(1997) 05 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15167 of 1996

Arvind Kumar Sharma and Ors. APPELLANT

Vs

State of U.P.through Collector,Agra & Ors. RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 28A

Citation : (1997) 05 AHC CK 0091

Hon'ble Judges : M.Katju, J and B.S.Chauhan, J

Final Decision : Dismissed

Judgement

Dr. B.S. Chauhan, J.—A large track of land situate in Revenue Estate of village Gailana Mustkil, district Agra was notified under Section 4 of the Land Acquisition Act, 1894, (hereinafter called the Act), on 2431982/1741982. In respect of the said land the declaration under Section 6 was made on 25 382/17482. By resorting to. the urgency clause enshrined in the provisions of Section 17of the Act, possession of the land was taken by the respondents on 21782. Out of the notified land some area had been owned by one Shri Hukum Singh Parihar, who allegedly because of his poverty and ignorance could not wait for making of the award by the Collector under Section 11 of the Act and he executed a registered sale deed on 20686 in favour of Lal Krishna Sahkari Avas Samiti, Agra. The Collector made the award just on the 4th day of the execution of the sale deed, i.e. on 24686 assessing the market value of the land at the rate of Rs. 45/ per sqr. yard. The said Sahkari Avas Samiti preferred a reference under Section 18 of the Act, which was rejected by the Collector vide order dated 21788 and the order of rejection was communicated to the said Sahkari Avas Samiti. One Sri Sambhar Singh, whose land had also been acquired by the same notification had filed a reference case No. 275 of 1987 which was decided by reference court on 2851992 and the market value of the land was assessed at Rs. 115/ per sqr. yard.

2. The present petitioners got a registered sale deed executed in their favour from the said Sahkari Avas Samiti on 1761992 and filed an application under

Section 28A before the Collector on 2081992.The said application was rejected by the Collector on the ground that the reference under Section 18 filed by the predecessorininterest, i.e. Lal Krishna Sahkari Avas Samiti, had been rejected on 2171988 and, thus, the said application under Section 28A was not maintainable. Hence this writ petition.

3. Heard Shri Murli Dhar Mishra, learned Counsel for the petitioners and learned standing Counsel for the respondents.

4. It is settled law that once the possession is taken, the land vests in the State free from all encumbrances under Section 16 of the Act, and once the land vests in the State it could not be divested, vide Satendra Prasad Jain v. State of U.P. and others, AIR 1993 SC 2517 and New Rivera Cooperative Housing Society v. Special LandAcquisition Officer, 1996(1) SCC731. There can also be no quarrel with the proposition that any sale after the S. 4 notification is void, videAjay Kumar Singhalv. Union of India, AIR 1996 SC 2677.

5. In Senh Prabha v. State of U.P, AIR 1996 SC 540, the Apex Court observed that any person, who purchases land after publication of the notification under Section 4 of the Act does so at his own peril. The object of the Section 4 notification is to give notice to everyone. The land is needed for public purpose and the acquisition proceeding points out "an impediment to anyone to encumber the land acquired thereunder". Therefore, any alienation of the land after the publication of the Section 4 notification is not binding upon the State, and on taking possession of the land, all rights, titles and interests in the land vest in the State under Section 16 of the Act free from all encumbrances.

6. Similarly, in U.P.JalNigam v. Mis. Kalra Properties (P) Ltd., AIR 1996 SC 1170, the Apex Court has held that purchase of land after the publication of the Section 4 notification is void against the State and the purchaser cannot acquire any right, title or interest in the land. However, the purchaser may be a person interested in compensation, since he steps into the shoes of the erstwhile owner and hence he may claim only compensation.

7. In the instant case, the land had vested in the State on 2171982. It was purchased by the Sahkari Avas Samiti on 2041986 and subsequently by the present petitioners on 1761992. We are of the considered view that both the sale deeds are void as Shri Hukum Singh Parihar, the original owner had no title, interest in the land after its vesting in the State on 21782. He had sold this land allegedly because of his poverty, ignorance and inarticulation and considering himself helpless and incompetent to get proper compensation from the Collector and the Courts. In fact what he had transferred is the right to get Court in Mewa Ram v. State of Haryana, (1986) 4 SCC 151, and the court placed particular emphasis on para 2 (ix) of the objects and reasons which provided for a special provision for inarticulate and poor people to apply for re determination of the compensation amount on the basis of the court award in a land acquisition reference filed by comparatively affluent land owner. The Apex Court observed as

under:

"Section 28A in terms does not apply to the case of the petitioners.....They do not belong to that class of society for whose benefit the provision is intended and meant, i.e. inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court under Section 18 of the Land Acquisition Act, 1894. On the contrary, the petitioners belong to an affluent class.............." (Emphasis added)

12. The Apex Court approved the law laid down in Mewa Ram (supra) again in Scheduled Caste Cooperative Owning Society Ltd. Batinda v. Union of India and others, AIR 1991SC730.

the compensation and nothing more. The present petitioners, though stepped into the shoes of the Sahkari Avas Samiti, but they cannot claim ''a better title than the said Sahkari Avas Samiti had possessed.

8. Admittedly the reference under Section 18 of the Act, filed by the Sahkari Avas Samiti had been rejected by the Collector on 21 71988 and he communicated the order to the said Samiti. The said Samiti did not challenge the said order for reasons best known to it and allowed it to become final. The application of the present pet;.loners has been rejected only on the ground that the Section 18 reference of the purchaserininterest had been rejected. If the order of rejection of the Section 18 reference had become final, even the said Sahkari Avas Samiti would not have a legitimate claim under the law to file an application under Section 28A of the Act, and thus an application which could not have been maintainable at the behest of the predecessorininterest would not become maintainable at the behest of the purchaser of the said interest.

9. It has been contended on behalf of the petitioners that the said application for reference under Section 18 had wrongly been rejected by the Collector. Neither the said application to refer the matter u/S. 18 nor the order dated 2171988 rejecting the said application has been filed, and once the said order dated 21788 has become final the issue of illegality cannot be agitated after the lapse of about a decade before this Court. Thus, we are of the considered opinion that there is no illegality in the impugned order dated 721996, contained in Annexure 4 to this writ petition and the submissions made on behalf of the petitioners are devoid of any merit.

10. There is another aspect of the matter. S. 28A of the Act was inserted in the Act by amendment Act No. 68 of 1984 and it provides for redetermination of the amount of compensation on the basis of the award of the court in respect of a land which has also been acquired in the same land acquisition proceedings, if the applications are filed within a period of three months from the date of the award of the Court.

11. The scope of provisions of Section 28A was considered by the Supreme

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13. In Babua Ram v. State of U.P, 1995 (2) SCC 689, the Apex Court again approved and reiterated the law laid down in Mewa Ram (supra) and observed as under:

"Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28A was not extended. Otherwise, the phraseology of the language of the non obstinate clause would have been differently worded........It is true that the legislature intended to relieve hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference under Section 18 which is an existing bar and to remedy it, Section 28A was enacted giving a right and remedy for reader monition.........The legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under subsection (1) of Section 18 due to poverty or ignorance or avoidance of expropriation."

14. A similar view has been taken by a Division Bench of this Court in Nanakand others v. State of U.P and others, 1996 AWC 1237.

15. Thus, it is apparent that the legislature has carved out an exception in the form of Section 28A and made a special provision to grant some relief to a particular class of society, namely, poor, illiterate, ignorant and inarticulate people. It is made only for little Indians. The provision of Section 28A refers to the "person interested" which means the original owner and that original owner must also belong to the exceptional class as referred to above. The person interested must further be a person aggrieved by the award of the Collector.

16. In the instant case, the present petitioners purchase the interest on 1761992, though the award had been made exactly six years ago on 2461986. We failed to understand how the present petitioners can claim that they were aggrieved by an award which came into existence six years prior to their stepping into the shoes of the first purchaser. The provisions of Section 28A is beneficial legislation meant only for a particular class. The petitioners do not belong to that class. They had exploited the poverty, illiteracy and ignorance of the original owner indirectly as the original owner, Sri Hukum Singh Parihar had already been exploited by the said Sahkari Avas Samiti. It is settled law that a person who prefers a Section 18 reference cannot maintain an application under Section 28A of the Act, vide G. Krishna Murthy and others v. State of Orissa, 1992 (2) SCC 733. The benefit of such an exceptional rule cannot be extended to the petitioners as it would be against the public policy. In a similar situation the Hon''ble Supreme Court in Union of India v. Sheo Kumar Bhargava, 1995 (6) JT 274, observed that the benefit of State policy which confers certain beneficial rights on a particular class of person is meant only for the person whose land was acquired and by necessary implication "the subsequent purchaser was elbowed out from me policy and became disentitled to the benefit of'' the State

policy.

17. In Jaipur Development Authority v. Mahabir Housing Society, Jaipur and others, 1996 (II) SCC 229, the Apex Court, though not expressing a final opinion, expressed doubt on the maintainability of a Section 18 reference by the subsequent purchaser.

18. Before parting with the case, we would also like to point out that even if a person purchases the land at a point of time recent to the Section 4 notification he cannot claim compensation more than what he has paid as a consideration for the sale. Vide Dollar Co. Madras v. Collector of Madras, AIR 1975 SC1670, wherein it has been held that the best evidence of the value of the property is the sale of the very property to which the claimant is a party. If the sale is of recent date then all that need normally be proved is that the sale was purchased by a willing purchaser and by a willing seller and there has not been any appreciable rise or fall since then, and there has been no substantial improvement on the land in such a short interval. The "price paid by the owner recently represents an expression of market value, as bonafide evidence of value."

19. In the instant case, the land had to be assessed at the market value prevailing on 1741982. The petitioners did not disclose what consideration they had paid for the property in question in 1992 to the Sahkari Avas Samiti and what was the consideration which the Sahkari Avas Samiti had paid to the original owner, Sri Hukum Singh Parihar, as none of the sale deeds has been brought on record nor any other particular has been furnished. In such situation they can certainly nor claim as market value more than what they had paid, and if they are not entitled under the law to do something directly, they cannot be permitted to do it indirectly by adopting the oblique means by filing the Section 28A application. It is a clear case of speculation and gambling and the petitioners cannot seek any relief under the enquity jurisdiction under Article 226 of the Constitution of India.

20. In view of the above, the petition lacks merit and is accordingly dismissed.