

(2014) 02 AHC CK 0100

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10209 of 2010

Asha Ram

APPELLANT

Vs

Pramukh Sachiv Avas Evam Shastri Niy. and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 16, 17, 18, 4, 48
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 27

Citation : (2014) 2 ADJ 506 : (2014) 103 ALR 312 : (2014) 3 AWC 3214 :
(2014) 123 RD 130 : (2014) 3 UPLBEC 2128

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : K.K. Srivastava, K.K. Tiwari and K.P. Tiwari, Advocate for the Appellant; A.K. Singh, A.R. Singh, Ajit Kumar Singh and Akhileshwar Singh, Advocate for the Respondent

Judgement

Mahesh Chandra Tripathi, J.—Heard Sri O.P. Singh, learned Senior Advocate for the petitioner, Sri B. Dayal, for the Meerut Development Authority, Sri Akhileshwar Singh, for the respondent No. 8, U.P.S.I.D.C., Meerut and learned Standing Counsel for State of U.P., Lucknow. Parties have exchanged their affidavits, with the consent of learned counsels for the parties, the writ petition is finally decided at the admission stage itself. The petitioner has filed the present writ petition with following prayers:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 16.12.2009 passed by the respondent No. 1 (Annexure XIV to the writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent No. 1 to exempt the petitioners land from exemption under Land Acquisition Act.

(iii) Issue a writ, order or direction in the nature of mandamus alternatively directing the respondent Nos. 1 to 7 to get the evaluation of the land and the existing factory/Building carried out as per prevailing market rate fix the amount of compensation on the basis of valuation amount and pay alongwith interest @ 18% P.A.

(iv) To grant any other relief as this Hon"ble Court may deem proper and justified.

(v) Award cost of the writ petition in favour of the petitioner.

2. In the present matter the petitioner has prayed that plot No. 49 (area 0.172 hectare), situated in Village Achhraura, Tehsil and District Meerut, be exempted from acquisition and challenged the impugned order dated 16.12.2009 passed by the respondent No. 1, rejecting the prayer of the petitioner regarding the exemption of the land u/s 48 of the Land Acquisition Act, 1894 (herein after referred as an "Act"). In the present matter notification u/s 4 of the Act had been gazetted on 14.8.1987 and Section 6 of the Act had been notified on 4.9-1987 and the award was made on 22.2.1990. The present disputed plot i.e. plot No. 49 was also part of the acquisition proceeding.

3. In the present matter the possession had been taken over by the competent authority on 19.5.1995 and immediately thereafter the Meerut Development Authority (herein after referred as "M.D.A.") had handed over the possession to the U.P.S.I.D.C. on 27.5.1995. The said land had been acquired for the purpose of "Planned Industrial Development" at District Meerut. The memo of possession dated 19.5.1995 has been brought on record through supplementary-affidavit (Annexure 2 to the 2nd Supplementary-affidavit filed by the "M.D.A.)."

4. Sri O.P. Singh, learned Senior Advocate had submitted that in the present matter the petitioner was running a factory over the plot in question and same was mutated in the Nagar Mahapalika and the petitioner continued to pay the municipal tax in this regard. He had also brought to our notice that in the present matter a survey was conducted on 30.1.1990 and to this effect an information had been sent by the Vice Chairman, "M.D.A." to the State Government vide letter dated 11.5.2009. He has also drawn our attention towards Annexure 11 to the writ petition by which the local revenue authorities had made a survey on 30.1.1990 in which it had been mentioned that there was factory and abadi over the plot No. 49. He submits that the impugned order dated 16.12.2009 passed by the State Government is not justified and the same is not in accordance with law. Specially on the ground that "M.D.A." and the State Authority had taken only symbolic possession and the petitioner is in actual possession over the property in dispute, therefore, liable to get the benefit of Section 48 of the Act and his land is liable to be exempted.

5. Whereas Mr. B. Dayal counsel for the "M.D.A." had opposed the contention of the petitioner and stated that land in question was required for the establishment of Planned Shatabdi Nagar Scheme at Village Orcha and Gata No. 49 area

0-13-12 Bigha was also acquired strictly in consonance with the provisions of the Act. In this regard the Section 4 and 6 of the Act had been gazetted on 14.8.1987 and 4.9.1987 respectively and thereafter the possession had been taken over on 19.5.1995 by the M.D.A. and the same had been handed over to the U.P.S.I.D.C. on 27.5.1995. In this regard very detailed information had been sent by the "M.D.A." to the State Government by which it had also been informed that under the grave urgency the land had been acquired and immediately the same has been handed over to the U.P.S.I.D.C. for industrial development. He has also drawn our attention that claim of the petitioner regarding factory or construction is also not sustainable specially under the background that due to some illegal construction over the land, the notice u/s 27 of the U.P. Urban Planning and Development Act, 1973 had also been given to the original owner of the property in question on 14.7.1987. The said notice had also been brought on record by the petitioner through Annexure 2 to the writ petition. He has also stated that whenever the authority identified any piece of land for acquisition and the survey which is required prior to the notification of Section 4 of the Act is being made, the tenure holder starts making construction in a haphazard manner, so that they may prove before the acquiring authority regarding the construction or old abadi and finally pray for an exemption of the land from the acquisition proceedings. He has categorically submitted that whatever the illegal construction over the plot, the same had been removed by M.D.A. and the same was in violation to the provision of U.P. Urban Planning and Development Act, 1973. So for demolition part is concerned it had been accepted by Sri O.P. Singh, learned Senior counsel for the petitioner.

6. It is also relevant to mention that the petitioner himself has purchased the disputed property which was owned by Surajmal and the sale-deed was executed on 3.10.1986 as averred in Paragraph No. 7 to the writ petition the petitioner claims that since he has handed over the possession on 10.2.1996, the petitioner continued to be under possession.

7. Mr. B. Dayal has refuted the claim of the petitioner regarding the alleged possession specially on the ground that once the possession had been taken over by the authority i.e. "M.D.A." on 19.5.1995 then there was no occasion for retention of the said plot by the petitioner. He has also stated that once the possession has been taken over by the competent authority and thereafter if tenure holder claims to be actual possession of the land in question the same is tantamount to be illegal encroachment over the acquired land.

8. In Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , while dealing with same issue the Hon"ble Apex Court held as follows:

It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt, Sri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession

of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

9. Sri Akhileshwar Singh, learned counsel for the U.P.S.I.D.C. has also filed short counter-affidavit bringing on record that the total area of 156 acres of land was given to the respondent No. 8 the U.P.S.I.D.C. for Planned Industrial Development on 27.5.1995 by the "M.D.A." and it was agreed that external development of the land like construction of master plan, road and drain etc. were to be developed by the "M.D.A." and remaining development work were required to be performed by the U.P.S.I.D.C. He has also submitted that after the possession of the land to the U.P.S.I.D.C. The layout of the industrial area namely Udyog Nagar, Meerut was approved and accordingly industrial plots were allotted to the industries and most of them have established and running there industries and full fledged industrial township alongwith all basis infracture such as roads, drain, culverts, electricity etc. had already came in existence and the area is already developed as per plan.

10. In these circumstances learned counsel for the respondents have submitted that the State Government rightly rejected the claim of the petitioner after appreciating the correct facts and rightly appreciated the correct proposition of law, the same is sustainable under the present facts and circumstances of the case and liable to be upheld by this Hon"ble Court.

11. We have heard the counsel for the petitioner as well as respondents counsels and perused the record. The State Government while rejecting the claim had clearly mentioned that the actually survey was conducted and if there were some actual construction or abadi over the plots under the acquisition the same had been exempted from the award and in the present matter the possession had been taken over on 19.5.1995 by the "M.D.A." and immediately on 27.5.1995 the same had been handed over to the U.P.S.I.D.C. and once the possession had been taken over by the competent authority the same is being vested in the State free from all encumbrances as per the provision of Section 16 of the Land Acquisition Act, and the land in question cannot be divested.

12. The Hon"ble Apex Court had considered that once land has been vested in the State whether can be divested. In case of V. Chandrasekaran and another v. The Administrative Officer and others, the Hon"ble Apex Court has made following observation in paragraph Nos. 16, 17, 18, 21, 22, which is quoted below:

16. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. (Vide: Awadh Bihari Yadav and Others Vs. State of Bihar and Others, ;

U.P. Jal Nigam v. Kalra Properties (P) Ltd. (Supra); Allahabad Development Authority Vs. Nasiruzzaman and Others, , M. Ramalinga Thevar Vs. State of Tamil Nadu and Others, ; and Govt. of A.P. and Another Vs. Syed Akbar, .

17. The said land, once acquired, cannot be restored to the tenure holders/ persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/ abandoned under the provisions of Section 48 of the Act, or u/s 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide: State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, ; Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, ; Satendra Prasad Jain and Others Vs. State of U.P. and Others, ; Rajasthan Housing Board and Others Vs. Shri Kishan and Others, and Dedicated Freight Corridor Corporation of India Vs. Subodh Singh and Others,).

18. The meaning of the word Vesting", has been considered by this Court time and again. Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, , this Court held that the meaning of word Vesting" varies as per the context of the Statute, under which the property vests. So far as the vesting Under Sections 16 and 17 of the Act is concerned, the Court held as under:-

In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of Government without any condition or; limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration.

21. In Government of Andhra Pradesh and another v. Syed Akbar (Supra), this Court considered this very issue and held that, once the land has vested in the State, it can neither be divested, by virtue of Section 48 of the Act, nor can it be reconveyed to the persons-interested/tenure holders, and that therefore, the question of restitution of possession to the tenure holder, does not arise. (See also: Pratap and Others Vs. State of Rajasthan and Others, ; Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, ; State of Kerala and others Vs. M. Bhaskaran Pillai and another, ; The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, ; Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, ; and Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another,).

22. In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non-grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person-interested, nor can such person claim any right of restitution on any ground, whatsoever,

unless there is some statutory amendment to this effect.

13. In view of the above relief claimed by the petitioner cannot be granted by this Court, in the present matter the award was made on 22.2.1990. The Land Acquisition Act itself is a complete Code. As prayed by the petitioner himself through prayer No. 3 that any alternative direction may be issued to the respondent Nos. 1 to 7 to get the evaluation of the land as per prevailing market rate and fix the amount of compensation on the basis of valuation amount and pay alongwith interest @ 18% per annum. The said prayer is not justified, specially under the present facts and circumstances of the case, the award was declared on 22.2.1990. The petitioner has every right to challenge the said award by means of reference u/s 18 of the Land Acquisition Act, if he was not agreed with the compensation fixed by the authority regarding actual valuation of the property in question, he had every remedy to approach to the competent authority regarding the redressal of his grievance. Therefore, in aforementioned facts and circumstances of the case, we are not inclined to interfere in the present matter under extraordinary jurisdiction Under Article 226 of the Constitution of India. However, if the petitioner has any grievance regarding the non-payment of compensation and interest, he may approach to the competent authority regarding his grievance.

Accordingly, the writ petition is dismissed with the observations as made above.