Act and a

modified part plan was submitted by them. The plan suggested by the petitioners is not acceptable as the suggestion given by them is not feasible.

It is submitted that the entire project is 1619 metres long and composite project though being executed in parts due to non-availability of land. The

alignment of the grade separator has already been freezed at site. The work has already been commenced at both ends and 21 piers have already

been casted. Photographs to this effect have already been placed on record. It will not be possible to realign the alignment for the interest of some

affected residents. Even a slight change of the plan at the behest of some residence will affect the efficacy of the project adversely.

As submitted above heavy traffic from Dhaula Kuan is expected to reach the Grade Separator from Rani Jhansi Road besides the traffic from East

Park Road. The traffic from both the directions would merge at this commencement of the grade separator. In order to avoid a total chaos at this

point a traffic island and a retaining wall separating the influx of traffic at this point is needed. The traffic coming from East Park Road is required to

character the surface level road and can take the ramp after 400 m to approach the elevated road. Whereas the traffic coming from Rani Jhansi Road

would take flyover on straight line. In order to segregate this traffic flow the retaining wall of the flyover is required to be constructed beyond

intersection. It is submitted if this wall, as suggested by the petitioners, is not constructed the traffic coming from both the directions would make

the effort to take the fly over from the intersection itself and not only this, the shifting of traffic island would also create huge bottle neck at the entry

of the surface road and this will frustrate the very purpose of construction of this grade separator. It is submitted that the grade separator has been

planned while taking into considerations the requirements of the public at large as well as interests of the affected persons and minimum dislocation

is being done for this flyover.

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8. The respondents heavily rely on the above affidavits, and urge, through their counsel that this Court should desist from interfering in exercise of

its judicial review powers. It is argued that having given up the challenge to the acquisition, the Petitioners cannot be permitted, through the back

door, as it were, to agitate the legality of the measure. It is submitted that the Court's scrutiny about the exercise of power u/s 48 is extremely

circumscribed. Absent any compelling reason such as manifest arbitrariness or discrimination, or a glaring omission of the administrative agency, the

Court should not substitute its opinion for that of the planning or requisitioning agency. The respondents relied on the judgment of a Division Bench

of this Court, reported as Summit Inport Services Ltd. and Another Vs. Delhi Metro Rail Corporation and Others, .

9. It can be seen from the above discussion that the suit lands were sought to be acquired by the respondents for the purpose of constructing a

grade separator at Rani Jhansi Road. This is towards de-congesting traffic in Delhi. The petitioners had sought to challenge the notification.

However, they withdrew their earlier writ petition and sought liberty to approach the respondents with a request for de-notification u/s 48. The

respondents did not issue any favourable orders. The petitioners are, therefore, seeking appropriate directions for release of their lands, contending

that the proposals for saving their lands through modification of the plans for construction of the Grade separator have not even been considered.

10. This Court is cognizant of the extremely limited nature of its jurisdiction under Article 226 of the Constitution of India, while dealing with

matters u/s 48 of the Act. In this context, the Courts are alive to the fact that acquisitions are based on a notified public purpose. There has to be

circumspection while entertaining any proceeding which seeks a direction for de-notification. The nature of jurisdiction in such cases is limited,

because the nature of the public purpose has been tested, and upheld by the court. Unless the landowner can demonstrate a glaring omission,

prove mala fides or manifest arbitrariness or discrimination in the approach of the decision maker, the power of judicial review cannot be lightly

resorted to. Thus, mere submission of alternative plans, which can possibly save the landowner's properties cannot be the basis of relief, because

the Court would then be exercising primary decision making powers of the administrative or executive agency. This aspect was emphasized by the

earlier Division Bench, in *Summit Import Services Ltd.* (supra), in the following terms:

18. That leaves us with the only other question whether the alternative plan which the petitioners had suggested is technically feasible and ought to

be implemented by them. As noticed earlier, the respondents DMRC has disputed the technical feasibility of the alternative plan. Since however

the parties were not averse to examining the alternative suggested by petitioners more thoroughly, they were given an opportunity to do so. Based

on the exercise so undertaken by the parties, they have submitted their versions on affidavits. The DMRC has in the affidavit filed on its behalf

asserted that the alternative proposal given by the petitioners is not technically feasible and would involve acquisition of private land from thickly

populated areas located at the end of the Depot towards Ghitorni. This court sitting in its extraordinary writ jurisdiction is ill-equipped to sit in

judgment over the view taken by the experts in whose opinion the proposed alternative plan for the Depot is not technically feasible. The choice of

the location of the Depot or any other project for that matter is ordinarily within the administrative discretion of the respondents. A writ court

would not in exercise of its powers of judicial review sit in judgment over the said choice or embark upon an exercise to determine the locational

advantages and disadvantages of the project at one or the other place. Interference in the matter of such decisions may be called for only in cases

of patent perversity or irrationality. The court may be induced to examine the validity of any such decision only in case it is shown to be so

outrageously illogical that no person of ordinary prudence would countenance the same. The present is not in our opinion one such case where the

decision to locate the proposed Depot at the site selected by the respondents can be said to be irrational or perverse. Simply because another site

may be equally good or even better, is no reason for this court to interfere with the decision already taken by the authorities. The third limb

advanced on behalf of the petitioners must also in that view of the matter fail and is hereby rejected.

In the present case, Para 9 of the additional affidavit filed by the respondents on 15.05.2013 explains that even a slightest change in the plan will

affect the efficacy of the Project. In order to avoid the traffic chaos a retaining wall separating the influx of the traffic is needed. The representations

submitted by the Petitioners were considered and were rejected due to the larger public interest and decongestion of the road. Furthermore, it

cannot be said that the rejection of such representation or alternative plan is itself indicative of mala fides or non-application of mind. Whilst there is

no gainsaying that a landowner would indeed suffer trauma and hardship and in all likelihood will end being the loser, due to the nature of

compensation determination, equally, public projects and the undeniable benefits that they are likely to confer to the general public cannot be

undermined by the court by donning the role of a planner or administrator, which it is not equipped to discharge. 13. In the light of the above

discussion, it is held that the present writ petition lacks merit. The status quo order subsisting till date is hereby vacated. The writ petition fails and is

dismissed, without any order on costs.