
(2015) 11 AHC CK 0037
In the Allahabad High Court
Case No : Land Acquisition No. 168 of 2014

Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 11, 17, 18, 31, 31(2)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114, 114(1), 114(2), 24, 24(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168-A

Citation : (2015) 11 AHC CK 0037

Hon'ble Judges : S.S. Chauhan and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Asheesh Chaturvedi, for the Appellant; Gaurav Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—This petition has been filed for quashing the notification issued under Section 4 read with Section 17 of the Land Acquisition Act, 1894 (for short "the Old Act") dated 5.9.2000 and notification issued under Section 6 read with Section 17 of the Old Act published on 16.2.2001 in respect of the land belonging to the petitioner society.

2. The petitioner society is a registered Cooperative Housing Society under the provisions of the U.P. Cooperative Societies Act, 1965 having its Registration 3343/1988. The objective of the Society is to acquire, develop and sell the land to its members for residential purposes and the petitioner society has been continuously discharging its function since its inception. The petitioner society has undertaken large development of projects in past to cater and fulfil the needs of its members. The Society authorized its Secretary Sri Ajeet Singh to file the instant writ petition on behalf of the petitioner society vide resolution passed by the Managing Committee of the petitioner society on 5.4.2014. Up to the date

of notification i.e. 5.9.2000 under Section 4 read with section 17 of the Old Act, the petitioner society had purchased the land measuring 34 bigha 16 biswa 10 biswansi in Village Maqdoompur, Pargana, Tehsil and District Lucknow bearing Khasra Nos. 25, 28, 39, 40, 41, 43, 45, 55, 54, 58A & B and 289 on respective dates from the respective owners through various sale deeds. Title over the land bearing aforesaid khasra numbers was acquired by the petitioner society and in pursuance thereof, name of the Society was entered into the revenue record i.e. Khetaunis of 1410 to 1415 fasli in respect of Khasra Nos. 25, 28, 39, 40, 41, 43, 45, 54-Sa, 55, 58. In Khetauni of 1398 to 1403 fasli, Khasra Nos. 54 and 25 were recorded and in Khetauni of 1404 to 1409 fasli, Khasra No. 289 was recorded. The land purchased by the Society was sold to its members for construction of houses. Till the date of acquisition, the Society had purchased total land measuring 944261.80 sq. feet out of which 359931 sq. feet land has been allotted and sold to its members vide registered instruments and total land measuring 584330.8 sq. feet was under the ownership and possession of the petitioner society.

3. The State Government initiated acquisition proceedings in respect of the chak of land bearing aforesaid khasra numbers in the year 2000 vide notification issued under Section 4 read with Section 17 of the Old Act on 5.9.2000 followed by notification under Section 6 read with Section 17 of the Old Act published on 16.2.2001. Possession of the land notified under the aforementioned notification was taken by the opposite parties on various dates and thereafter, award was made under Section 11 of the Old Act in respect of the aforesaid khasra numbers on 29.10.2008. After declaration of the award under Section 11, Section 31 of the Old Act contemplates deposit of compensation in the court if the compensation has not been received by the owners. If for any reason, the amount has not been received by the persons interested, who are entitled to compensation, then the compensation is liable to be deposited in the court as contemplated under Section 31 (2) of the Old Act. In the instant case, neither any compensation has been paid to the petitioner nor has been deposited in the court where reference under Section 18 of the Old Act could have been made by the opposite parties. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the New Act") came into force w.e.f. 1.1.2014 and under Section 24(2) of the New Act, a provision has been made that where an award under Section 11 of the Old Act has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. Proviso to Section 24 of the New Act deals with the situation where award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then all beneficiaries specified in the notification for acquisition under Section 4 of the Old Act shall be entitled to compensation under the New Act. Notification is also violative of Section 24(2) of the New Act. On these pleadings, the acquisition has been put to challenge in

this petition.

4. Submission of learned counsel for the petitioner is that land possessed by the petitioner society cannot be challenged on the ground of fragmentation as provided under Section 168-A of the UP ZA & LR Act (for short "ZA Act"). The aforesaid fragmentation is not applicable in the case of the petitioner. Further submission is that the award in the present case has been made prior to five years of coming into force the New Act and in such a contingency, if possession has not been taken or compensation has not been paid, then the acquisition proceedings shall stand lapsed. Learned counsel submits that admittedly, in the present case the award has been made prior to five years of coming into force the New Act and one of the contingencies that compensation has not been paid is writ large and therefore, acquisition proceedings shall stand lapsed. Learned counsel also submits that after award of compensation, if compensation could not be paid to the person interested or to the original owner, then it was incumbent upon the opposite parties to have deposited the compensation amount in the court to which reference under Section 18 of the Old Act could be made, but in the present case at no point of time the compensation was deposited in the court as contemplated under Section 31 (2) of the Old Act. So, also the acquisition proceedings shall stand lapsed in view of the law laid down by the Apex Court in the case of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, .

5. Learned Additional Chief Standing Counsel, on the other hand, has submitted that the sale deed of the petitioner is hit by the provisions of Section 168-A of the ZA Act as certain portion of land was transferred to certain persons, which will amount to fragmentation. It is also submitted that the amount of compensation has been deposited in the court, but after promulgation of the New Act and not prior to that. Learned Additional Chief Standing Counsel has submitted that once the amount has been deposited even after the promulgation of the New Act, it shall be deemed to be valid deposit under law. Submission is that provisions of Section 31 (2) of the Old Act could not be complied with on account of the fact that at the relevant time no such law was prevailing to the said effect and petitioner society did not come forward to receive the compensation though it was incumbent upon it to have received the same.

6. We have heard learned counsel for the parties and perused the record.

7. Admittedly, notification under Section 4 read with Section 17 of the Old Act was issued on 5.9.2000 for acquiring land of various khasra numbers belonging to the petitioner society as indicated hereinabove. Notification under Section 6 read with Section 17 of the Old Act was issued on 16.2.2001 and possession of the land was taken by the opposite parties on 5.10.2001, 8.10.2001, 7.12.2001, 14.5.2002, 21.6.2002, 11.7.2002, 13.2.2003 and 10.4.2007. After taking over the possession, award under Section 11 of the Old Act was made on 29.10.2008 and after declaration of the award, compensation was never paid to the petitioner society nor the same was deposited in the court as contemplated

under Section 31 of the Old Act. Section 31 of the Old Act obligates the opposite parties to deposit the amount in the court where reference under Section 18 could be made, but no such deposit was made at any point of time as contemplated under Section 31(2) of the Old Act. No evidence has been brought on record to indicate that the compensation amount was received by the petitioner society at any point of time. When the compensation has not been given to the original owner, then Section 31(2) of the Old Act comes into play. Section 31(2) of the Old Act mandates the opposite parties to deposit the amount in the court and because of the fact that opposite parties have failed to deposit the compensation amount under Section 31 of the Old Act, the acquisition proceedings shall stand lapsed in view of the law laid down by the Apex Court in the case of Pune Municipal Corporation (supra). In paragraphs No. 20 and 21 of the aforesaid judgment, the Apex Court held as under:--

"20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

"21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114 (2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114 , however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2) , there is no merit in the contention of the Corporation."

8. Similar view has been expressed in the case of Bimla Devi Vs. State of Haryana, . Paragraph No. 4 of the said judgment is reproduced as under:--

"4. In view of the above legal position and the fact that the ward was passed on 18.11.1995 and the compensation has not been paid nor deposited in the court nor received by the appellants till 31.1.2014 and the physical possession is also with the appellants as on date, the subject acquisition has to be held to have been lapsed. We hold accordingly."

9. In the case of Union of India (UOI) and Others Vs. Shiv Raj and Others, , the Apex Court again reiterated the same principle.

10. The aforesaid legal position goes to indicate that once the deposit has not been made in the court, the acquisition proceedings shall stand lapsed. We cannot take any other different view in view of the law laid down hereinabove and we hold that the acquisition proceedings stood lapsed on account of non-deposit of the compensation amount in the court as contemplated under Section 31 of the Old Act.

11. Right to challenge the acquisition proceedings as contemplated under Section 24 of the New Act would be available to a person or not has been considered by the Apex Court in the case of Competent Automobiles Co. Ltd. Vs. Union of India (UOI) and Others . In the said case the facts were that all the appeals were admitted before commencement of the New Act and the appellants therein challenged their stand which they took originally in the appeal and the acquisition proceedings were impugned on account of violation of Section 24(2) of the New Act and the Apex Court found that various facts were not before it and were disputed in regard to the award of compensation prior to five years or possession being retained by the appellants therein or not and the compensation has been paid or not, then acquisition proceedings shall stand lapsed. The Apex Court found that under Section 24 of the New Act, requirement is of unambiguous and unvaryingly that factual conclusion be drawn about the passing of the award under Section 11 of the Old Act on or before 1.1.2009 and further that absence of compensation having been paid to the owner was required to be considered after a threshold requirement attracting the lapse. The Apex Court gave opportunity to the appellant to challenge the same before the High Court. In paragraph No. 7 of the said judgment, it was held as under:--

"7. Having heard all the learned Counsel, we are persuaded to dispose of these proceedings, without entering on the merits, by granting liberty to the land owners before us to pray for the revival of the Appeal in the event that Orders Under Section 24 of the 2013 Act are adverse to their interest. We, therefore, permit the land owners to initiate appropriate proceedings in the proper forum/ court, seeking the benefit of Section 24 of the 2013 Act, within eight weeks from today. We clarify that, in the even that any land owners have already approached the High Court concerned, their plea Under Section 24 of the 2013 Act shall be decided on merits."

12. On the basis of the aforesaid case law, it has been submitted that the plea of Section 24 of the New Act is required to be considered by the High Court and there is no estoppel and neither the opposite parties can argue that such plea cannot be taken by the petitioner. Co-ordinate Bench of this Court in the case of Bhusai v. State of U.P. & others, Writ Petition No. 42 (LA) of 2014, has already taken a similar view wherein it was held that the acquisition proceedings taken up under the Old Act would stand lapsed under Section 24 of the New Act in case compensation has not been paid. In that case, award was made on 21.10.2008

and the New Act came into force on 1.1.2014 and so, clearly the period of five years prior to commencement of the New Act expired on 21.10.2013 and as the award dated 21.10.2008 was made under the Old Act and more than five years have passed. The Court relied upon the case of Pune Municipal Corporation (supra) and ultimately set aside the acquisition in the aforesaid case.

13. Learned counsel for the petitioner has submitted that the case of Pune Municipal Corporation (supra) is the leading case which plays a guiding factor in the acquisition proceedings where award has not been made five years or more prior to the commencement of the New Act and physical possession of the land has not been taken or compensation has not been paid, then the acquisition proceedings shall stand lapsed. In the present case, it is evident from the record that award has been made on 29.10.2008 and the New Act has come into force on 1.1.2014. There is clear period of more than five years in making the award prior to commencement of the New Act has passed. In such a situation, if compensation has not been paid to the petitioner, then the acquisition proceedings shall stand lapsed under the provisions of Section 24(2) of the New Act.

14. Argument of the learned Additional Chief Standing Counsel that the sale deeds are hit by fragmentation. In respect of the said argument, it has been replied by the counsel for the petitioner that claim of the petitioner will not stand defeated on that account if some of the sale deeds are hit by fragmentation, the petitioner still possesses the right to get them validated as contemplated under the amended ZA Act. It has also been submitted that for the purpose of the present writ petition, the land to that extent may be excluded.

15. Compensation has neither been paid nor the same has been deposited in the court as contemplated under Section 31 of the Old Act, therefore, in both the situations, the acquisition proceedings will lapse. Learned Additional Chief Standing Counsel has submitted that compensation has been deposited in the court on 21.10.2014. The aforesaid deposit is of no consequence because the deposit has to be made under Section 31(2) of the Old Act immediately after the compensation has not been received by the land owners. The deposit made under the New Act will be of no consequence. If the liability incurred upon the opposite parties to deposit the compensation in the court under the Old Act as contemplated under Section 31 of the Old Act, they ought to have deposited the compensation in the court immediately after the compensation has not been received by the land owners where reference under Section 18 of the Old Act had to be submitted but the opposite parties failed to do so.

16. On consideration of the entire facts and law on the point, we are of the view that the acquisition proceedings in respect of the petitioner are liable to be quashed on account of non-compliance of the provisions contained under Section 31 of the Old Act and Section 24(2) of the New Act.

17. We accordingly allow the writ petition and issue a writ in the nature of

certiorari quashing the notifications dated 5.9.2000 and 16.2.2001 in respect of the petitioner. A writ in the nature of mandamus is issued directing the Lucknow Development Authority, Lucknow to restore the possession or allot some alternative land to the petitioner within a period of one month from the date of receipt of a certified copy of this order.