

(2019) 06 UK CK 0045
In the Uttarakhand High Court
Case No : Special Appeal No. 620 Of 2019

Anuya Rana And Others

APPELLANT

Vs

Mussoorie Dehradun Development Authority And Others

RESPONDENT

Date of Decision : 17-06-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6
Uttarakhand Urban & Country Planning And Development Act, 1973 — Section 7B
Constitution Of India, 1950 — Article 226, 300A

Citation : (2019) 06 UK CK 0045

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Aditya Singh, Rahul Consul

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Aditya Singh, learned counsel for the appellants and Mr. Rahul Consul, learned Standing Counsel for the MDDA and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. This appeal has been preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 3526 of 2018 dated 24.05.2019. The appellants-writ petitioners invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, seeking a writ of certiorari to quash the objection letter issued by the MDDA dated 09.01.2018; and for a mandamus commanding the respondent-MDDA to sanction the map submitted by the appellants-writ petitioners, to the first respondent, vide Application No. C-0214/17-18.

3. In the order under appeal, the learned Single Judge noted the submission, urged on behalf of the respondents, that the map, for raising construction, could not be sanctioned by the authority as proceedings under the Land Acquisition Act, 1894, initiated for acquisition of the area, were still pending and a

notification was already issued under Section 6 of the Land Acquisition Act, 1894, which had been presently stayed in a writ petition by an order of this High Court; and under the garb of the interim order passed by this Court in the present writ petition dated 08.01.2019, permitting the appellants-writ petitioners to make repairs, the appellants-writ petitioners had raised new construction. On the ground that the appellants-writ petitioners had an alternate remedy, under Section 7-B of the Uttarakhand Urban & Country Planning and Development Act, 1973, the learned Single Judge dismissed the writ petition granting liberty to the appellants-writ petitioners to move an application to the Chief Administrative Officer. Aggrieved thereby, the present appeal.

4. Mr. Aditya Singh, learned counsel for the appellants-writ petitioners, would submit that the objection letter dated 09.01.2018, issued by the MDDA, is a show-cause notice informing the appellants-writ petitioners that the proposed property was part of the Chakrata Road Development Project for which a notification was issued under Section 6 of the Land Acquisition Act, 1894, and further proceedings pursuant thereto had been stayed by the High Court; the mere fact that land acquisition proceedings are pending, would not disentitle the appellants-writ petitioners from putting the subject property to use; since the MDDA has already determined the issue, no useful purpose would be served in now filing objections to the show-cause notice; and since the impugned proceedings is not an order, no revision can be preferred thereagainst under Section 7-B of the Uttarakhand Urban & Country Planning and Development Act, 1973.

5. Land acquisition proceedings, under the Land Acquisition Act, 1894, commence from the date on which a notification is issued under Section 4(1) of the said Act. The said notification is followed by a declaration under Section 6 thereof. The writ petition filed before this Court, pursuant to which the land acquisition proceedings were stayed, is, according to Mr. Aditya Singh, learned counsel for the appellants-writ petitioners, not by the appellants-writ petitioners but by someone else.

6. A land owner has a constitutional right, under Article 300A of the Constitution of India, not to be deprived of his property except in accordance with law. The mere fact that proceedings have been initiated, by way of a notification being issued under Section 4(1) of the Land Acquisition Act, 1894, would not result in the appellant-writ petitioners ceasing to be the land owners. They would continue to be the land owners till an award is passed, compensation is paid and possession of the land is taken from them in accordance with the provisions of the said Act. The market value, required to be paid for the subject land, would undoubtedly be the market value of the land prevailing on the date on which a Section 4(1) notification is issued. As the appellants-writ petitioners now intend raising construction, after the Section 4(1) notification has been issued, they would be doing so at their own risk; and, in case land acquisition proceedings are permitted to continue later, the State Government would be under no obligation

to pay them compensation for the structures raised by the appellants-writ petitioners after issuance of the Section 4(1) notification. That does not, however, mean that they would not be entitled to raise construction, albeit at their own risk, in the interregnum. This objection raised by the MDDA, for grant of permission for construction, does not accord with law.

7. Suffice it, in such circumstances, to make it clear that, in case the application submitted by the appellants-writ petitioners for grant of permission to raise construction accords with the by-laws of the MDDA, and the Buildings Regulations if any, the MDDA may make it clear to the appellants-writ petitioners that any construction raised by them would be at their own risk, for which they may not be entitled for compensation later, in case the subject land is acquired in terms of the notification already issued under Section 4(1) of the Land Acquisition Act, 1894.

8. In so far as the other objection is concerned, while Mr. Aditya Singh, learned counsel for the appellants-writ petitioners, submits that no construction has been raised, Mr. Rahul Consul, learned Standing Counsel for the MDDA, would contend otherwise. Suffice it, in such circumstances, to protect the interest of the MDDA permitting them to cause a physical inspection of the subject land; and, in case it is found that any construction has been raised by the appellants-writ petitioners without obtaining permission from the MDDA, to then take action for its demolition forthwith, after informing the appellants-writ petitioners of the extent of unauthorized construction. The appellants-writ petitioners' application for grant of permission shall be considered, in the light of the observations made hereinabove, with utmost expedition and, in any event, not later than two weeks from the date of production of a certified copy of this order.

9. It is open to the MDDA to specify, in the order to be passed by it, that any construction raised by the appellants-writ petitioners shall be at their own risk and they would not be entitled to receive any compensation for such structures in case the proceedings, already initiated under Section 4(1) of the Land Acquisition Act, 1894, culminates in an award being passed, and possession of the land being taken by the State Government pursuant thereto.

10. The order under appeal is modified to the extent indicated hereinabove, and the Special Appeal is, accordingly, disposed of. No costs.