

UNION OF INDIA AND ORS.

v.

JASWANT RAI KOCHHAR AND ORS.

MARCH 11, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Land Acquisition Act, 1894 : Section 4(1)*

*Land Acquisition—Change of user contrary to purpose notified—Permissibility of—Land Acquisition for Housing Scheme—Use of land for commercial purpose—Construction of District Centre—Challenge—Quashing of notification by High Court—Held not correct—Held land sought to be acquired for public purpose may be used for another public purpose—When land was sought to be acquired for Housing Scheme but was used for District Centre purpose does not cease to be public purpose—In such a case nomenclature mentioned in notification cannot be construed to be a colourable one.*

*Raising fresh plea at appellate stage—Land acquisition—Entitlement to alternative site—Point not raised before High Court—Held it cannot be examined by this Court.*

CIVIL APPELLATE JURISDICTION : Civil appeal No. 4557 of 1996.

From the Judgment and Order dated 6.2.84 of the Delhi High Court in L.P.A. No. 1 of 1977.

V.C. Mahajan and Arun Mohan, Mrs. Indira Sawhney, B.K. Prasad, C.V.S. Rao, A.K. Shrivastava, Ms. Sushma Suri, P.H. Parekh, Ms. Bina Madhavan and P.N. Gupta for the appearing Parties.

The following Order of the Court was delivered :

Leave granted.

We have heard the counsel on both sides.

Notification under section 4(1) of the Land Acquisition Act, 1894 (for short the 'Act') was published on November 6, 1958 acquiring the land

for housing scheme. The same came to be challenged on the ground that the appellant had proposed to use the land for the district centre i.e., commercial purpose. The learned single Judge allowed the writ petition and quashed the notification holding that the property acquired was for housing scheme which cannot be used for commercial purpose, namely, District Centre. On appeal, the Division Bench of Delhi High Court in LPA No. 1 of 1977 by order dated February 6, 1984 confirmed the same. Thus this appeal by special leave.

It is contended for the respondents that since the acquisition is for housing scheme, the land cannot be used for commercial purpose, namely, District Centre. Therefore, the learned single Judge and the Division Bench have rightly disapproved the change of the user contrary to the purpose notified in section 4(1) of the Land Acquisition Act. We find no force in the contention. It is conceded by the learned counsel that the construction of the District Centre for commercial purpose itself is a public purpose. No doubt it was sought to be contended in the High Court that in a housing scheme, providing facilities for commercial purpose is also one of the composite purpose and that, therefore, acquisition was valid in law. However, the contention was rejected by the High Court. We need not go to that part. Suffice it to state that it is a well-settled law that land sought to be acquired for public purpose may be used for another public purpose. Therefore, when the notification has mentioned that the land is sought to be acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under section 4(1) as housing scheme cannot be construed to be a colourable one. The notification under section 4(1) could not have been quashed on the ground that the land is sought to be used for District Centre, namely, for commercial purpose. It is obvious that the lands acquired for a public purpose should serve only the public purpose of providing facilities of commercial purpose, namely, District Centre as conceded by the learned counsel in fairness to be a public purpose. The notification under section 4(1) cannot be quashed on the ground of change of user. The High Court was wholly wrong in quashing the notification on the ground of change of user.

It is next contended that the first respondent is entitled to be provided with alternative site. It is stated in the additional affidavit filed in this Court, pursuant to the direction issued earlier, that a private company

by name Sunlight Assurance, New Delhi had floated a scheme Sunlight Estate, which was not approved by the competent authority, i.e., either MCD or DDA. But some persons purchased plots and to purchase peace with them a compromise was entered into and they have been allotted alternative sites. It is contended that the respondents also similarly are entitled to alternative sites. It is stated in the counter-affidavit filed in the High Court that the land of the first respondent was not the subject matter of the acquisition and that, therefore, he is not entitled to the alternative site. In the additional-affidavit also it was mentioned that since the first respondent had constructed a house and has been living therein, he is not entitled to alternative site and if the house of the appellant is acquired, action would be taken according to law. It is also stated by the counsel for respondent Nos. 2 to 4 that they have also constructed houses and they are also entitled to alternative sites. Since that controversy was not raised before us, we did not have an occasion to go into the question whether they have constructed the house either prior to or after the notification etc. Under these circumstances, we cannot go into that question because the question of providing alternative sites was not addressed before the learned single Judge or the Division Bench. If they are otherwise entitled according to the practice prevailing, they are at liberty to make a representation to the competent authority and have the matter examined according to the practice.

The appeal is accordingly allowed. The orders of the High Court are set aside. The writ petition stands dismissed. No costs.

Appeal allowed.