

(2017) 04 AHC CK 0154
In the Allahabad High Court
Case No : 15681 of 2017

BALJEET AND OTHERS

APPELLANT

Vs

STATE OF U P AND OTHERS

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs
Land Acquisition Act, 1894, Section 4, Section 6, Section 18, Section 17(4), Section 5A, Section 17(1), Section 4(1) - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose - Reference to Court - Special powers In cases of urgency - Hearing of objections - Special powers In cases of urgency - Publication of preliminary notification and powers of officers thereupon.

Citation : (2017) 04 AHC CK 0154

Hon'ble Judges : Krishna Murari, Ravindra Nath Kakkar

Bench : Division Bench

Advocate : Sanjay Kumar Mishra, Shivam Yadav

Final Decision : Dismissed

Judgement

1. Heard Sri Sanjay Kumar Mishra, learned counsel for the petitioners, leaned Standing Counsel for respondent nos. 1 and 2 and Sri Shivam Yadav, who has accepted notices for respondent no. 3.

2. This petition seeks the quashing of the order dated 23.6.2016 passed by the Chief Executive Officer, New Okhla Industrial Development Authority-respondent no. 3 rejecting the representation filed by the petitioner for providing 64.70% Additional Compensation and 10% developed abadi land in view of the full Bench decision in the case of Gajraj & Ors. Vs. State of U.P. & Ors. reported in 2011 (11) ADJ 1.

3. Respondent no. 1 issued a notification under Section 4 of the Land Acquisition

Act 1894 on 30.6.1999 and a declaration under Section 6 was issued on 21.6.2000 for acquisition of the land situated in Village Barolla, Pargana and Tehsil Dadri, District Gautam Budh Nagar for Planned Industrial Development.

4. The land belonging to the petitioners was included in the said notification and was the subject matter of acquisition.

5. Admittedly, the petitioners did not challenge the aforesaid land acquisition notification. This fact has been accepted in paragraph 10 of the writ petition.

6. The contention of the learned counsel for the petitioner is that even though the notification acquiring the land of the petitioner was not the subject matter of challenge still they would be entitled to be extended the benefit of paying 64.70% of additional compensation and 10% of developed abadi land in view of the direction passed by the full Bench in Gajraj & Ors. (supra).

7. The issue that arises for consideration in this petition is whether the benefit of the directions issued in Gajraj for providing additional compensation and land should be given to such tenure-holders also whose lands were not acquired by the notifications under challenge in Gajraj.

8. One of the plea that was raised before the Full Bench in Gajraj was that the State Government was not justified in dispensing with the provisions of Section 5-A of the Act by invoking the provisions of sub-sections (1) and (4) of Section 17 of the Act. The Full Bench held that the State was not justified in dispensing with the enquiry contemplated under Section 5- A of the Act. Three sets of directions were then issued. Some of the writ petitions that had been filed with unexplained delay and laches were dismissed. The notifications issued in respect of villages where no development had taken place were also quashed. However, in respect of some villages where substantial development had taken place, instead of quashing the acquisition proceedings even after accepting the plea that the provisions of Section 17(1) of the Act were wrongly invoked, the Full Bench enhanced the compensation by 64.7% as well as issued directions for allotment of developed abadi plot. The operative portion of the directions issued by the Full Bench in respect of petitions where relief for additional compensation and allotment of developed abadi plot was granted, is as follows:- "3. All other writ petitions except as mentioned above at (1) and (2) are disposed of with following directions:

(a) The petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for village Patwari in addition to the compensation received by them under 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for Authority to take a decision as to what proportion of additional compensation be asked to be paid by allottees. Those petitioners who have not yet been paid compensation may be paid the compensation as well as additional compensation as ordered above. The payment of additional compensation shall be without any prejudice to rights of land owners under section 18 of the Act, if any.

(b) All the petitioners shall be entitled for allotment of developed Abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 square meters. We however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of abadi plot to the extent of 10% be also given to;

(a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and

(b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned at direction No.3."

9. It is, therefore, clear that the Full Bench in Gajraj, instead of quashing the acquisition proceedings under challenge before it in regard to certain villages in which extensive development had taken place, even after holding that providing of opportunity to file objections under Section 5-A of the Act had wrongly been denied to the tenure-holders, protected the acquisition proceedings by directing for payment of additional compensation and for providing certain percentage of developed abadi plot. This benefit was, therefore, restricted to the acquisition proceedings under challenge before the Full Bench and the only additional relief that was granted was that even if those acquisition proceedings had not been challenged by certain tenure-holders, then too they would be entitled to the benefit. This benefit was also granted to those tenure-holders whose petitions to challenge the acquisition proceedings had earlier been dismissed by the Division Bench of the High Court.

10. The decision rendered by the Full Bench in Gajraj was assailed before the Supreme Court in Savitri Devi Vs. State of U.P. & Others⁵. The portion of the judgment of the Supreme Court relevant to the controversy involved in this petition, is as follows:- "46. Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5-A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the landowners, developments have taken in these villages and in most of the cases, third party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in Bondu Ramaswamy and Others (2010) 7 SCC 129 came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the landowners in the form of compensation as well as allotment of developed abadi land at a higher rate i.e.

10% of the land acquired of each of the landowners against the eligibility and to the policy to the extent of 5% and 6% of Noida and Greater Noida land respectively.

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56. Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution. However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/specific background and, therefore, it would not form precedent for future cases." (emphasis supplied)

11. What has, however, been contended by learned counsel for the petitioners is that irrespective of whether notification issued under Section 4(1) of the Act was under challenge before the Full Bench or not, the petitioners should be granted the same benefit regarding the additional compensation and developed abadi plot as was granted by the Full Bench in Gajraj.

12. This submission of learned counsel for the petitioners cannot be accepted. Firstly, as noted above, the Full Bench in Gajraj had granted relief to the petitioners and to such persons also who had not filed petitions to challenge the acquisition or whose petitions had earlier been dismissed by Division Benches of the High Court in view of the peculiar facts of the case narrated above that extensive development had taken place after acquisition and the Supreme Court in Savitri Devi also clarified that the directions issued by the Full Bench shall not be treated as a precedent in future cases. In the present case, the acquisition made in 1999 was not under challenge before the Full Bench and it has been assailed after a lapse of almost fifteen years.

13. A Division Bench of this Court in Writ -C No. 18243 of 2016 connected with two other writ petitions also observed that since the land of the petitioners were acquired by means of a notification which was not the subject matter before the Full Bench, the relief for payment of additional 64.70% compensation and 10% additional abadi land cannot be claimed.

14. Learned counsel for the petitioner has placed reliance upon a Division Bench judgment of this Court in Writ-C No. 72630 of 2011. This decision was rendered as learned counsel for the parties had agreed that the Full Bench decision in Gajraj would be applicable and the relevant portion of the order is reproduced: "In the aforesaid facts and circumstances of the case, as the learned counsel for the parties have agreed that the ratio laid down by the Full Bench in the case of Gajraj (Supra) would squarely cover this case also, we are of the view that the petitioners would be entitled to the benefit of directions issued by the Full Bench of this Court in the case of Gajraj (Supra) in paragraph of 482-3(a) and (b):- "

15. The relief which was granted in Gajraj cannot be made applicable to the

acquisition proceedings not covered by the acquisitions assailed in Gajraj. The petitioners are, therefore, not entitled to the relief claimed in this petition.

16. The impugned order, therefore, does not suffer from any illegality which may call for interference by the Court under Article 226 of the Constitution.

17. The writ petition is, accordingly, dismissed.