

Union Of India & Ors vs Shakuntala Gupta (Dead) By Lrs on 27 August, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3079, 2002 (7) SCC 98, 2002 AIR SCW 3543, 2002 (3) BLJR 1989, (2002) 4 ALLMR 541 (SC), (2002) 6 JT 371 (SC), (2003) 1 ALLINDCAS 16 (SC), 2002 (8) SRJ 417, 2002 (5) SLT 60, 2002 (6) SCALE 131, 2002 (4) LRI 142, 2003 (1) ALLINDCAS 16, 2002 (4) ALL MR 541, 2002 BLJR 3 1989, (2002) 4 ICC 424, (2002) 4 ALL WC 3225, (2002) 3 PUN LR 836, (2002) 2 LACC 371, (2002) 49 ALL LR 206, (2002) 64 DRJ 676, (2002) 4 MAHLR 754, (2002) 5 SUPREME 570, (2002) 4 RECCIVR 114, (2002) 6 SCALE 131, (2002) 99 DLT 396

Author: Ruma Pal

Bench: Ruma Pal, Arijit Pasayat

CASE NO.:
Appeal (civil) 518 of 1998

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
SHAKUNTALA GUPTA (DEAD) BY LRS.

DATE OF JUDGMENT: 27/08/2002

BENCH:
RUMA PAL & ARIJIT PASAYAT

JUDGMENT:

RUMA PAL, J The respondent claims to be the owner of premises known as Grand Hotel which is situated at 2, Under Hill Road, Delhi. On 3rd April, 1980, a portion of the premises had been requisitioned by the petitioners under the Requisition & Acquisition of Immovable Property Act, 1952. The 1952 Act lapsed on 10th March, 1987. On 6th March, 1987 a notification was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act'.) which reads as follows:

" No.F.7 (9)/86- L&B (1) Whereas it appears to the Lt. Governor Delhi that the lands/properties are likely to be required to be taken by the Government at the public expense for the following public purposes. It is hereby notified that the land in the locality described below is likely to be required for the above purpose.

This notification is made under the provisions of Section 4 of the Land Acquisition Act to all whom it may concern.

In exercise of the powers conferred by the aforesaid section the Lt. Governor is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

The Lt. Governor, being of the opinion that the provisions of sub-section (1) of section 17 of the Act are applicable to this land is further pleased under sub-section 4 of the said section, to direct that the provisions of Section 5-A shall not apply".

The notification goes on to list 14 properties under the heading 'Specification' to which the notification would apply. Apart from the description, the purpose of acquisition in respect of each of the properties specified has been set out in a separate column. Against item 7 of the Specification, 11.740 sq. meters of 2, Under Hill Road Delhi (referred to hereafter as the 'premises') has been mentioned, and the purpose of acquisition stated is "Housing the Government Office". A notification under Section 6 of the Act was issued in respect of all fourteen properties on 10th March, 1987.

The respondent challenged the notification issued under Section 4 as well as the declaration under Section 6 of the Act under Article 226 of the Constitution before the High Court at Delhi. The owner of one of the premises similarly specified in the impugned notifications, namely Banwari Lal and Sons Pvt. Ltd., (Banwari Lal) also filed a writ application in the High Court impugning the notifications inter alia on the ground that there was no urgency which justified the Governor to dispense with the right of the owner to object under Section 5A of the Act. Banwari Lal's writ application was allowed on 4th February, 1991 and the impugned notifications were quashed. The High Court upheld the several contentions of Banwari Lal including the issue of urgency . The Division Bench of the High Court set aside the acquisition proceedings on three bases:

(i) ".. There is not a whisper of what was the urgency to take immediate possession and to deny the right of raising objection to the owner under Section 5-A of the Act.

The Notification under Sections 4 and 17(1) in the present case, therefore, stand vitiated for non-compliance of the requirement of mentioning urgency in the Notification itself".

(ii) "What is more objectionable is the fact that the building was already in occupation of the officers of the Delhi Administration and the Administration knew that the Requisitioning and Acquisition of Immovable Properties Act was to lapse on 10.3.1987. Thus they had sufficient time to make alternate arrangement for the residence of the officers and there was no urgency whatsoever for invoking the

provisions of the laxity or lethargy of the Administration to take appropriate steps in time for making available alternate accommodation for its officers".

iii) "The Notification under Section 17(1) is also bad in law for non compliance of the requirement of Sub-section 3-A of Section 17 of the Land Acquisition Act. The said Sub-Section mandates the Collector to tender payment of 80 per cent of the compensation for the land, as estimated by him before taking possession of the land."

The High Court also appointed an Ex-Chief Justice of the Delhi High Court as an Arbitrator to determine the damages payable by the Delhi Administration to Banwari Lal.

The decision in Banwari Lal's case was impugned before this Court by the petitioners by way of an application for special leave to appeal. The application was dismissed by this Court on 21st March, 1991 by the following order:

" In the facts and circumstances of the case we do not find any good ground to interfere with the impugned order of the High Court. The Special Leave Petition is accordingly dismissed.

Although we have dismissed the petition but having regard to the facts that public servants are residing in the premises in dispute and their immediate dispossession may cause injury to public interest, we allow the petitioners to continue in possession till 31.3.93 provided the petitioners file an undertaking in this Court within three weeks with usual conditions to hand over vacant possession on or before 31.3.93. We further make it clear the Arbitrator appointed by the High Court may give award and the same may be filed before the High Court for appropriate orders".

It is not in dispute that the petitioners have since vacated Banwari Lal's premises pursuant to the order of this Court.

In the respondent's writ application the decision in Banwari Lal's case was followed by the High Court. While disposing of the respondent's writ application, the Division Bench also appointed a retired Judge of the Delhi High Court to determine the damages, if any, payable to respondent by the petitioners.

The petitioners impugned the decision of the High Court before this Court. On 19th January 1998, leave was granted. Notice was issued on the application of the petitioners on stay and the operation of the impugned order was stayed in the meanwhile. On 8th May 2000, the appeal was directed to be expedited. It appears from the records that the appeal was duly listed for hearing at least on 9th August, 2000. However, from time to time the matter was adjourned. Ultimately on 14th November 2000, the appeal was disposed of by a reasoned order, the relevant extract of which is quoted:

"The High Court quashed the impugned notification by following its earlier decision in Banwari Lal & Sons V. Union of India decided on 4th February, 1991 in which this

very notification was quashed. It is not in dispute that subject matter including the notification under Land Acquisition were the same except that in Banwari Lal it was the Government housing for the officers while in the present case it is housing for the offices. The said decision of the High Court stood confirmed when this Court dismissed the SLP filed by the Union of India. We do not find any sustainable ground raised in the present appeal to make any distinct(ion) or difference from the one in the case of Banwari Lal & Sons. Accordingly, there is no error committed by the High Court in making the decision and dismissing the same. Accordingly, the present appeal has no merits and it is dismissed."

The petitioners then made an application for recalling the order dismissing the appeal on the ground that they were not heard before the appeal was disposed of. On 10th January 2001, the petitioners' prayer that the application for recalling the order dated 14th November 2000 may be treated as a review petition was allowed and notice was issued on the review application on 17th January 2001.

It is this Review application which is now being disposed of. It was submitted by the Learned Solicitor General appearing on behalf of the petitioners that the principles of law enunciated in Banwari Lal's case no longer hold the field. Reliance was placed on the decisions of this Court in *Aflatoon vs. Lt. Governor of Delhi* (1975 (4) SCC 285) ; *Deepak Pahwa Etc. vs. Lt. Governor of Delhi and Ors.* (1985 (1) SCR 588) ; *Satendra Prasad Jain and Others vs. State of U.P. and Others* (1993 (4) SCC 369); *Chameli Singh and Others vs. State of U.P. and Anr.* (1996 (2) SCC 449) to contend that the decision in Banwari Lal's case was wrong. It was therefore submitted that the decision of the High Court to quash the impugned notifications by following Banwari Lal's decision was erroneous.

Mr. Arun Jaitley, learned senior counsel appearing for the respondent, has on the other hand submitted that the review petition itself was not maintainable at all as there was no error apparent on the face of the record. It was further submitted that the same notification stood quashed in Banwari Lal's case and that since the impugned notification had been quashed on a general ground which did not specifically relate to a particular petitioner, the quashing of the notification must enure to the benefit of all persons affected by that notification. Reliance has been placed on *Abhey Ram vs. Union of India* (1997(5) SCC

421) and *Delhi Administration vs. Gurdip Singh Uban and Others* (2000(7) SCC 296) in this connection. Several other decisions were also cited to contend that the provisions of Section 17(4) of the Act had been improperly invoked in the circumstances of this case. It was also submitted that since 1996 the petitioners had made no payment whatsoever in respect of the premises and in fact were not utilising the premises which were in a state of utter disrepair and occupied by encroachers.

The matter has been argued extensively. We therefore do not propose to reject the application on the ground that the review application should not at all be entertained. It is also not necessary to consider whether the decision in Banwari Lal correctly enunciates the principles of law as to acquisitions under Section 17 of the Act as we are of the view that the order of this Court dated 14th November, 2000 was, in the circumstances of the case, correct.

It appears that the petitioners have proceeded on the basis that the acquisition sought to be affected by the impugned notification under Section 4 had been invalidated in respect of other specified properties by the decision of this Court in Banwari Lal's case. The statement in the respondent's affidavit that several of the properties covered by the same notification have since been returned by the petitioners to the original owners has not been disputed by the petitioners. Furthermore, the High Court in the decision impugned before us has also noted:

"It is also not disputed that under the impugned notifications neither an award has been made nor any compensation is determined and paid. The reason being that the impugned notifications were quashed and set aside in Banwari Lal's case (supra)."

Indeed no compensation as envisaged under Section 17 (3A) of the Act has been offered to the respondent by the petitioners till now.

In any event the order dated 14th November, 2000 was not legally erroneous. The notification under Section 4 was a composite one. The "opinion" of the Lt. Governor that the provisions of Section 17(1) of the Act were applicable, as expressed in the last paragraph of the impugned notification, was relatable in general to the 14 properties specified in the notification. The impugned notification was quashed in Banwari Lal's case inter alia on the ground that the "opinion" of the Lt. Governor as expressed in the notification was insufficient for the purpose of invoking the provisions of Section 17(1) of the Act. This ground was not peculiar to the premises in Banwarilal's case, but common to all fourteen properties. The urgency sought to be expressed in the impugned notification cannot be held to be sufficient for the purposes of section 17 (1) in this case when it has already been held to be bad in Banwari Lal's case . The expression of urgency being one cannot be partly good and partly bad like the curate's egg. It must follow that the acquisition in respect of the respondent's premises as mentioned in the notification which were sought to be acquired on the basis of such invalid expression of "urgency" cannot be sustained.

We therefore dismiss the review application without any order as to costs.