
(2004) 05 AHC CK 0181
In the Allahabad High Court
Case No : C.M.W.P. No. 9394 of 2001

Col. Ratanjit Singh (Retd.) and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 3, 4, 6

Citation : (2004) 4 AWC 3581

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : K.K. Srivastava and G.K. Khanna, for the Appellant; B. Dayal, Pranav Ojha and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned notice dated 2.2.2001 (Annexure-8 to the writ petition) by which the petitioners have been directed to take compensation for the land in question by notice u/s 12(2) of the Land Acquisition Act. The petitioner has also prayed for a mandamus directing respondents to de-notify the 3000 sq. yards land of Plot No. 539 situate in village Kaseru Bazar, district Meerut and exempt from acquisition.

2. Heard learned counsel for the parties.

3. The facts of the case are that on 14.8.1987 a notification u/s 4 of the Land Acquisition Act was published for acquiring the petitioners land including Khasra No. 539 measuring 10 bighas 18 biswa 3 biswansi in village Kaseru Bazar, district Meerut. Thereafter on 4.9.1987 a notification u/s 6 was published in the Gazette. The land was being acquired for, Meerut Development Authority for implementation of Ganga Nagar Awas Yojana.

4. On 22.2.1990 the Special Land Acquisition Officer passed the award fixing compensation and solatium except tract of land measuring 3000 sq. yards [vide Annexure-1 to the petition). It is alleged in para 9 of the petition that this 3,000

sq. yards land of Plot No. 539 of the petitioners was abadi with an old building (Farm House), Tubewell, shed of cattle and a grove.

5. On 29.3.1990 Charanjit Singh (deceased), father of the petitioners made an application to the Meerut Development Authority, copy of which is Annexure-2 to the petition. In this application it was alleged that the applicant's double storeyed house was situate on the land in dispute with Tubewell etc. It was alleged that the said land was exempt as no compensation had been fixed for the same. It is also alleged that the applicants were in possession of the said land.

6. Thereafter on 5.5.1990 Charanjit Singh made another application to the Meerut Development Authority [vide Annexure-3 to the petition). By application dated 5.6.1990 Charanjit Singh requested the Special Land Acquisition Officer, Meerut that the said 3,000 sq. yards of land be exempted from acquisition as it was a grove land and having old building, tube well, trees, etc. True copy of application dated 5.6.1990 is (Annexure-4 to the petition).

7. After receiving the application dated 29.3.1990 the Special Land Acquisition Officer, Meerut by his letter dated 11.6.1990 directed the Secretary, Meerut Development Authority to take necessary action on the same in accordance with law (vide Annexure-5 to the petition). It is alleged that the Special Land Acquisition Officer has himself certified about non-payment of compensation In respect of 3,000 sq. yards of plot No. 539 on the application dated 23.3.1992 [vide Annexure-6 to the petition).

8. It is alleged in para 17 of the petition that in respect of exemption of this 3,000 sq. yards land of plot No. 539 the Meerut Development Authority has passed a resolution, copy of which is Annexure-7 to the petition, and it is alleged that the authority has resolved not to pay compensation of this 3000 sq. yards, but instead it would make allotment of the same in favour of the petitioners after charging the development charges. However, it is alleged in para 19 of the petition that in utter disregard to the aforesaid decision of the Meerut Development Authority, the A.D.M. (Land Acquisition) issued the impugned notice dated 2.2.2001 to the father of the petitioners u/s 12(2) (vide Annexure-8 to the writ petition). The petitioners filed a reply to the said notice vide an application dated 20.2.2001 (Annexure-9 to the writ petition). It is alleged that the impugned notice is wholly illegal as it is contrary to the decision pertaining to the aforesaid 3,000 sq. yards land taken by the Special Land Acquisition Officer in the award dated 22.2.1990.

9. A counter-affidavit has been filed by the State Government. In para 8 of the same it is alleged that a perusal of the award of the Special Land Acquisition Officer dated 22.2.1990 shows that no part of the petitioner's land was exempted by the Special Land Acquisition Officer from the award u/s 48 of the Land Acquisition Act. In para 12 it is alleged that the petitioners did not move an application for exemption of the land. No proposal has been received from the Meerut Development Authority so that the matter may be referred to the State

Government for exemption of the land. In para 13 it is stated that the certificate mentioned in para 16 of the writ petition was issued to the petitioners for the purpose of income tax to show that the amount of compensation relating to 3,000 sq. yards land from the total acquired land has not been received by the petitioners as yet.

10. In para 15 of the counter- affidavit it is stated that the petitioners themselves requested for not including the amount of compensation for 3,000 sq. yards as they would approach the authorities concerned for exemption of the said area. As the matter was lingering for a considerable period the answering respondents thought it proper to pay the amount of compensation for the said area to avoid any legal technicality.

11. A counter-affidavit has also been filed by the Meerut Development Authority. In para 4 of the same it is stated that possession of the 3,000 sq. yards land was taken on 11.7.1988, and hence the allegation to the contrary in the writ petition is not correct. In para 6 it is stated that by the award dated 22.2.1990 compensation for the entire acquired land including the disputed 3,000 sq. yards land of plot No. 539 was declared and no land was left under the award for which compensation was not determined.

12. In para 7 of the counter-affidavit it is stated that at the time of issuing the notifications under Sections 4 and 6 there were no construction over the disputed land, and therefore, there was no question of exempting the land from acquisition. In para 8 it is stated that the S.L.A.O. gave the award for the entire acquired land. However, in case the petitioners have a grievance with regard to the quantum of compensation they could agitate the same in reference proceedings already initiated by the petitioners.

13. In para 9 of the counter-affidavit it is stated that the land of the petitioners was not exempted nor any recommendation was made to the State Government by the Meerut Development Authority for exempting the land. It is not correct to state that the award was conditional with regard to the land in question or that the land was left out from the award. In para 10 it is stated that the Meerut Development Authority did not recommend exemption of any part of the land in plot No. 539, and the entire land has in fact vested in the answering respondents. In para 11 it is stated that in fact the petitioners themselves requested the S.L.A.O. to permit them not to withdraw the awarded compensation for 3,000 sq. yards of land in the hope that the land might be exempted in future. However, since the land was not exempted, the S.L.A.O., served the impugned notice upon the petitioners to take compensation.

14. In para 12 of the counter-affidavit it is stated that the proposal mentioned in paras 17 and 18 of the writ petition was not ultimately accepted. In para 15 it is stated that since the possession had been taken on 11.7.1988, the Special Land Acquisition Officer had no option but to serve the notice upon the petitioners. It is alleged in para 19 that the acquisition proceedings have become final.

Possession has already been taken of the land in question on 11.7.1988.

15. We have also perused the rejoinder-affidavit. From the facts we find no merit in this petition.

16. As held by the Division Bench decision of this Court in *Amar Singh v. State of U. P.* 2003 (52) ALR 469, it is entirely in the discretion of the Government to exempt the land from acquisition or not, and it is not appropriate for this Court to interfere in this matter as that would disrupt the entire scheme of acquisition.

17. In *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, it was held that upon taking compensation the land vests in the Government, and there is no provision in the Act by which the land which has vested in the Government can revert to the owner.

18. In *Awadh Bihari Yadav and Others Vs. State of Bihar and Others*, the Supreme Court held that where possession of the land was taken u/s 17 it is not open to the Government to withdraw from the acquisition u/s 48.

19. In *U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others*, the Supreme Court held that once possession is taken u/s 17(2), the land vests in the State free from all encumbrances unless a notification u/s 48(1) is published in the Gazette withdrawing from the acquisition.

20. In *Ved Prakash and Others Vs. Ministry of Industry, Lucknow and Another*, the Supreme Court held that it was for the State Government to consider the feasibility of releasing the land from acquisition u/s 48. In fact this is the view which we have also taken in *Amar Singh v. State of U. P.* (supra).

21. As already stated above the Meerut Development Authority in para 7 of its counter-affidavit has stated that there was no construction over the disputed land when the notification under Sections 4 and 6 was issued.

22. Thus, there is a factual dispute whether there was any construction on the land in question when notification under Sections 4 and 6 was issued. There is also a factual dispute whether the possession of the land in dispute was taken over by the respondents or not. Writ Jurisdiction is not the appropriate forum in which these disputed factual matters can be adjudicated. At any rate even assuming that there was any construction on the land in dispute the petitioners will get compensation for the same as held in *Amar Singh v. State of U. P.*, (supra). The definition of land in Section 3(a) of the Land Acquisition Act includes building and trees on the land which is being acquired. Hence it cannot be said that the land over which some building or trees are standing cannot be acquired.

23. If this Court starts interfering in such a scheme the whole scheme will be disrupted as held in *Amar Singh's case* (supra). Hence following the decision in *Amar Singh v. State of U. P.* (supra), this petition is dismissed.