Ajay Krishan Shinghal Etc. Etc vs Union Of India & Ors on 6 August, 1996

Equivalent citations: JT 1996 (7), 301 1996 SCALE (6)29, AIR 1996 SUPREME COURT 2677, 1996 (10) SCC 721, 1996 AIR SCW 3343, (1997) 1 CTC 156 (SC), 1996 (2) UJ (SC) 636, (1996) 7 JT 301 (SC), 1996 (7) JT 301, 1996 UJ(SC) 2 636, (1996) 1 ANDHLD 477, (1996) 3 CURCC 383, (1996) LACC 563

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
AJAY KRISHAN SHINGHAL ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 06/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (7) 301 1996 SCALE (6)29

ACT:

HEADNOTE:

JUDGMENT:

With C.A.Nos. 2299, 2300-01/81.

O R D E R These appeals by special leave arise from the judgment of the Division Bench of the Delhi High Court dated October 10, 1978 made in L.P.A. No.115/75 and batch. The Division Bench consisting of Hon'ble Chief Justice T.V.R. Tatachari and Hon'ble Justice S. Ranganathan, as they

then were, in elaborate judgment rendered by the later running into 129 pages, considered threadbare two questions of law raised for considerations namely, the validity of the notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act 1 of 1894 (for short, the `Act') acquiring an extent of 3470 acres in Naraina village for purpose, viz., "Planned Development of Delhi" and secondly, whether the substance of the notification under Section 4(1) was published in the locality as envisaged under sub-section (1) of Section 4 of the Act. The learned Judges have upheld the judgment of the learned Single Judge and held that the planned development of Delhi is a public purpose and that, therefore, notification was not beset with any vagueness in the likely need of the land for the said purpose. It also held that the substance of the notification was published in the locality, Naraina. The Division Bench considered elaborately various discrepancies pointed out in compliance of the publication of the substance of the notification as noted in the judgment. Thereafter, it was held that they were satisfied that the substance of the notification was in fact effected as per law.

The material facts are that notification under Section 4(1) of the Act was published in the Gazette on October 24, 1961. The substance of the notification was published on November 21, 1961. The declaration under Section 6 was published on December 7, 1966 after enquiry under Section 5A. The first question, therefore, is: whether the land was needed or was likely to be needed for public purpose as envisaged under Section 4(1) of the Act?

The contention of Shri Lekhi, learned senior counsel for the appellants, is that the lands situated within the Delhi Cantonment are governed by the provisions of the Cantonment Act, 1924. The land in its jurisdiction is required to be developed as per the provisions contained in that Act and the rules made thereunder. The interim General Plan drawn up for development of Delhi in 1957 and revised laster Plan in 1962 under Delhi Development Act, 1958 (for short the `Development Act') effective from September 1, 1962 and the further revised plan 1992 which would be elongated till 2001 do not envisage any development in respect of the acquired land. The Master Plan do indicate that the land use is "undetermined" which would indicate that the land was not itemised to the effect that it was needed for any kind of specified public purpose as required under the Master Plan 85 per the provisions of the Development Act which requires various steps to be taken thereunder, namely, Master Plan, Regional Plan, Zonal Plan and Zonal Development Plan. In all the steps, there should be specification of the land required for specified public purpose. An elaborate study by a group of experts undertook to demarcate various lands situated at different places for various purposes mentioned in the plans appended thereunder. The land in question was not specifically demarcated for any of the purposes. It would, therefore, be clear that the land is not needed or is likely to be needed for any public purpose. Accordingly, the acquisition is a colourable exercise of power to deprive the owners of the land. He further contended that, as a fact, there was no publication of the substance of the notification under Section 4(1) of the Act, in the locality. Publication of the notification under Section 4(1) of the Act in the State Gazette and of the substance thereof in the locality are mandatory requirements under Section 4 (1) of the Act. Hon-compliance thereof renders the entire acquisition void. Three versions on publication of the substance emerge from the record, namely, one, as given and translated by the counsel for the appellants in the High Court; second, as given by the court translator as was got done by the High Court; and the third, the affidavit filed by Daryao Singh, who was a peon attached to the office of the Land Acquisition Officer. The three

versions are diametrically inconsistent. Consequently, there is no acceptable version found from the record. In those circumstances unless it is proved to the hilt that substance of the notification was in fact published in the locality the acquisition cannot be declared to be valid in law. The benefit of doubt should go to the owners in upholding the acquisition as it is an expropriatory action. The High Court, therefore, had not considered this aspect of the matter in the proper perspective. Consequently, when the special leave petitions came to be filed in this Court, this Court had called upon the respondents to produce the original record. Since the records had not been produced, adverse inference was drawn and unqualified leave was granted though notice was limited to and point. These circumstances would clearly indicate that there is no compliance of the requirement of publication of the substance of Section 4(1) notification in the locality. Resultantly, the presumption available under Section 114 (e) of the Evidence Act stands displaced. The High Court therefore, was clearly in error in holding that the substance of the notification under Section 4(1) was published in the locality.

Shri Nambiar, learned senior counsel for the Union of India, contended that the High Court extensively considered the entire record and returned a finding that the notification under Section 4(1) was not only published in the Gazette but also its substance was got published in the locality as evidenced from the record. The High Court after perusal and elaborate consideration recorded the finding that there are no suspicious features in the publication of the substance of the notification. Therefore, the presumption under Section 114(e) of the Evidence Act would be applicable to the facts in this case.

Shri Ravinder Sethi, learned senior counsel appearing for the Delhi Development Authority, has contended that the Master Plan and the interim General Plan do indicate that the lands are needed for public purpose. The entire Naraina area was required for the planned development. Except the lands in dispute of an extent of 14 bighas, all the lands were acquired and the Naraina residential scheme was implemented and around three lakhs people are living there. Though the land in question is partly situated in the Cantonment area, the Development Act stands attracted to the area which was not actually needed for the purpose of Cantonment. The notings regarding the interim General Plan at various places do indicate that the Delhi Development Authority intended to develop the area of the lands situated within the Cantonment. Under those circumstances, the public purpose has been specifically envisaged under the notification. This Court consistently has taken a view that planned residential development is a public purpose. Elaboration thereof after the acquisition would be undertaken at a later point of time. Therefore, the public purpose as required under Section 4(1) of the Act has been satisfied. He, therefore, contends that the Division Bench has correctly interpreted the provisions of the Master plan, Development Act and Cantonment Act in arriving at the above conclusion.

In view of the diverse contentions, the first question that arises for consideration is: whether the lend in question is needed for a public purpose? If the finding is held against the State, it would not be necessary to go into the second question. "Public purpose" has been defined in Section 3(f) of the Act with an inclusive purpose of various developments and extension, planned development and improvement of the village etc. The controversy is no longer res integra. In Aflatoon v. Lt. Governor [(1975) 1 SCR 802] a Constitution Bench of this Court, (Mathew, J. speaking for the Court) after an

elaborate consideration, held that the acquisition for planned development of Delhi is a public purpose. In the case of an acquisition of a large extent of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular purpose for which every item of land comprised in the area is needed. Under those circumstances, the acquisition of planned development was held to be for public purpose. It is not necessary to burden the judgment with the development of the law in this behalf. Relevant decisions in this behalf are Smt. Ratni Devi & Anr. v. Chief Commissioner, Delhi & Ors. [(1975) 4 SCC 467]; Pt. Lila Ram v. The Union of India & Ors. [(1975) 2 SCC 547]; Om Prakash v. Union of India [1988 (1) SCC 356]; Ram Chand & Ors. v. Union Of India & Ors. [(1994) 1 SCC 44]; State of Tamil Nadu & Ors. v. L. Krishanan & Ors. [(1996) 1 SCC 250] and Jai Narain & Ors. Krishanan & Ors. [(1996) 1 SCC 250] and Jai Narain & Ors. v. Union of India & Ors. [(1996) 1 SCC 9]. Suffice it to state that when an authority constituted under the Act has initiated the action for acquisition of a large area of land comprising several plots for planned development, the specification of a particular land needed for a specified purpose intended to be undertaken for the development ultimately to be taken up) is not a condition precedent to initiate the action for acquisition and publication of the notification under Section 4(1) of the Act in the Gazette does not vitiated on account thereof. The reasons are not far to seek. In drawing details, the scheme required detailed examination consistent with plans and ecological balance.

Shri Lekhi sought to place reliance on the judgments of this Court in Smt. Somavanti State of Punjab [(1963) 2 SCR 774 and Khubchand v. State of Rajasthan [(1967) 1 SCR 973. Somvanti's case relates to acquisition for a company and Munshi Singh's case was considered and distinguished in Tamil Nadu case. Khubchand's case relates to compliance of Section 4(1). So it is not necessary to deal with these cases in detail. Suffice it to state that each case has to be considered on the facts and circumstances of each case. The planned Development of Delhi was held to be a public purpose in Aflatoon's case (supra) followed by several judgments including the latest judgment of this Court in jai Narain's case. The question then is: whether the interim General Plan 1956, the Master Plan under the Development Act brought on statute in 1962 w.e.f. 1.9.1962 and further amended plan in 1990 are required to necessarily specify the purpose for which land is needed vis-a-vis the provisions of the Cantonment Act, 1924. It is true that when acquisition of the land was within the limits specified under Section 4 and declaration under Section 5 of the Cantonment Act 1924 was published, the Cantonment Board and the authorities constituted thereunder get the power and jurisdiction to deal with the lands within its jurisdiction for the development. None of their representatives finds berth in Planning Council under Development Act. Equally, under the Development Act the Delhi Development Authority and the various authorities constituted thereunder are required to prepare the master plan, the zonal plan and the area developmental plan as required for planned development of the land. But one fact that needs to be emphasized and always kept in mind is that all these are developmental activities to be undertaken subsequent to the acquisition after the land is available. The harping and insistence on compliance of details by Sri Lekhi from several provisions in various Acts do not need elaborate consideration. As a fact High Court had done that exercise and in our view in correct perspective obviating. They need for reiteration. Once a public purpose has been specified by the Governor in the notification and on specification obviately on presumptive satisfaction thereof the Governor issued the notification as

required under Section 4(1); the absence of the specification and further elaboration of the development do not have the effect of rendering the satisfaction reached by the Governor is illegal and the notification under Section 4(1) published by the Governor in exercise of the power of eminent domain is not rendered void. Therefore, it is not necessary to elaborately deal in detail with the manner in which the development has to be undertaken when the land is situated within the cantonment area. In fact, Section 12(3)(ii) of the Development Act takes care of the development in cantonment area when there would be a conflict between the authorities under the Development Act and the need for prior approval in that behalf of the cantonment, which is a local authority, for developing land under the Development Act. As a fact, except the land in question, the land in Naraina was developed as per plan. Under those circumstances, since the High Court has elaborately dealt with this aspect of the matter in the judgment running into 129 pages, we feel it unnecessary to burden this judgment with further discussion in that behalf. Accordingly, we hold that the notification under Section 4(1) is not vitiated on account of the fact that planned Development was not specified with particularisation of the land in question needed for the public purpose.

The next question is: whether the mandatory requirements of Section 4(1) have been complied with? It is not in dispute that the notification under Section 4(1) was published in the Gazette. Therefore, the first limb of the statutory requirement stands satisfied. The serious dispute is as regards the publication of the substance of the notification in the locality. In this behalf, the High Court also has spent considerable time and dealt with in about 20 pages in considering this question. In paragraph 57 of the judgment, the learned Judges have stated that the notification under Section 4(1) as regards the endorsement made on the back of the publication of the substance was put in issue and it was noted. The translated copy given by the learned counsel for appellant was dealt with in paragraph 58 and thereafter in paragraph 59 the contentions raised by the learned counsel were dealt with. When there was a dispute, as regards the contents of the respondent, the learned Judges felt it expedient to have it translated by the Court translator of the Enforcement in Urdu and extracted as under:

> "Received one copy. I shall affix the same to some conspicuous place. Sd/- Illegible 21.11."
>
> "The proclamation shall be got done through the Chowkidar.
>
> Sd/- Illegible 21.11."
>
> "Sir, It is submitted that one copy of the notice has been affixed outside the court of the Land Acquisition Collector; one copy of the notice has been affirmed out-
>
> side the Court of Deputy Commissioner, one copy of the notice has been affixed outside the Tehsil office at Kashmere Gate, and one copy has been got affixed at the spot in village Naraina through the Lumberdar.
>
> The report is submitted.

Sd/-Illegible 21.11.61.

It would be seen that the copy of the notification was received by the peon, Daryao Singh and he made an endorsement that he received the copy and affixed the same on some conspicuous place. Thereafter, he made an endorsement which reads that "A copy of the notice was affixed outside the court of the Land Acquisition Collector; one copy of the notice was affixed outside the court of the Deputy Commissioner; one copy of the notice was affixed outside the Tehsil office at Kashmere Gate and one copy of the notice has been got affixed on the spot through Lumbardar" as was read out by our Court Officer whose services we requisitioned. The only difference in the translated copy of the Court translator of the Delhi High Court and that was explained to us by or Court Officer is that the name of village Naraina was not specifically mentioned at the bottom. It is sought to be explained by the learned counsel for the Union of India that on the top of the front page the village Naraina was found written. Our Court Officer also has mentioned that village Nariana was found written on the top. When these endorsements are read together it would be clear that the substance of the notification was got affixed in the village Naraina since he had already made an endorsement that he received the copy and he would get the substance of the notification affixed in some conspicuous place as endorsed on November 21, 1961.

The serious contention raised here and also in the High Court was that Daryao Singh, the peon of the Land Acquisition Collector's office made inconsistent statements in his affidavit filed in the year 1978 and the endorsement contained thereunder with reference to one endorsement dated November 11, 1961 In this behalf, the High Court also had dealt with in extenso and it has concluded in paragraph 62 thus:

"So there is no reason to suspect any malafides in this interpolation which adds nothing to the entry in the context of the statutory requirements. The second entry similarly records the Lumbardar undertaking to proclaim by beat of drum."

It would thus be seen that the High Court having carefully perused the record and extensively considered the same had recorded, as a finding of fact thus.

"We are therefore of opinion that we should accept the record as showing that a copy of the notice was affixed at a conspicuous place in the locality in which the land proposed to be acquired were situated."

After perusing the record and satisfying ourselves and also considering various cogent and weighty reasons given by the learned Judges, we are of the opinion that the substance of the notification under Section 4(1) was duty published in the locality. It is not the law and could not and would not be the law that publication of the substance of Section 4(1) notification in the locality should be, established beyond shadow of doubt and benefit should be extended to the owner or interested person of the land. Obvious thereto, person of the land. Obvious thereto, presumption under Section

114(e) of Evidence Act has been raised that official acts have been properly done unless proved otherwise. We are satisfied that it was properly done. It is futile to reiterate the settled legal position that the publication of the notification under Section 4(1) in the Gazette and substance thereof in the locality are mandatory requirements and the omission thereof renders the notification void. In Khub Chand's case, this Court had held the same view. But as recorded earlier, since substance of the notification was published in the locality, the second limb of the requirement also stands complied with. Considered form this perspective, we are of the considered view that the High Court has not committed any error of law.

Another contention raised by Shri Ravinder Sethi is that the claimant in the first appeal had purchased the property after the declaration under Section 6 was published and that therefore he does not get any right to challenge the validity of the notification published under Section 4(1). Since his title to the property is a void title, at best he has only right to claim compensation in respect of the acquired land claiming interest in the land which his predecessor-in-title had. In support thereof, he placed reliance on the judgments of this Court in State of U.P. vs. Smt. Pista Devi & Ors. [(1986) 4 SCC 251]: Gian Chand v. Gopala & Ors. [(1995) 2 SCC 528]; Mahavir & Anr. v. Rural Institute, Amravati & Anr. [(1995) 5 SCC 335] and Laxmi Engineering Works v. P.S.G. Industiral Institute [(1995) 3 SCC 583]. We need not deal at length with this issue as is the settled legal position. But since other appellants are owners of the lands who are challenging the validity of the notification and since we have upheld the validity of the notification though others have challenged its validity. It is not necessary to dismiss the appeal of Bahadur Singh on this ground alone as we are upholding the notification under Section 4(1) in the appeals of other appellants.

The appeals are accordingly dismissed, but in the circumstance, without costs.