
(2015) 08 AHC CK 0097

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18045 of 2004

Asha Ram and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2015) 8 ADJ 543 : (2015) 8 ADJ 294 : (2015) 112 ALR 619 : (2015) 5 AWC 5225 : (2015) 129 RD 585

Hon'ble Judges : Arun Tandon, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : Rajeev Misra, Karan Singh Yadav, Pankaj Dubey and Piyush Sharma, for the Appellant; R.P. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Piyush Sharma, counsel for the petitioners and learned counsel for the Noida. This writ petition has been filed with the following reliefs:

(i) issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 23.2.2004 passed by the respondent No. 3. The Chairman/ Chief Executive Officer, New Okhla Industrial Development Authority, Gautam Budh Nagar (An-nexure-11 to the writ petition);

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to register the exchange deed in respect of survey plot No. 248 area 1-0-0 situate in village Nithari, Sector-31 Noida, Tehsil and District Gautam Budh Nagar;

(iii) issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful possession of the petitioner over the plot No. 248 area 1-0-0 situate in village Nithari/Sithari and further not to demolish the construction raised by the petitioner thereon."

2. The facts, as borne out from the records of the writ petition, are as follows:

3. State of U.P. vide notification dated 1.6.1976 issued in exercise of powers under Section-4 of Land Acquisition Act, 1894 (hereinafter referred to as the old Act) acquired plot No. 248 in village Nithari/Sithari, Gautam Budh Nagar. According to the petitioners out of the plot No. 248, an area of one bigha of land was not acquired. It is further his case that the land which was part of said plot was handed over to the Development Authority for development purposes on the assurance that in lieu of one bigha of land of plot No. 248 which was not subject-matter of acquisition, he would be provided plot Nos. 29 and 31 in Sector-38 Noida. In term of the offer so made to the petitioner, a deed of exchange was also prepared on 20.11.1981, which was submitted on 20.11.1981 with the Development Authority but for the reasons best known to the Authority, exchange deed was not executed. It is then stated that on 31.12.1989 a tripartite agreement was executed between Jai Ram, New Okhla Industrial Development Authority and one Radha Krishna Trust. Under the terms of tripartite agreement, possession of property of plot Nos. 29 and 31 was delivered to the petitioner.

4. It is then stated that despite all the aforesaid, the officers of the respondent Development Authority were illegally interfering with the possession of the petitioner and the constructions which he proposed to raise over plot Nos. 29 and 31.

5. The petitioner, therefore, approached this Court by filing Civil Misc. Writ Petition No. 8323 of 2003 (Asha Ram v. District Magistrate, Ghaziabad and others) which was decided vide judgment and order dated 20.2.2003 permitting the petitioner to ventilate their grievances before the Chief Executive Officer, NOIDA, Gautam Budh Nagar.

6. The representation so made by the petitioner before the Chief Executive Officer, Noida, Gautam Budh Nagar, in terms of the order of the High Court, has been rejected under the impugned order dated 23.5.2004. It is against this order, the present writ petition has been filed.

7. Today before this Court, counsel for the petitioner has produced a certified copy of the tripartite agreement which is said to have been registered on 6.6.1992. When this Court enquired that the tripartite agreement referred to in paragraph-14 of the petition, it has been stated that the deed after signatures was handed over in the office of the Registrar. It was registered after six months. Counsel for the petitioner vehemently contended before us that Development Authority has played fraud upon the petitioner who is a poor farmer. After giving assurance to the petitioner that they would be provided land in exchange of one bigha of land of plot No. 248 in Sector-31 Noida, the authority has now turned and is denying the agreement earlier entered. He, therefore, submitted that this Court may require Development Authority to execute the exchange deed and not to interfere with the possession of the petitioner over plot Nos. 29 and 31.

8. A counter-affidavit was filed by the Development Authority stating therein that plot No. 248 was acquired under notifications issued in exercise of powers under Section-4 of the old Act dated 1.6.1976 followed by notification under Section-6 of the old Act dated 16.9.76. Possession of the said plot was taken on 28.10.1976. Similarly situated plot No. 775 was also requisitioned which was the property of the Gaon Sabha. It has also been stated that at no point of time, any agreement for exchange was entered into between the authority and the petitioner for providing land in Khasra Nos. 29 and 31 in lieu of one Bigha of land of plot No. 248. The averments to the contrary made in the writ petition are incorrect. It has also been stated that at no point of time, exchange deed was executed between the parties. With regard to tripartite agreement, it is stated that no such agreement had ever taken place. Copy of tripartite deed enclosed alongwith the writ petition is a forged document. The petitioner was never allotted plot Nos. 29 and 31. Lastly, it is stated that petitioner has raised unauthorized constructions over the aforesaid plot Nos. 29 and 31 and in order to save these unauthorized constructions present proceeding have been initiated.

9. In the rejoinder, counsel for the petitioner referred to the orders passed at interim stage in present petition and reiterated what was stated in the writ petition.

10. We have heard learned counsel for the parties and examined the material available on record.

11. At the very outset, we may record that the entire case pleaded by the petitioner in the matter of allotment of land to him in exchange of one bigha of plot No. 248 which was not subject-matter of acquisition appears to be wholly misconceived. The only document on record of the present writ petition suggesting some consideration in that regard is the letter dated 22.2.1985, Annexure-2 to the writ petition. This is a letter written by the Administrative Officer, Noida, which only records that undeveloped land of plot Nos. 29 and 31 has been reserved for the petitioner and petitioner may contact the Special Land Officer, Ghaziabad alongwith the certificate that he had not withdrawn the compensation in respect of the aforesaid land and after he withdraws the civil suit, the land shall be provided to him on lease-rent and he would be required to execute an exchange deed. There is nothing on record that this offer was ever acted upon by the Noida. This offer is of the year 1985. The first writ petition was filed for enforcing the same in the year 2003 i.e. after 18 years of the alleged letter dated 22.2.1985. Moreover, the correctness of the said letter is disputed in the counter-affidavit filed by the Noida authority. What is surprising to note is that the petitioner claims to have submitted the exchange deed with the Noida authority on 20.11.1981 and within 23 days of the said deposit of the exchange deed, he alleges that a tripartite agreement was executed between the parties in respect of same plots. This tripartite agreement makes no mention of the exchange deed. The tripartite deed which has been produced before us has been registered on 6.6.1992. What has been worst to note is that the name and

authority of the person who signed on the said deed on behalf of Noida authority has not been mentioned. We have gone through the entire deed carefully. We are not able to decipher as to who signed the deed and what was his designation. No authority in Noida has any competence to execute such deed without there being an authorization in his favour by the authority itself. The tripartite deed is kept on record of the present writ petition. We further find that Chief Executive Officer, Noida under the impugned order has recorded that no exchange was ever agreed upon at any point of time and entire claim set up by the petitioner is false. At no point of time, plot Nos. 29 and 31 were allotted to the father of the petitioner. In the totality of the circumstances, we do not find any good ground to interfere with the impugned order passed by the Chief Executive Officer, Noida dated 23.2.2004. No case is made for issuance of a direction to the respondents for execution of the exchange deed. The writ petition is devoid of any merit and is accordingly dismissed. The Noida authorities are free to proceed against the unauthorized construction raised over plot Nos. 29 and 31, if any, in accordance with law.