
(2016) 08 AHC CK 0130

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No.16006 of 2016

Arvind Kumar

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2016) 8 ADJ 716 : (2016) 6 AllWC 5909 : (2017) 120 ALR 893 :
(2016) 133 RD 195

Hon'ble Judges : Tarun Agarwala and Vipin Sinha, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—This group of petitions involves a common question and, is accordingly, being decided together. For facility, the facts of Writ Petition No.16006 of 2016 is being taken into consideration.

2. A notification dated 7.10.2013 was issued under Section 4 of the Land Acquisition Act inviting applications from interested tenure holders who wanted to sell their land in pursuance of the "Green Field Project (Agra to Lucknow) Entry Control Express Way".

3. The petitioner considering the importance of the project, being in public interest, offered his land for sale on reasonable market rate.

4. Pursuant to the Government Order dated 2.9.2013 a Committee was constituted for consideration of the offers give by the tenure holders. The Committee in its meeting dated 15.12.2014 approved certain rates for the purpose of executing the sale deeds. The petitioner's land was declared as abadi in consolidation proceedings under Section 5(1)(c) of The Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act), based on which the Committee offered a rate of Rs.800/- per square metre, treating the petitioner land as abadi. The rate offered was accepted by the petitioner and a

sale deed dated 30.12.2014 was executed.

5. Subsequently a recovery order dated 23.11.2015 was issued for recovery of the compensation paid to the petitioner. The petitioner, being aggrieved by the said recovery order, filed Writ Petition No.66527 of 2015, which was disposed of by an order dated 14.1.2016 treating the recovery order as a notice and directed the petitioner to file an objection to the said notice, which would be decided by the authority concerned before proceeding to recover any amount. Based on the said order, the petitioner filed a detailed objection contending that the sale consideration was offered by the respondents with open eyes, which was duly accepted by the respondents and that no fraud was placed either by the petitioner or by anyone else and, therefore, the amount cannot be recovered as arrears of land revenue. The said objection was rejected by the Collector by an order dated 7.3.2016 against which the present writ petition has been filed.

6. We have heard Sri T.P. Singh, the learned senior counsel assisted by Sri Siddharth Nandan for the petitioner and Sri Ramesh Upadhyay, the learned Chief Standing Counsel for the State.

7. The learned senior counsel for the petitioner contended that village Baccela Bachheli was under the consolidation proceedings in which an order dated 30.7.2012 was passed under Section 5(1)(c) of the Act treating the land as abadi. The Committee that was constituted under the Government Order considered various aspects and evidence. A report dated 10.12.2014 was submitted by the Tehsildar and the Additional District Magistrate holding that the land is abadi. Such report was approved by the Chief Executive Officer on 20.12.2014. The respondents thereafter gave an offer, which was accepted by the petitioner, pursuant to which a sale deed was executed on 30.12.2014, which was duly registered before the Sub Registrar.

8. The learned senior counsel contended that once the rate offered was accepted and consideration was paid and a sale deed has been executed, no recovery of the consideration paid could be recovered as arrears of land revenue. It was further contended that even assuming that a fraud was played, the amount could not be recovered as arrears of land revenue.

9. On the other hand, the respondents contend that the sale-deeds were executed on the basis of the documents produced by the officers and employees of the Consolidation Department, but, when physical possession of the land was being taken, the respondents noticed the discrepancy and found that the land was not abadi but agricultural land. Accordingly, a three member inquiry committee was constituted, which found discrepancy in the nature of the land. According to the respondents the inquiry report reported that the officers and employees of the Consolidation Department were in collusion with the tenure holders and that an ante dated order dated 30.7.2012 was passed under Section 5(1)(c) of the Act after publication of the notification issued under Section 4 of the Land Acquisition Act, thereby causing loss to the Government. It was also

asserted that since excess payment has been made, the petitioner was required to return the amount along with interest. It was also contended that a charge sheet has been issued against the erring officials and inquiry proceedings are going on. It was further contended that there is a stipulation in the sale deed that in the event any excess amount has been paid to the petitioner the same could be recovered as arrears of land revenue.

10. Having heard the learned counsel for the parties at some length, we find that the contention that the order dated 30.7.2012 passed under Section 5(1)(c) of the Act is ante dated has not as yet been proved. It is only an allegation nor has the said order dated 30.7.2012 been recalled by the authority concerned. Consequently, no recovery can be made on the basis of an allegation, which is yet to be proved. At the moment the land of the petitioner is abadi in view of an order passed under the Act. So long as the order treating the land of the petitioner as abadi stands, recovery cannot be made from the petitioner's treating the said land as an agricultural land.

11. Allegation of collusion by the petitioner or by other tenure holders with the officials of the Consolidation Department is yet to be proved. At the moment, on the basis of allegations of fraud recovery cannot be made.

12. It is alleged that there is a stipulation in the sale-deed for recovery of the amount as arrears of land revenue, in the event excess amount was paid to the petitioner. A copy of the said sale deed has been annexed to the writ petition. The recital contained in the sale-deed indicates that in case there is a discrepancy in the area of the land, on the basis of which if it was found that excess amount had been paid, in that eventuality, the excess amount would be recovered as arrears of land revenue along with 12% interest. This clause in the sale-deed does not entitle the petitioner to recover any amount paid towards consideration of the land. The sole contention of the respondents is, that the rate offered by them to the petitioner was the rate for abadi land whereas rate for agriculture land should have been offered.

13. In our opinion, if a wrong rate has been offered by the respondents to the petitioner, the same cannot be recovered as arrears of land revenue, as per the recital contained therein. If a fraud has been played by the petitioners upon the respondents, the remedy available to the respondents is to file a suit for cancellation of the sale deed. At the moment, there is a concluded contract, namely, an offer made by the respondents with regard to the rate of land, which was duly accepted by the petitioner. A sale deed has been executed and the consideration has been paid to the petitioner. The amount can only be recovered after the sale deed is cancelled and not otherwise.

14. In the light of the aforesaid, the recovery notice against the petitioner is wholly illegally and without any authority of law. The recovery cannot be sustained and the impugned order is quashed.

15. The writ petition is allowed.