

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6811 OF 2010
PETITION FOR SPECIAL LEAVE TO APPEAL) NO. 24532 OF 2009

RAJINDER KISHAN GUPTA &ANR. .. Appellant(s)

Versus

UNION OF INDIA & ORS. .. Respondent(s)

DATE : 20/08/2010 This matter was called on for
pronouncement of judgment today.

For Appellant(s) Mr.Arvind Kumar Gupta,Adv.

For Respondent(s) Mr.Tarun Johri,Adv.
Ms.Rachana Srivastava,Adv.
Mr. A.Venayagam Balan,Adv.
Ms. Sushma Suri,Adv.

Hon'ble Mr. Justice P. Sathasivam pronounced the
judgment of the Bench comprising His Lordship and
Hon'ble Mr. Justice B.S. Chauhan.

Leave granted.

The civil appeal is dismissed with no order as to
costs in terms of the signed reportable judgment.

[Madhu Bala]
Sr.PA

[Savita Sainani]
Court Master

[Signed reportable judgment is placed on the file]

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2010
(Arising out of S.L.P. (C) No. 24532 of 2009)

Rajinder Kishan Gupta & Anr. Appellant (s)

Versus

Union of India & Ors. Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the judgment and order dated 08.09.2009 passed by the High Court of Delhi at New Delhi in W.P. (C) No. 9647 of 2009 whereby the High Court dismissed the petition filed by the appellants herein.

3) Brief facts:

A notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 24.10.1961 to acquire vast chunk of agricultural land for the planned development of Delhi including the lands of the appellants herein situated in Village Mehrauli. A declaration under Section 6 of the

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Act in respect of the said land was issued on 04.01.1969. Not
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were issued by the Collector under Section 9 of the Act
on

26.04.1983, after a lapse of almost 22 years from the date
of

Notification published under Section 4 (1) of the Act. Thereafte
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objections and claims were filed by the appellants on 23.05.1983.

Challenging the validity of the acquisition proceedings,
the

appellants filed W.P. (C) No. 1129 of 1983 and other members of the
family also filed W.P.(C) No. 1131 of 1983 before the High Court.

The High Court, vide its order dated 25.05.1983, issued notice and
directed to maintain status quo as on that date. However
on

15.04.2004, the High Court dismissed the writ petitions. Aga
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the dismissal of the writ petition, the appellants filed Review
Petition No. 253 of 2004 which was also dismissed by the High Court.

Aggrieved by the said order, on 19.11.2004, the appellants filed

S.L.P. before this Court. On 24.01.2005, this Court, while issuing

notice, granted status quo in respect of possession of the land in question. Thereafter, the abovesaid S.L.P. were numbered as Civil Appeal Nos. 2418-2419 of 2008. On 07.10.2008, Delhi Metro Rail Corporation Limited (hereinafter referred to as "DMRC") filed applications in C.A. Nos. 2418-2419 of 2008 for impleadment and vacation/modification of order of status quo on the ground that land admeasuring 26,187 sq. mtr. was required urgently for the construction of Chattarpur Metro Station on Qutub Minar-Gurgaon Corridor of Delhi MRTS. On 17.11.2008, this Court allowed

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application for impleadment and clarified that the order of status quo passed by it will not come in the way of DMRC proceeding with fresh acquisition in accordance with law. Thereafter, on 19.01.2009, the Land Acquisition Collector along with Delhi Administration preferred I.A. No. 5 of 2009 and on 29.1.2009, DMRC also filed I.A.No.6 of 2009 in C.A. Nos. 2418-2419 of 2008 for modification of this Court's order dated 17.11.2008. This Court, on 23.02.2009, disposed of the said applications for modification reiterating its earlier order dated 17.11.2008. On 06.06.2009, the Government of NCT of Delhi and Land & Building Department, Govt. of Delhi published a notification dated 02.06.2009 under Section 48 of the Act withdrawing its earlier notification for acquisition of land in question and a fresh notification dated 04.06.2009 was published on 07.06.2009 exercising powers under Section 4 read with Section 17(1)(4) of the Act seeking to acquire land of the appellants. Challenging the said notification, the appellants filed W.P. (C) No. 9647 of 2009 before the High Court. The High Court by the impugned order dated 08.09.2009 dismissed the petition. Aggrieved by the said order, the appellants have preferred this appeal by way of special leave petition before this Court.

4) Heard Mr. P.S. Patwalia, learned senior counsel for the

appellants/land owners, Mr. Parag P. Tripathi, Additional Solicitor General for the Union of India and Mr. Nikhil Goel for DDA.

5) Main Contentions:

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i) When the acquisition of the land is for DMRC and when there is a specific Act, namely, the Metro Railways (Construction of Works) Act, 1978 whether the authorities are justified in invoking the urgency provision in the Land Acquisition Act by dispensing enquiry under Section 5A of the said Act.

ii) When Government land adjoining to the land in question is available, whether acquisition of a private land belonging to the appellants is justifiable.

6) It is true that initially a vast extent of agricultural lands in Delhi were sought to be acquired under the provisions of the Land Acquisition Act (Central Act) for the planned development of Delhi.

The said acquisition was challenged before the High Court of Delhi and after their dismissal, the appellants and others preferred Civil Appeal Nos. 2418-2419 of 2008 before this Court and vide order dated 24.01.2005, this Court directed maintenance of status quo in respect of possession of land in question.

Subsequently, at the instance of the DMRC, the limited status quo order was clarified to the effect that DMRC is free to proceed with the fresh acquisition in accordance with law. Pursuant to the same, fresh notification dated 04.06.2009 was published on 07.06.2009 exercising powers under Section 4 read with Section 17(1)(4) of the Act seeking to acquire the land of the appellants. The said action and the entire acquisition proceeding was challenged before the High Court which ended in dismissal. As raised before the High Court, it was

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contended before us that in view of the Metro Railways (Construction of Works) Act, 1978, the respondents are not permitted to invoke urgency provision under the Land Acquisition Act which deprived the appellants from participating in the enquiry under Section 5A.

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Metro Railways Act (No. 33 of 1978) was enacted by the Parliament to provide for the construction of works relating to metro railways in the metropolitan cities. Chapter III of the said Act deals with

'Acquisition'. It is not in dispute that similar provisions as that

of Sections 4, 5A, 6, 9 and 11 of the Land Acquisition Act have been incorporated in the Metro Railways Act. Section 17 makes it clear

that when acquisition of land is initiated under Metro Railways Act,

the provisions of Land Acquisition Act, 1894 shall not apply.

Section 45 also makes it clear that any proceeding initiated under

the Land Acquisition Act for the purpose of any metro railway project pending immediately before the commencement of Metro

Railways Act is to be continued and be disposed of under that Act

(Land Acquisition Act).

The above provisions make it clear that if

any land is required/needed for the construction works relating to

metro railways in the metropolitan cities, the authorities are free

to apply the Metro Railways Act and acquire any land.

But at the

same time, there is no specific prohibition in the Metro Railways

Act from applying the Land Acquisition Act to acquire any land for a

public purpose, more particularly, for the construction works

relating to metro railways in the metropolitan cities.

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7) The respondents have clarified that in view of the status quo

order passed by this Court in respect of the first acquisition

proceedings and the project has to be executed urgently in view of

ensuing Commonwealth Games, they sought for clarification from this

Court and this Court clarified that the respondents are free to

initiate fresh proceeding in order to execute the project.

In

such

circumstance, the Government cancelled the earlier notification and

issued a fresh notification under the Land Acquisition Act.

Since

Section 17 of the Act enables the authorities to dispense with

enquiry under Section 5A and to complete the acquisition proceedings

without any delay, urgency clause under Section 17 of the

Land

Acquisition Act was invoked.

There is no serious challenge as to

the invocation of urgency clause under the Land Acquisition Act.

It

is also not in dispute that there is no provision for acquisition of

land on urgent basis in the Metro Railways Act, 1978.

8) Similar question was considered by this Court in S.S. Darshan

vs. State of Karnataka and Others, (1996) 7 SCC 302. Ag
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dismissal of two writ petitions by a common order dated 14.07.1995,

passed by a Division Bench of the High Court of Karnataka, the

landowners have filed appeal before this Court.

The challenge made

in the writ petitions before the High Court was to the validity of

the notification dated 16.07.1994, issued under Section 4(1) read

with Section 17 of the Land Acquisition Act, 1894 and
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notification dated 22.08.1994 issued under Section 6 thereof by the

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State of Karnataka for acquisition of 11 acres 36 gunthas of land in

Pattandur Agrahara Village, Whitefield, Bangalore Taluk, Bangalore,

belonging to the appellants therein. It was contended that these

notifications were invalid apart from the fact that the user of the

acquired land by them is beneficial to the society.

Several other

contentions on which the validity of acquisition was challenged have

been rejected by the High Court.

It is also seen from the above

case that a large tract of land contiguous to the area acquired by

the impugned notifications had already been acquired by the

Karnataka Industrial Areas Development Board under the Karnataka

Industrial Areas Development Act, 1966 which also provides for

acquisition of land for the Board. The said area was found to be

inadequate for the project on account of which the contiguous

disputed area had been acquired under the Land Acquisition Act,

1894. It was contended that the acquisition of the present area

should also be made only under the Karnataka Act of 1966 instead of

the Land Acquisition Act since the Karnataka Act gives greater

opportunity to the owners of the land to resist the acquisition.

It

was also contended that the acquisition under the Central Act, which is a more stringent provision, is violative of Article 14 since it deprives the appellants of the right of the more liberal provisions of the Karnataka Act, 1966.

This Court rejected all the above

contentions and held:

"10. In our opinion, there is no merit in this contention as well. In view of the urgent need for the

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acquisition of this land, which cannot be met under the Karnataka Act, resort to the provisions of the Central Act which are applicable cannot be faulted...."

It is clear that in spite of the provisions of Karnataka Industrial Areas Development Act, 1966, this Court upheld the action of the Karnataka Government in invoking Land Acquisition Act (Central Act) for acquiring lands for a public purpose of setting up the Information Technology Park and to meet the need of additional land contiguous to the area acquired earlier. This decision is squarely applicable to the case on hand. Even though special enactment, namely, Metro Railways Act, 1978 is available, in view of urgency and in the absence of similar urgency clause in the Metro Railways Act as that of Land Acquisition Act, the Lt. Governor, Delhi issued a fresh notification for acquisition under the Land Acquisition Act. Accordingly, we reject the first contention.

9) With the assistance of maps that were produced before the High Court, Mr. Patwalia, learned senior counsel for the appellants submitted that when the lands adjoining to the railway track belongs to DDA, the Authorities are not justified in acquiring the private land of the appellants. Before considering this issue, it is our duty to point out that nowhere in the affidavit the appellants have specified the details regarding their holdings such as khasra No., extent, ownership details with reference to revenue records. The appellants have not disclosed anywhere in the petition as to how they are concerned with the suit land. Very vague pleadings have

been made that the suit land belonged to their family.

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As per the

revenue record, total area of land owned by their so called family is 12-1-0 bighas only while land in respect of which the acquisition is under challenge is 28-1-0 bighas. Land acquisition proceedings can be challenged only by the "person-interested" and none else. On this ground also, their claim is liable to be rejected.

10) Coming to the land owned by DDA, report filed by the Department clearly shows the Conservator of Forests who inspected the adjoining land of DDA along with the Director (LMI) of DDA and other officials in the presence of appellants, that the land in question is comprised in Reserved Park as per MPD 2021 and has also been notified as Reserved Forests vide Notification No. F.10(42)-I/PA/DCF/93/2012-17(1) dated 24.05.1994. Further, the Conservator of Forests has specifically stated that the said DDA land is a forest land. In addition to the same, DDA has filed an affidavit which reiterated the above report and also asserted that on inspection it was verified that the land of DDA falls in reserved park and reserved forests, South Central Ridge. The High Court also perused the said notification dated 24.05.1994 and found that the Lt. Governor of Delhi declared those lands mentioned in Schedule A of the notification as Reserved Forests. The notification also shows that the area in South Central Ridge comprises approximately 626 hectares of forest land and waste lands which have been duly declared as reserved forests. Though relying on reply sent to the

appellants on their application under RTI Act that these land
s cannot be treated as reserved forests and the counsel wanted to rely upon certain communications from the Department, in view of proper notification declaring the area in question as reserved forests, we are not inclined to entertain such argument at this stage. A
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rightly observed by the High Court, the joint survey carried out by the Conservator of Forests and DDA, in the presence of the appellants, is a sufficient proof that the land in question belongs to DDA being the land notified under the notification date

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24.05.1994. In a matter of this nature, Courts have to accept the notification duly issued by the authority concerned as sufficient proof. In view of the same, though Mr. Patwalia has heavily relied on certain communications about the nature of land in question and in view of authoritative notification by the department concerned, we are of the opinion that it would not be possible to rely on those details at this stage. Accordingly, we reject the second contention also.

11) Though a feeble request was made that the appellants were ready to forego as much land as was required for Metro tracts and Chhattarpur Metro Station provided the electric sub-station is shifted to some other land and that part of the appellants land which was sought to be used for electric sub-station is allowed to be retained by them, in view of the factual findings about the nature and character of the land owned by the DDA being a forest

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land as per the notification, we have no other option except to reject the same.

12) In the light of the above discussion, we are satisfied that the existence of public purpose and urgency in executing the project before the Common Wealth Games, the adjoining land belonging to DDA being forest land as per the notification and also of the fact that the respondents have fully complied with the mandatory requirements including deposit of 80 per cent of the compensation amount, we are in entire agreement with the stand taken by the respondents as well as the conclusion of the High Court.

13) Consequently, the appeal fails and the same is dismissed with no order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(DR. B.S. CHAUHAN)

NEW DELHI;
AUGUST 20, 2010.