

(2016) 01 AHC CK 0124

In the Allahabad High Court

Case No : Writ-C. Nos. 62311 and 62312 of 2013

Abdul Latif and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 11, Section 11 (2), Section 11-A, Section 17, Section 18, Section 55

Citation : (2016) 01 AHC CK 0124

Hon'ble Judges : Dinesh Maheshwari and S.B. Singh, JJ.

Bench : Division Bench

Advocate : Shams Vikas and K.K. Roy, for the Appellant; C.S.C., A.S.G.I., Pranjali Mehrotra and R.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. These two petitions, involving identical issues on similar nature facts in relation to the same land acquisition proceedings, have been considered together and are taken up for disposal by this common order.

WRIT - C No. - 62311 of 2013

2. The petitioners herein, having interest in different parcels of land acquired by the respondents, as situated in different villages namely, Saidpur Chunni Lal, Taha Tajpur and Gopalpur Nagariya Anoop, tehsil Sadar, district Bareilly, have filed this writ petition for being aggrieved of the order dated 27.09.2013, (Annexure No. 9) whereby the District Magistrate, Bareilly and the Special Land Acquisition Officer, Bareilly have rejected their representation made pursuant to the order dated 01.08.2013 passed by this Court in Writ-C No. 31812 of 2013.

3. In the present petition, the petitioners have prayed for the reliefs as under:--

"i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 27.09.2003 passed by Respondents No. 4 & 5. (Annexure No. 8 to the Writ Petition)

ii) Issue a writ, order or direction in the nature of Mandamus commanding/ directing the Respondents to facilitate settlement of the terms and conditions and rates of compensation between the petitioners and the land acquiring body in accordance with Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules 1997.

iii) Issue a writ, order or direction in the nature of Mandamus directing the Respondents to ensure full compliance of Government Order dated 02.06.2011 and rehabilitation and resettlement policy as referred to in the order dated 02.06.2011.

iv) Issue a suitable writ, order or direction quashing the declaration of award of the Petitioners as mentioned in the impugned order dated 27.09.2013 passed by Respondents No. 4 & 5.

v) Issue such other writ, order or directions as this Hon"ble Court may deem fit and proper having regard to the facts and circumstances of the case; AND

vi) to award cost of the Petition to the Petitioners."

4. Shorn of unnecessary details, the relevant background aspects of the matter are that the land in question was acquired under the Land Acquisition Act, 1894 ("the Act of 1894") in the year 2003-2004 and was subsequently handed over to the National Highway Authority of India through its Project Director at Bareilly (respondent No. 6) for the purpose of construction of National Highway No. 24 including the Bareilly Bypass.

5. So far the process of acquisition is concerned, it is noticed from the material placed on record that the challenge thereto was made by some other land holders without success and possession was taken over with invocation of the provisions of Section 17 of the Act of 1894. It had been a matter concluded between the parties that the land acquired for a public purpose long back cannot be restored to the petitioners; and their prayer to invalidate the acquisition proceedings was specifically rejected by this Court. Hence, the background aspects concerning acquisition notifications etc. are not required to be dilated upon.

6. The relevant facts for the present purpose are that in the month of May 2013, the respondent Special Land Acquisition Officer, Bareilly issued notices to the persons like the petitioners that as per the agreement with agriculturists under and in accordance with Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 [hereinafter referred to as "the Rules of 1997"], the District Level Committee had fixed the rates of compensation for the area in question at Rs. 25/- lakhs per hectare generally and at Rs. 26/- lakhs per hectare for the land adjoining pucca road. The addressees were called upon to enter into an agreement with the acquiring body and were also informed that on their failure to do so, the award would be made on the basis of referable sale-deed. A copy of one such notice dated

16.05.2013, as issued to the petitioner No. 2, has been placed on record as Annexure No. 5 and the contents thereof could be usefully reproduced as under:--

7. It is further borne out that a general notice was also issued and published in the newspaper on 30.06.2013 whereby, the Special Land Acquisition Officer called upon the affected agriculturists to execute agreements under the Rules of 1997 by 07.07.2013 and informed that else, the award would be pronounced in accordance with law. The contents of this public notice dated 30.06.2013 (Annexure No. 6) could also be noticed as under:--

8. Leaving aside other details, relevant it is to notice at this juncture that after issuance of the aforesaid notice dated 16.05.2013, the petitioners invoked the writ jurisdiction of this Court by filing the writ petition aforementioned [No.31812 of 2013] in the month of May 2013 for quashing of the impugned notice as also for a declaration that the acquisition proceedings have lapsed; and for directions to the respondents to settle the rates of compensation under the Rules of 1997. The petitioners also prayed for compliance of the Government Order dated 02.06.2011 and for relief under rehabilitation and resettlement policy of the Government.

9. The aforesaid writ petition was considered and decided by this Court on 01.08.2013. This Court specifically rejected the prayer of the petitioners to invalidate the acquisition proceedings. Even the prayer for quashing the impugned notice dated 16.05.2013 was declined with the observations that it was open for the petitioners to claim adequate compensation either by opting for the Karar Niyamawali or by filing objections against the same and opting for determination of compensation as per the provisions of the Act of 1894. This Court also left it open for the petitioners to make a representation to the District Magistrate for consideration of their grievance that the rates for the purpose of Karar Niyamawali had not been determined properly or in accordance with the Rules. As regards the prayer for compliance of the Government Order dated 02.06.2011 and for rehabilitation and resettlement, this Court observed that there was nothing to show that the said Government Order would be covering the past cases too, but left it open for the Government to consider the prayer of the petitioners. The order dated 01.08.2013 is reproduced in its entirety as under:--

"Heard learned counsel for the petitioners, learned counsel for the State as well as learned counsel for the National Highway Authority of India-respondent No. 5.

The concerned lands of the petitioners were acquired for the public purpose by the State Government and have been subsequently handed over to respondent No. 5 for use in relation to construction of highways. The notifications for acquisition were issued in the year 2003-04 and are contained in Annexure Nos. 2 and 3 to this writ petition.

The writ petition seeks quashing of notices dated 16.05.2013 (Annexure Nos. 6 and 7) issued by the Special Land Acquisition Officer, Bareilly. There is another

prayer for mandamus directing the respondents to treat the acquisition made pursuant to notifications in Annexure Nos. 2 and 3 as having lapsed in accordance with Section 11-A of the Land Acquisition Act. The other prayers relate to settlement of rate of compensation in accordance with the U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement), Rules, 1997. The petitioners have also prayed for a mandamus to direct the respondents to comply with the Government Order dated 02.06.2011 (Annexure No. 5) and to ensure implementation of rehabilitation and resettlement policy mentioned in that order.

Learned counsel for the National Highway Authority of India-respondent No. 5 has submitted that the acquisitions made in the year 2004 were challenged earlier by some other land holders without success and the possessions of the lands were taken long back in view of invocation of provisions of Section 17 of the Land Acquisition Act.

In our considered view, the lands acquired admittedly, for the public purpose long back cannot be now restored to the petitioners and in the facts of the case, the prayer to invalidate the acquisitions made in the year 2003-04 is rejected. So far as the prayer to quash the notices contained in Annexure Nos. 6 and 7 is concerned, a perusal of the notices shows that by that notices an option has been given to the affected land holders to accept compensation on the rates determined under Karar Niyamawali or else their compensation will be decided as per the provisions of the Land Acquisition Act.

In that view of the matter, it is open for the petitioners to claim adequate compensation either by opting for the Karar Niyamawali or by filing objections to the same and opting for determination of compensation as per provisions of the Land Acquisition Act.

The impugned notice itself, in our view, does not affect the rights of the petitioners in respect of compensation for the lands acquired. In that view of the matter, the petitioners are granted liberty to exercise other options available to them in law.

It will be open for the petitioners to represent to the District Magistrate to consider their grievance that the rate fixed by him for the purpose of Karar Niyamawali has not been determined properly or in accordance with the Rules. If such objection is raised, the District Magistrate shall decide the same on the basis of the relevant materials as per law.

So far as a mandamus for complying with the Government Order dated 02.06.2011 (Annexure No. 5) to provide for rehabilitation and resettlement of the petitioners is concerned, there is nothing in the Government Order to show that it will cover those who are affected by land acquisitions in the past. In that view of the matter, no mandamus can be issued, but it is always open for the Government to extend the benefit of such Schemes as per its policy decision. Hence, it will be open for the petitioners to pray before the Government for

extending the benefit of Government Order dated 02.06.2011 to the petitioners also, but such prayer will abide by the policy decision of the State Government.

The writ petition is disposed of, accordingly."

10. After the order aforesaid, the petitioners submitted their representation/objections on 22.08.2013 (Annexure No. 8) with the submissions that determination of the rates under Karar Niyamawali had not been carried out in their presence or with their consent. The petitioners also contended that they had submitted objections earlier too that had not been examined. The petitioners further submitted that the rates as determined were rather the lowest rates of the year 2010 although the compensation was assessed in the year 2012. The petitioners also indicated that in regard to the other parcels of land involved in this acquisition, which were referable to a former MP and his relatives, compensation had been determined at the rate of Rs. 61 lakhs per hectare and hence, the dealings of the respondents were highly discriminatory and unjustified. The petitioners, prayed in this representation as under:--

11. The respondent Nos. 4 and 5 have dealt with and rejected such representation made by the petitioners by the impugned order dated 27.09.2013, inter alia, on the ground that the petitioners were not seeking compensation under the Karar Niyamawali or under the Award but were demanding compensation beyond what had been determined under the Karar Niyamawali, which was entirely impermissible. It has also been indicated that if dissatisfied with the award pronounced, the petitioners could seek enhancement of compensation by taking recourse to the proceedings under Section 18 of the Act of 1894. The consideration and observations of the respondents while rejecting the representation had been as under:--

12. The aforesaid order dated 27.09.2013 is questioned in this writ petition and the petitioners also seek other reliefs as noticed hereinbefore.

13. The respondents have filed their counter affidavits while asserting, inter alia, that the rates were determined after several meetings of the District Level Committee, District Magistrate and the farmers concerned, which were duly approved by the Commissioner. It is submitted that a few tenure holders cannot delay the registration of agreement and for the petitioners having not entered into the agreement, the awards had rightly been declared in their cases whereagainst, they could have taken recourse of the provisions of Section 18 of the Act of 1894. A copy of the award made on 15.07.2013 in relation to the case of the petitioner Nos. 1 & 3 is placed on record as Annexure No. CA-1 to the counter affidavit filed on behalf of the respondent Nos. 2 to 5; and the copies of other awards have also been placed on record as Annexure No. CA-8 to the counter affidavit filed on behalf of the respondent No. 6, including the award dated 15.07.2013 in relation to the petitioner No. 2 and dated 30.09.2013 in relation to the petitioner No. 4.

Writ -C No. 62312 of 2013

14. The basic factual aspects relating to Writ Petition No. 62312 of 2013 are more or less similar in nature. The petitioners of this writ petition are having interest in other parcels of land situated in different villages namely, Atta Kayasthan, Saidpur Chunni Lal, Didar Patti, Mundiya Ahmad Nagar, Gopalpur Nagariya Anoop, Bithri Chainpur, Bilwa, Parsa Kheda, Kumhara etc. of the same tehsil Sadar, district Bareilly. The land referable to the petitioners was also subjected to the same acquisition for the Bareilly Bypass. In the case of the petitioners too, similar proceedings were adopted by the respondents and the Special Land Acquisition Officer issued similar nature individual notices and a general notice inviting response to the proposition of agreement on the rates of compensation determined. It may be observed that in relation to most of the affected land of petitioners, the same rates as referred in the preceding case were fixed, but in relation to the land at Bithri Chainpur and Mundia Ahmad Nagar, the rates had been at Rs. 34.60 lakhs and Rs. 40.00 lakhs per hectare respectively with the same stipulation of Rs. 1 lakh additional for the land adjoining the road.

15. The present petitioners had also preferred earlier a writ petition in this Court being Writ-C No. 40482 of 2013 that was dismissed by a similar nature order dated 26.07.2013 by this Court that reads as under:

"Heard learned counsel for the petitioners and learned counsel for the State as well as learned counsel for the National Highway Authority of India - respondent No. 5.

The petitioners' lands were acquired for use by respondent No. 5 through notifications issued in the year 2003 and 2004, contained in Annexure Nos. 1 and 2 to this writ petition. Challenge to those notifications through writ petitions filed earlier have failed and the possession of the lands were taken long back in view of invocation of provisions of Section 17 of the Land Acquisition Act.

The present writ petition has been preferred with two prayers. One is against notice dated 30th June, 2013, contained in Annexure No. 9, issued by the Special Land Acquisition Officer, Bareilly and the other prayer seeks a mandamus so as to invalidate the acquisition made in the year 2003-04. The second prayer is dismissed in view of unexplained delay and laches. So far as prayer No. 1 is concerned, a perusal of Annexure 9 shows that by the public notice an option has been given to the affected land losers to accept compensation on the rate determined under Karar Niyamawali or else their compensation will be decided as per provisions of the Land Acquisition Act.

It will be open for the petitioners to claim adequate compensation either by opting for the Karar Niyamawali or by filing objection to the same and opting for determination of compensation as per provisions of the Land Acquisition Act.

The notice itself in our view does not affect the rights of the petitioners in respect of compensation for the lands acquired. In that view of the matter, the writ petition in respect of first prayer noticed above is disposed of with the liberty

aforesaid.

It will also be open for the petitioners to represent to the District Magistrate to consider their grievance that rate fixed by him for the purposes of Karar Niyamawali has not been determined properly or in accordance with the rules. If such objection is raised, the District Magistrate shall decide the objection on the basis of all the relevant materials as per law."

16. The present petitioners also made similar nature representation, pursuant to the order so passed by this Court as made by the petitioners of the other writ petition with similar prayers. The respondents Nos. 4 and 5 have dealt with and rejected the representation of the petitioners too by a similar nature impugned order dated 27.09.2013 which has been challenged by the petitioners with similar prayers as noticed hereinbefore.

17. In this petition too, the respondents have filed similar counter affidavits, as noticed in relation to the other writ petition. Herein, the copies of the awards made on 15.07.2013, 27.08.2013, 11.09.2013 and 30.09.2013 in relation to different villages referable to the petitioners have been placed on record as Annexure - CA8 with the counter affidavit of the respondent No. 6. Thus, the stand of the respondents in this case is essentially the same that the rates were duly determined for the purpose of the Rules of 1997 and for the petitioners having not entered into the agreement, awards had rightly been declared in their cases; and on their claim for higher compensation, the petitioners could have taken recourse of the provisions of Section 18 of the Act of 1894.

18. We have heard the learned counsel for the parties and have perused the material placed on record.

19. The learned counsel for the petitioners has strenuously argued that in these matters, the Rules of 1997 have not been complied with in letter and spirit; and the rates of compensation had not been determined as per the procedure envisaged by the said Rules, particularly when the petitioners were never called upon to give consent for the purpose of such determination. With these submissions, the learned counsel for the petitioner has made a fervent prayer for directions to the respondents that they ought to facilitate settlement of rates of compensation and ought to award just and proper compensation to the petitioners. Per contra, the learned counsel for the respondents have duly supported the orders impugned and submitted that even the final awards having been made with participation of the petitioners or their representatives, the petitioners are not entitled to seek any relief under the Rules of 1997 now at this stage.

20. Having given thoughtful consideration to the rival submissions with reference to the material placed on record and the law applicable, we are clearly of the view that in the given set of facts and circumstances, the petitioners are not entitled to any relief in these petitions.

21. As noticed hereinabove, all other aspects of the matter, of challenge to the acquisition in question and claim for other reliefs, stand closed and concluded with the above-quoted orders dated 01.08.2013 and 26.07.2013 passed by this Court in disposal of the earlier writ petitions filed by the present petitioners. In the orders aforesaid, this Court specifically declined to interfere with the acquisition or even with the notices issued by the Special Land Acquisition Officer calling upon the petitioners to respond to the proposition for agreement while observing that it was for the petitioners to either accept the compensation on the rates determined under the Rules of 1997 or opt for determination of compensation as per the provisions of the Act of 1894. This Court also declined to issue any mandamus in relation to the Government Order dated 02.06.2011 but left it open for the petitioners to make a prayer before the State Government and to abide by the policy decision of the Government. This Court also left it open for the petitioners to represent before the District Magistrate concerned that the rates fixed for the purpose of the Rules of 1997 were not determined properly or in accordance with Rules. This aspect of the matter alone was to be considered by the respondents No. 5 and 6. Apart that they have properly and adequately considered the same, the fundamental factor operating heavily against the petitioners is that they had not categorically and unequivocally stated their readiness and willingness to get their compensation determined under the Rules of 1997.

22. At this juncture, it appears apposite to examine the import and scope of the Rules of 1997 and the extent of right available to the petitioners thereunder. Noticeable it is that these Rules of 1997 were promulgated by the State Government in exercise of its powers under Section 55 of the Act of 1894, particularly for the purpose of the matter envisaged by Sub-Section (2) of Section 11 of the Act of 1894 which provides that on being satisfied that the persons interested in the land appearing before him had agreed in writing on the matters to be included in the award in the form prescribed by the rules, the Collector could make an award without further enquiry and according to the terms of such agreement. Obviously, the process of entering into such agreement is essentially to facilitate making of the award with amicable settlement while obviating the necessity of any contest. For these purposes, the mechanism has been provided by way of the Rules of 1997; and the provisions contained in Rules 2 to 4 thereof could be usefully reproduced as under:--

"2. The body or Department for which the land if being acquired may, at any stage of the proceedings settle down the terms and conditions and rates of the land under acquisition, with the landowners and appear before the Collectors and make an application indicating the terms and conditions so settled down and its readiness and willingness for determination of compensation and declaration of award in accordance with agreement. The Collector shall, if satisfied, issue notice to the persons interested in the land under acquisition to express their readiness and willingness to execute the agreement in writing, on the matters to be included in the award.

3. The Collector may, after hearing the parties, and upon being satisfied that the persons interested in the land are ready and willing to execute the agreement, grant the permission unless, for reasons to be recorded in writing he decides to refuse it.

4. (1) The Collector shall, where he grants the permission inform the persons interested in the land by registered post, about date, time and place for the execution of the agreement.

(2) The agreement shall be executed in the form appended to these rules, with necessary details as to whether possession has, or has not, been taken before the award.

(3) If the persons so informed fail to turn up and execute the agreement on such date, time and place or the extended date, as the case may be, the Collector shall proceed to make enquiry under section 11 from the stages, at which the application under rule 2 was made."

23. Thus, in the Scheme of the Rules of 1997, it is upon settling down of the terms & conditions and rates of the land under acquisition with the land owners that the acquiring body/department would appear before the Collector and make an application while indicating the terms and conditions settled as also stating its readiness and willingness for declaration of award in accordance with law. It is upon such a proposition from the acquiring body/department that the Collector would issue notice to the persons interested in the land under acquisition enquiring on their readiness and willingness to execute the agreement; and after hearing the parties and after being satisfied about the readiness and willingness of the persons interested, the Collector would grant permission of making award in terms of agreement. He could even refuse such permission for the reasons to be recorded. Thus, operation of the mechanism of the Rules of 1997 depends on the agreement and on the readiness and willingness of both the parties to the transaction i.e., the acquiring body/department and the land owners concerned.

24. In the present case, it appears from the material placed on record that the respondents settled the terms and conditions and rates, allegedly with a substantial number of land owners and their representative/s and then, presented the proposition of agreement before the Special Land Acquisition Officer, who, thereafter, proceeded to issue the individual notices and then public notices, specifically informing the interested persons like the petitioners about the proposition for agreement on the rates as said to have been settled. The petitioners definitely had the opportunity to appear in response to such notices and they could have either expressed their willingness or stated their objections and viewpoints. However, the petitioners chose not to respond to such notices and in any case, never expressed their willingness to get the compensation determined under the Rules of 1997. The significant aspect of the matter remains that even after the orders in their writ petitions on 01.08.2013 and 26.07.2013, the petitioners did not categorically state their willingness to get the

agreement executed in terms of the Rules of 1997. They had only been stating their objections against the rates that were settled for the purposes of the Rules of 1997 and were only seeking upward revision of such rates.

25. In our view, the propositions as differently stated by the petitioners only led to the position that they were not willing to get the award made on the rates as offered for the purpose of the Rules of 1997 with the obvious consequence that in their matters, the process as contemplated by the Sub-Section (2) of Section 11 of the Act of 1894 was not to be applied. Hence, the Collector was only required to make the regular award after carrying out the necessary enquiry.

26. Even if by the aforesaid orders dated 01.08.2013 and 26.07.2013, this Court had provided an opportunity to the petitioners to make representations on their grievance against the rates fixed for the purposes of the Rules of 1997, in our view, for availing of this opportunity, it was first of all required of the petitioners to state their willingness to get the compensation determined under the Rules of 1997, which they did not and only stated objections against the rates settled. We are clearly of the view that on the submissions as made by the petitioners, the matter of determination of rates for the purpose of Rules of 1997 was not required to be re-opened by the respondents. Yet, as is noticed from the orders impugned, the respondent Nos. 4 and 5 adequately dealt with the representations made by the petitioners and rejected the same with reference to the material available on record and with the specific findings and observations that the rates for the purpose of the Rules of 1997 were indeed determined with participation of the representative of the farmers; and that a substantial number of affected persons had accepted such rates. We find no cogent reason to discard or upset these findings in these petitions.

27. Another factor operating against the petitioners in these matters is that in some of their cases, the regular awards had, in fact, been made by the Special Land Acquisition Officer on 15.07.2013, i.e., even before passing of the orders by this Court on 26.07.2013 and 01.08.2013 in the earlier writ petitions. Of course, in some of the cases, the awards were made later. In any event, the fact of the matter remains that regular awards have already been made in these cases.

28. In an over all comprehension of the matter, we are clearly of the view that now and at this stage, the petitioners are not entitled to seek any relief of revision of rates that were fixed for the purpose of Section 11 (2) of the Act of 1894 and the Rules of 1997.

29. Thus, when the petitioners have not categorically stated their readiness and willingness for the purpose of Rules of 1997; and where the respondents Nos. 5 and 6 have adequately dealt with the representation of the petitioners and have indicated the reasons wherefore the petitioners' suggestions for revision of rates were not acceptable inasmuch as the rates were earlier determined with the representative/s of the land owners and a substantial number of such land owners had already accepted the rates so determined; and where the regular

awards have also been made by the Special Land Acquisition Officer, the petitioners are not entitled to any relief in these writ petitions.

30. So far their claim for higher amount of compensation is concerned, the respondent Nos. 5 and 6 have rightly pointed out in their impugned orders dated 27.09.2013 that the petitioners could have taken recourse of Section 18 of the Act of 1894. No further observation appears requisite in these cases.

31. Accordingly, and in view of the above, these writ petitions stand dismissed.

32. No costs.