
(1999) 11 AHC CK 0119
In the Allahabad High Court
Case No : C.M.W.P. No. 28262 of 1999

Abhai Kumar Rai	Vs	APPELLANT
State of U. P. and others		RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4, 4(1), 6

Citation : (2000) 1 AWC 427

Hon'ble Judges : S. K. Jain, J; Palok Basu, J

Bench : Division Bench

Advocate : S.K. Chaubey, for the Appellant; S. C., for the Respondent

Final Decision : Allowed

Judgement

Palok Basu and S.K. Jain, JJ.—It is a strange case where an innocent citizen living in interior of an underdeveloped village is being deprived of his agricultural land on the ground of establishing an irrigation canal but compensation has not been paid to him since the year 1981. Petitioner has to rush up to this Court for the second time even though the first order dated 29.11.1996 directed the payment of the compensation to be made expeditiously vide orders in Writ Petition No. 37926 of 1996 quoted in paragraph 3 of the instant writ petition. When this writ petition was filed before this Court, a counter-affidavit was called because the pleadings were on the part of an helpless innocent citizen. While calling the counter affidavit. therefore, an interim mandamus was also issued which was to the following effect :

"An interim mandamus is hereby issued to the respondents to grant the compensation to the petitioner within one month from today and release the compensation amount to the petitioner within another 2 weeks, or show cause by filing a counter affidavit why the petitioner be not paid the compensation and the aforesaid relief be not finally granted."

2. In response, two counter-affidavits have been filed. One has been sworn by

Sri Sandeep Kumar Sharma who is presently posted as Additional District Magistrate. Sant Ravi Das Nagar, Sri Indra Dev Prasad presently posted as Assistant Engineer Tubewell Maintenance Division Bhadohi, District Sant Ravi Das Nagar has sworn the second counter-affidavit. The contents of both these counter-affidavits are identical in terms. The difference existed only in some of the averments, which are not relevant for the purpose of the deciding the question of payment of compensation to the petitioner. The relevant paragraph in the writ petition which required answer from the respondent is paragraph 7 which reads as under :

"That the land plot belongs to the petitioner was possessed by the respondent authorities in the year 1991-92 and the construction over the land plot in dispute, tubewell for irrigation purposes has already been made and the notification pertaining to acquisition was made on 16th April, 1996 u/s 4(1) of the Act. True copy of U. P. Gazette dated 16th April, 1996 which is pertaining to publication of notification is being filed herewith and is marked as Annexure-5 to the writ petition."

3. Paragraph 8 of the counter-affidavit filed by Sri Sandeep Kumar Sharma as also paragraph 8 of the counter-affidavit filed by Indra Dev Prasad read as under :

"That the contents of para 7 of the writ petition are admitted to the extent that the land in question was taken by Tubewell Department. It is also admitted that Section 4 notification was also published. (Emphasis by Court)

4. It is amazing that the defence pleaded in the two counter-affidavits is that the tubewell division or department did not contribute to the State exchequer, the compensation amount could not be paid to the tenure-holder. It has been pleaded that unless the department for which the land is sought to be acquired, does not deposit or contribute the amount of compensation into the State exchequer, it is not possible to issue notification u/s 6 of the Land Acquisition Act. And, therefore, in the instant case since only a notification u/s 4 was issued and Section 6 declaration was not issued, the petitioners are not entitled to get compensation no award proceedings could start.

5. How sweet it is to say on the one hand that the compensation will be awardable only if Section 6 declaration is issued and on the other admit that though actual physical possession of the land has been taken by a department of the State after notification only u/s 4, the State should be exonerated from its responsibility in making payment of the compensation. This Court shall not entertain such a defence because it amounts to flouting of law only on a technical plea. Contribution from the department concerned having not been made to the Government cannot be accepted as a valid reason for nonpayment of the compensation when the poor cultivator in fact stands divested of his land. The purpose of acquisition may be one or the other, so long as the land owner is not thrown out of possession, all technicalities may be examined. But when he

actually stands dispossessed from the land, the State Government is bound to compensate such ousted persons. There can possibly be no compromise on this legal compulsion. A department or inter-departmental matter cannot be interpreted to thwart the legal right of the citizen to get compensation for the land acquired.

6. This writ petition consequently succeeds and is allowed with special cost which is assessed at Rs. 10,000. The said special cost shall be payable on the date on which the compensation amount is arranged to be paid. The respondents are directed to pay the compensation and the special cost to the petitioner within two months from today.

7. Registrar is hereby required to send a certified copy of this order to the Chief Secretary, State of U. P. for ensuring that such instances are not repeated in the State at least. The Chief Secretary will do well to get initiated suitable proceedings so as to recover the amount of special cost from such officials who may be found negligent and guilty therein apart from other punishment which they may deserve.