

(2017) 05 AHC CK 0046
In the Allahabad High Court
Case No : 1818 of 2017

Ashok Kumar

APPELLANT

Vs

State Of U.P. Thru. Secy., Housing & Urban Planning & 3 Ors.

RESPONDENT

Date of Decision : 08-05-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6, Section 9(2), Section 31(2), Section 11(2) - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose - Notice to persons interested - Payment of compensation or deposit of same In Court - Enquiry and award by Collector Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2)

Citation : (2017) 05 AHC CK 0046

Hon'ble Judges : Amreshwar Pratap Sahi, Sanjay Harkauli

Bench : Division Bench

Advocate : Kshemendra Shukla, Gaurav Mehrotra, Mukund Tiwari

Judgement

1. This writ petition prays for a mandamus that the proceedings for execution for Plot No.224, measuring 3 bighas of Khata No.77, Village - Aurdaunamau, Tehsil - Sadar, District - Lucknow be declared to have been lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act").

2. The ground taken is that since on the exchange of affidavits it is evident that only part of the advance compensation had been paid and 2/3rd of the compensation has now been deposited on 2nd of February, 2017 in the Court of the learned District Judge, Lucknow under Section 31(2) of the 1894 Act, then in that event the judgments of the Hon'ble Supreme Court in the case of Delhi Development Authority Vs. Sukhbir Singh & Ors. - AIR 2016 (8) SC 4275 read with the ratio of the Division Bench judgment of this Court in the case of

Bimlendra Mohan Pratap Mishra & Anr. Vs. State of U.P. & Ors. - Writ Petition No.170 (L/A) of 2014 decided on 14.02.2017 are clearly attracted. Consequently, the writ petition deserves to be allowed with a suitable direction in this regard.

3. It may be clarified at the very outset that this writ petition is only by one Ashok Kumar contending that he was entitled to receive the entire compensation of the said land and therefore, it is he who can now successfully invoke the provisions of Section 24(2) of the 2013 Act.

4. The facts shorn of unnecessary details are that the land in dispute became subject matter of acquisition under the Land Acquisition Act, 1894 for being handed over to the Lucknow Development Authority (L.D.A.) vide notifications under Section - 4 & Section - 6 of the said Act dated 05.09.2000 & 16.02.2001 respectively.

5. According to the counter affidavit filed on behalf of the State, the possession of the land was taken and handed over to the Lucknow Development Authority, the respondent no.4 herein, on 14.05.2002 which fact is however, been contested by the petitioner by filing a rejoinder affidavit. Nonetheless after the issuance of the notification the petitioner filed his objection on 26th of September, 2001 under Section 9(2) of the 1894 Act and a supporting affidavit was filed in relation thereto on 28th of February, 2002. According to the respondent-State, the petitioner had only 1/3rd share and therefore, he received advance compensation to the tune of Rs.2,17,800/- as per the rates prescribed then being Rs.10/- per sq. feet. Even though the petitioner has described the same to be a 50% amount in Para-4 of the writ petition, yet in the same paragraph the petitioner has admitted the same to be 80% of the amount. The petitioner had already filed his objections and was claiming higher compensation and ultimately the proposed award was put in abeyance as the tenure holders of the area including the petitioner entered into a compromise on 08th of January, 2004 to receive compensation at the rate of Rs. 23/- per sq. feet. The said compromise has been appended as Annexure-1 to the supplementary affidavit filed by the petitioner on 17.02.2017. The said settlement in Para-9 clearly stipulates that the settlement at Rs. 23/- per sq. feet would include solatium, additional compensation etc., and no other compensation would be payable nor any claim would be put forward by the tenure holders in this regard in future.

6. The same paragraph also stipulates that the entire amount payable shall be disbursed by the Addl. District Magistrate (Land Acquisition) through a camp within three months and in the event there is any dispute about title or ownership then the amount should be deposited in the competent Court. In the event any amount remains due after 30th of June, 2004, then interest would be payable in accordance with the land acquisition rules.

7. In terms of the aforesaid settlement, the revised amount that became payable to the petitioner has been calculated to the tune of Rs. 6,26,175/-.

8. The State and the Lucknow Development Authority in their counter affidavits

have come up with a case that since the exclusive claim of the petitioner to receive the entire compensation became disputed, the compensation was not disbursed to the petitioner, as the real brothers of the petitioner namely Rajendra Kumar and Babu Lal filed their objections on 2nd of February, 2006 contending that the petitioner was entitled only to 1/3rd share and hence, the remaining amount of the compensation to be paid with respect to the extent of the share of the petitioner, was deposited under Section 31(2) of the 1894 Act in the Court of the learned District Judge, Lucknow which admittedly was done on 2nd of February, 2017.

9. It is on the strength of these facts that Shri Kshemendra Shukla, learned counsel for the petitioner, contends that even assuming for the sake of arguments that a dispute had been raised, the fact that the compensation amount to the extent of the deficit indicated in the counter affidavit itself was deposited on 2nd of February, 2017 and in the absence of any valid deposit as admitted, the ratio of the judgments referred to hereinabove are clearly attracted and the proceedings of acquisition will be deemed to have lapsed. He further submits that as a matter of fact the two real brothers of the petitioner had raised an objection but they did not turn up after 2004 and this dispute was in respect of the one bigha of land which is 1/3rd exclusive share of the petitioner.

10. Controverting the said allegations and submissions Shri Amitabh Ray, learned Standing Counsel for the respondent-State and Shri Mukund Tiwari, learned counsel for the respondent-Lucknow Development Authority both have urged that firstly this writ petition has been filed after seven years of the declaration of the award which is dated 30th of March, 2007. This award was declared after a compromise in terms of Section 11(2) of the 1894 Act under the 1997 Rules which authorise acquisition by way of agreement and since the agreement has become final, a delayed challenge on the grounds now taken should not be entertained. Learned counsel have also relied on the decisions in the case of Mutha Associates Vs. State of Maharashtra reported in 2013(14) SCC 304.

11. They have further laid stress on the fact that the issue with regard to lapse of such acquisition proceedings was considered by this Court in the decision of Bhusai Vs. State of U.P. - Writ Petition No.42 (L/A) of 2014 decided on 05.09.2014. An S.L.P. filed against the same was permitted to be withdrawn by the Hon'ble Supreme Court to file a review petition before this Court. Two review petitions were filed; one by the Lucknow Development Authority and the other by the State, that were rejected on 26th of September, 2016. Against the said rejection, the Lucknow Development Authority filed Special Leave to Appeal No.1150 of 2017 and on 17th of April, 2017 the Hon'ble Apex Court, keeping in view the substantial amount of compensation having been paid passed the following interim order:-

LUCKNOW DEVELOPMENT AUTHORITY Petitioner (s)

VERSUS

BHUSAI AND ORS. Respondent (s)

(With appln. (s) for c/delay in filing SLP and office report)

Date : 17/04/2017 This petition was called on for hearing today.

CORAM :

HON"BLE MR. JUSTICE ARUN MISHRA

HON"BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner (s) Mr. Manender Singh, ASG.

Mr. M. C. Dhingra Adv.

Mr. Gaurav Mehrotra, Adv.

Mr. Gaurav Dhingra, Adv.

Ms. Gauri Neo, Adv.

Mr. Piyush Kant Roy, Adv.

Mr. Divyanshu Sahay, Adv.

Ms. Meenakshi Kalra, Adv.

For Respondent (s) Mr. Keshmendra Shukla, Adv.

Mr. E. C. Agrawala, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

It was submitted by Mr. Manender Singh, learned ASG appearing on behalf of the Lucknow Development Authority that in this case, most of the amount of compensation has been paid.

The amount of Rs. 1,19,87,274/- (Rupees One Crore Nineteen Lakh, Eighty Seven Thousand, Two Hundred and Seventy Four only) has been disbursed to the respondents. For one acre area compensation remains to be paid.

Considering the aforesaid submission, we deem it proper to grant the leave in the matter.

Let reply be filed within a period of six weeks.

List thereafter for hearing.

In the meantime, operation of the impugned order shall remain stayed.

12. It is, therefore, submitted that following the said interim order since a substantial amount of compensation had already been received by the petitioner

and he had already entered into a settlement for receiving the balance amount of compensation at the rate of Rs. 23/- per sq. feet, this Court should not exercise its discretion in favour of the petitioner for the relief claimed.

13. In rejoinder Shri Keshmendra Shukla urged that this Court following the judgment in case of Bhusai (Supra) and that of Delhi Development Authority (Supra) allowed the writ petition of one Chandra Shekhar & Ors. Vs. State of U.P. & Ors. - Writ Petition No.66 (L/A) of 2012 vide a judgment dated 03.11.2016. The Special Leave to Appeal No.6540 of 2017 preferred by the Lucknow Development Authority was dismissed on 03.04.2017 holding that there was no merit in the said petition. The order passed therein by the Hon''ble Apex Court is extracted hereinunder:- LUCKNOW DEVELOPMENT AUTHORITY Petitioner (s)

VERSUS

CHANDRA SHEKHAR AND ORS. Respondent (s)

(With appln. (s) for c/delay in filing SLP and office report)

Date : 03/04/2017 This petition was called on for hearing today.

CORAM :

HON''BLE MR. JUSTICE R. K. AGRAWAL

HON''BLE MR. JUSTICE ABAY MAHOHAR SAPRE

For Petitioner (s)

Mr. M. C. Dhingra, Adv.

For Respondent (s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

We do not find any merit in this petition. The special leave petition is, accordingly, dismissed.

Pending application, if any, stands disposed of.

14. Shri Keshmendra Shukla, therefore, submits that the interim order passed in the case of Bhusai (Supra) as against the final judgment aforesaid in the case of Chandra Shekhar (Supra) would not be attracted, more so, in view of the fact that in the case of Bhusai (Supra), the Hon''ble Apex Court has passed the interim order on a consideration of the fact that a substantial and major part of the compensation had been received by the tenure holder; whereas in the present case, the petitioner has received only 1/3rd of the amount and the balance has admittedly been deposited in 2017 as noted above. He, therefore, submits that the writ petition deserves to be allowed as prayed for.

15. We have considered the submissions raised and the facts that are undisputed are to the effect that an award in terms of Section 11(2) after settlement was made prescribing a payment of Rs. 23/- per sq. feet, the calculation whereof under the award insofar as the disputed land is concerned is Rs. 6,26,175/-. Out of the said amount only Rs. 2,17,800/- was received by the petitioner as advance compensation, that was even prior to the award. No payment has been made thereafter nor was it deposited for which the respondents contend that there was a dispute of share between the petitioner and his brothers that has not been decided as yet. We have clarified the issue with regard to the payment and the learned counsel have urged that this calculation is in respect of one bigha of land which is the 1/3rd share of the petitioner.

16. At this juncture, it is relevant to point out that the petitioner in his rejoinder affidavit filed to the counter affidavit of the State - Respondent Nos. 2 & 3, has brought on record a notice dated 16.01.2007 calling upon the petitioner to appear for disposal of his application. It is thus clear that an objection had been filed with regard to the receipt of compensation by the petitioner for the entire land and the same was not deposited. It is here that it would be appropriate to revert to the agreement dated 08.01.2004 as noted above. In Para-9 of the said agreement, there was a clear stipulation that in the event of any dispute of title or shares, the amount would be deposited in the concerned Court. After the award dated 30th of March, 2007, the said amount was admittedly not deposited before the concerned Court, may be on account of the dispute raised as noted above. Thus, it was the obligation of the Addl. District Magistrate (Land Acquisition) to have deposited the amount as per the settlement aforesaid but the same has been admittedly done on 02.02.2017. The agreement, therefore, itself has been violated by the State Authorities, inasmuch as, according to Clause - 9 of the said agreement, the payments and disbursement had to be made within three months which necessarily entails that in the event of dispute, the same ought to have been deposited before the Court concerned in terms of Section 31(2) of the 1894 Act. This admitted violation is, therefore, clearly evident from the material on record.

17. Secondly, it is only 1/3rd of the amount that had been paid in advance to the petitioner and the rest being allegedly disputed has now been deposited in the year 2017 without there being any material to indicate the disposal of the objections by the two real brothers of the petitioner. The amount that had been received by the petitioner was at the rate of Rs.10 per sq. feet. This stood enhanced to the tune of Rs.23 per sq. feet. The enhanced compensation was neither paid to the petitioner nor was it deposited in the Court concerned. Thus, if there is a partial payment to the petitioner and which is not the substantial amount, then in our opinion the ratio of the interim order passed by the Hon''ble Apex Court in the case of Lucknow Development Authority vs. Bhusai & Ors. (Supra) quoted hereinabove dated 17.04.2017 would not be attracted. On the other hand, the judgment in the case of Chandra Shekhar & Ors. (Supra) which has been affirmed by the Hon''ble Supreme Court on 03.04.2017 read with the

judgment in the case of Bimlendra Mohan Pratap Mishra (Supra) would be applicable and the acquisition will, therefore, have to lapse in view of the aforesaid conditions existing.

18. The question of delay as raised by the learned counsel for the respondents also deserves rejection, inasmuch as, the 2013 Act came into force on 01.01.2014. It is in this background that the passing of the award in 2007 cannot be a ground to count laches from 2007. To the contrary, the 2013 Act itself provides the leeway period of five years prior to the enforcement of the Act as the date of award for applying the provisions of Section 24(2) of the Act. In our opinion, there is no inordinate delay as urged on behalf of the respondents and to the contrary the deposit has been made on 02.02.2017 after the filing of this writ petition on 23.01.2017. Thus, the delay of deposit is on the part of the respondents and not on the part of the petitioner in coming up before this Court which is within a reasonable time.

19. In the aforesaid facts and the compensation of the land having been clarified, there is one fact that will finally determine the claim of the petitioner namely the issue as to whether the petitioner had received his full and final payment to the extent of his share or not, would be dependent on the fact of the extent of his share to which he is entitled to receive as his brothers are claiming 2/3rd of the amount from the entire amount payable. This would, therefore, be required to be determined finally and therefore, this writ petition is disposed off with a direction that this issue relating to the share of the petitioner be determined, if not already disposed off by the competent Court in terms of the notice that has been filed by the petitioner alongwith his rejoinder affidavit.

20. The acquisition proceedings will be treated to have lapsed in the event it is found ultimately that the petitioner has received only part of his payment to the extent of his share as noted above. This exercise shall be completed within three months.

21. Disposed off with the aforesaid directions.