



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 10757 OF 2017

**Delhi Agricultural Marketing Board,
through its Chairman**

..... **Appellant**

Versus

**Bhagwan Devi (Dead),
through her LR.**

..... **Respondent**

JUDGMENT

SANJAY KUMAR, J

1. Turning the law of land acquisition on its head, the astonishing events that this appeal is founded on need to be narrated in some detail.
2. An extent of 33 acres of land abutting the Narela-Bawana Road was acquired by the Government to enable the Delhi Agricultural Marketing Board (hereinafter, 'the Board') to shift and establish its grain market in Narela. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for brevity, 'the Act of 1894'), was issued on 30.10.1963. Declaration under Section 6 of the Act of 1894 was issued on 10.01.1969 and the Award, determining the compensation, was made on 19.09.1986. The acquired land included an extent of 6 bighas and 10 biswas situated in Khasra Nos. 296, 298 and 303 of Village Mamoorpur.

Bhagwan Devi claimed ownership over this smaller extent under registered sale deeds of the years 1959 and 1971. Possession of the acquired land was taken and handed over on 22.09.1986 to the Agricultural Produce Marketing Committee, Narela, under the control of the Board. This ostensibly included the extent of 6 bighas and 10 biswas claimed by Bhagwan Devi. She, then, filed W.P. No. 149 of 1987 before the Delhi High Court challenging the acquisition of her land.

3. It is at this stage that the story took a curious turn. The Board resolved to settle the matter out of Court with Bhagwan Devi by releasing and returning to her half of the acquired extent claimed by her and retaining the remaining half, i.e., 3 bighas and 5 biswas. The agreement in this regard was executed on 30.09.1988 by the Board, through its then Chairman, with Bhagwan Devi. This agreement stated that Bhagwan Devi would claim compensation as per the Award dated 19.09.1986 from the Land Acquisition Collector and would have all the rights and remedies provided to her under the Act of 1894. The agreement further recorded that, with the prior consent of the Land Acquisition Collector, the Board, which had become the absolute owner of the acquired land that was mutated in its favour in the revenue records, would execute a proper conveyance deed in respect of the portion of land proposed to be returned to her thereunder, for valuable consideration. The consideration to be paid by Bhagwan Devi was

quantified as the proportionate compensation for half the land, as was granted to her under the Award dated 19.09.1986, along with interest @ 12 per cent per annum from the date of deposit of the compensation amount by the Board with the Land Acquisition Collector till the date of actual payment by Bhagwan Devi to the Board.

4. Clause (k) of the agreement provided that any dispute arising between the parties touching upon the effect and meaning of the agreement should be referred to the Chairman of the Board, whose decision thereon would be final and binding upon the parties. This agreement is stated to have been executed on behalf of the Board by its then Chairman, just one day prior to his tenure coming to an end. Though it is asserted that this action of the then Chairman was based on the Minutes of the Board meeting held on 29.09.1988, there is no mention of the same in the body of the agreement.

5. In any event, Writ Petition No. 149 of 1987 was disposed of on 05.10.1988 in the light of this agreement. The Board seems to have then realized that the land acquired for its benefit could not be released in this manner and the issue was reconsidered in the Board's meeting held on 22.11.1988. The Minutes of this meeting recorded that, upon enquiry, the authorities had informed the Board that though possession of the acquired land was handed over to the Board, the land still vested in the Government as no conveyance deed had been executed by the

Government in favour of the Board. The Board, therefore, opined that it was necessary to review the whole matter. This was brought to the notice of the Delhi High Court by filing an application to recall the order dated 05.10.1988 passed in W.P. No. 149 of 1987. Bhagwan Devi had also filed applications seeking implementation of the agreement dated 30.09.1988. The applications were taken up together and disposed of by the Delhi High Court on 06.08.2002. By the said order, the High Court left it open to Bhagwan Devi to avail appropriate remedies in accordance with law and permitted the Board to raise all such objections as were available to it, including the one mentioned in its application.

6. The turn of events then became 'curiouser and curiouser', to put it in the words of Lewis Carroll's Alice. Having slept over the matter for two years, by way of notice dated 30.09.2004, Bhagwan Devi sought 'arbitration' under clause (k) of the agreement dated 30.09.1988! She then filed an application, in Arb. P. No. 278 of 2004, seeking appointment of an arbitrator. The same was allowed by the Delhi High Court on 17.05.2006 and a retired Judge of the Delhi High Court was appointed. The Board contended before the Arbitrator that the agreement dated 30.09.1988 was void *ab initio* and could not be implemented as the land acquisition authorities were not party to it and the acquired land could not be returned without their consent. It also pointed out that the agreement was brought into existence with undue haste, inasmuch as

the stamp papers therefor were purchased on 26.09.1988; the agreement was drafted on 27.09.1988; the matter was put up before the Board in its meeting held on 29.09.1988; and without confirmation of the Minutes of the said meeting, the then Chairman signed the agreement on 30.09.1988, which happened to be his last day in office.

7. However, the learned Arbitrator passed Award dated 10.07.2007 in favour of Bhagwan Devi, holding that the Board was competent to enter into the agreement dated 30.09.1988 and return 3 bighas and 5 biswas of land to her. He accordingly directed the Board to comply with the said agreement by performing its obligations thereunder and execute a conveyance deed in favour of Bhagwan Devi. In turn, Bhagwan Devi was also directed to perform her part of the agreement.

8. Aggrieved by the Award dated 10.07.2007, the Board filed a petition, *vide* OMP No. 561 of 2007, under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996'), before the Delhi High Court. One of the grounds urged by the Board was that the Award was against public policy. However, by order dated 01.07.2013, a learned Judge of the Delhi High Court dismissed the petition, upholding the Award in its entirety. Aggrieved thereby, the Board preferred an appeal under Section 37 of the Act of 1996 in FAO (OS) No. 436 of 2013. The appeal also failed as a Division Bench of the Delhi High Court dismissed it on 27.09.2013.

9. It is against the dismissal of the above appeal that the Board filed SLP (C) No. 9491 of 2014, from which the present appeal originates. By order dated 28.03.2014, this Court directed *status quo* obtaining on that day to be maintained. Bhagwan Devi died on 13.01.2015 and her son was brought on record as her legal representative. While so, an intervention application in IA No. 36403 of 2021 was filed by one Meena Sehrawat along with her sons, Pankaj and Kunal. They put up a rival title over the subject land, claiming to be the legal heirs of late Sanjay Sehrawat, the grandson of Bhagwan Devi's husband, late Kripa Ram, through his first wife. Be that as it may.

10. Initially, the Bombay Agricultural Produce Markets Act, 1939 (for brevity, 'the Act of 1939'), was in force in Delhi. As per Section 16 thereof, if the Government was of the opinion that any land was needed for the purposes of that Act, it could proceed to acquire it under the provisions of the Act of 1894 and when such land vested in the Government, it was to be transferred by the Government to the Market Committee, on payment by the said Market Committee of the compensation awarded and of all other charges incurred on account of the acquisition, and on such transfer, the land would vest in that Market Committee. Notably, this was the legal regime holding the field when the notification and declaration were issued, in 1963 and 1969 respectively,

for acquisition of the 33 acres of land, which included the subject extent of 6 bighas and 10 biswas.

11. However, when the agreement dated 30.09.1988 was executed, the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 (for brevity, 'the Act of 1976'), was the extant legislation as the Act of 1939 stood repealed thereby. The Board was constituted under Section 5 of the Act of 1976 and in terms of Section 5(3) thereof, it was to be a body corporate, having perpetual succession with power, subject to the provisions of the Act of 1976, to acquire and hold property.

12. Thereafter, the present Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (for brevity, 'the Act of 1998'), replaced the Act of 1976. It contains similar provisions in Section 6 thereof, which states that the Board, constituted under Section 5 thereof, shall be a body corporate and a local authority, having perpetual succession with power, subject to the provisions of the said Act, to acquire, hold and dispose of property. Section 24(1) thereof deals with the acquisition of land for markets and states that when any land is required for the purposes of the Act of 1998 and the Board is unable to acquire the same by agreement, such land may, at the request of the Board, be acquired under the provisions of the Act of 1894 and on payment of the compensation awarded under the Act of 1894 by the Board and all other charges incurred in connection with such acquisition, the land shall vest in the Board. The *proviso* to Section

24(1), however, states that once a proposal has been made by the Board, it shall not be withdrawn by it except for reasons recorded by it and approved by the Lieutenant Governor. Section 24(2) of the Act of 1998 is of relevance and it reads as under:

'(2) - The Board shall not, without the previous sanction of the Lieutenant Governor, transfer any land which has been acquired for the Board or Marketing Committee under sub-Section (1) or vest in it or use such land for a purpose other than the purpose for which it has been acquired, or is used, as the case may be.'

In effect, the power of the Board to acquire property, be it by private negotiation or by compulsory acquisition through the aegis of the Government, always stood protected. Such acquisition of property, however, has to be in accordance with law, i.e., by way of a document of conveyance. Further, as matters now stand, divesting of title in or a different usage of the property compulsorily acquired for the Board is not within its sole discretion.

13. In the case on hand, it is an admitted fact that the Award determining compensation was passed on 19.09.1986 and possession of the land was taken and handed over to the Board on 22.09.1986. Section 16 of the Act of 1894 puts it beyond doubt that, upon possession being taking over on 22.09.1986, the acquired land vested absolutely in the Government free from all encumbrances. Significantly, the power of withdrawal from an acquisition, under Section 48 of the Act 1894, can be

exercised by the Government only in respect of an acquisition where possession of the land has not been taken. Therefore, it was not open even to the Government to withdraw from the acquisition of the subject land after possession was taken over on 22.09.1986, evidenced by proper documentation.

14. In such a situation, the question that arises is whether the Board, for whose benefit the land was acquired, could have achieved the equivalent of such withdrawal by entering into an agreement with Bhagwan Devi for returning part of the acquired land. Further, the question would also arise whether the Board could exercise such power when there was no document of conveyance in its favour in respect of this land. The statutory scheme of the laws applicable to the Board at different points of time, set out *supra*, speaks to the contrary as it manifests that there must be a document of conveyance for the Board to acquire and hold such land. Admittedly, no such document was ever issued by the Government actually transferring the subject land to the Board, whereby it could claim absolute rights over it.

15. The Board had raised these issues before the learned Arbitrator, apart from claiming that the agreement dated 30.09.1988 was contrary to public policy, but the Award dated 10.07.2007 came to be passed holding against the Board. Neither the Court exercising jurisdiction under Section 34 nor the Court exercising appellate power

under Section 37 dealt with these crucial issues. Section 34(2)(b) of the Act of 1996 categorically provides that an Arbitral Award may be set aside if the Court finds that it is in conflict with the public policy of India. Explanation (1) thereto clarifies that an **Award would be in conflict with the public policy of India if it is in contravention of the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice.**

16. **When the State uses its sovereign power of eminent domain and acquires land for a public purpose, as in the case on hand, i.e., for establishment of a grain market under the control of a statutory Board, such an exercise cannot be set at naught by the beneficiary of such acquisition, viz., the statutory Board, by entering into a private agreement shortly after the acquisition so as to reverse the usage of the power of eminent domain by the State.** Validating this dubious enterprise by a statutory beneficiary of a compulsory acquisition would be nothing short of permitting a fraud on the exercise of such sovereign power by the State. Viewed thus, the agreement dated 30.09.1988 was **clearly in contravention of the fundamental policy of Indian law** and the Arbitral Award dated 10.07.2007, upholding the said agreement, was equally so.

17. Further, the fact that the preparation of the agreement dated 30.09.1988, by purchase of stamp papers for the same and the drafting thereof, took place even before the matter was considered by the Board

in the meeting held on 29.09.1988 clearly revealed that there was something suspect about the transaction. Given the further fact that the only objective of the said agreement was to thwart the compulsory acquisition of the subject land by returning a portion thereof to Bhagwan Devi, the agreement was patently opposed to all tenets of law.

18. Viewed thus, we have no hesitation in holding that the Courts exercising jurisdiction under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, erred grievously in not setting aside the Arbitral Award dated 10.07.2007 that had upheld the agreement dated 30.09.1988.

19. The appeal is accordingly allowed and the judgment dated 27.09.2013 of the Division Bench of the Delhi High Court in FAO (OS) No. 436 of 2013 along with the judgment dated 01.07.2013 delivered by the learned Judge of the Delhi High Court in OMP No. 561 of 2007 and the Arbitral Award dated 10.07.2007 are set aside.

Pending applications shall stand closed in the light of this order.

Parties shall bear their own costs.

....., CJI
Sanjiv Khanna

....., J
Sanjay Kumar

March 20, 2025;
New Delhi.