
(2003) 09 AHC CK 0118
In the Allahabad High Court
Case No : C.M.W.P. No. 3194 of 1990

Dali alias Chhotey

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-09-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2003) 4 AWC 3386

Hon'ble Judges : R.C. Pandey, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Pranav Ojha and Rajiv Gupta, for the Appellant; B. Dayat, S.C., for the Respondent

Judgement

Dr. B. S. Chauhan, J.—This writ petition has been filed for quashing the land acquisition "proceedings including the notification u/s 4 of the Land Acquisition Act, 1894, hereinafter called "the Act" dated 14th August, 1987, and declaration u/s 6 of the Act dated 4.8.1987, on various grounds.

2. However, learned counsel for the petitioner Shri Pranav Ojha, has fairly submitted that identical petitions challenging the same notification and declaration have already been decided by this Court and the validity of the notification u/s 4 and the declaration u/s 6 of the Act have been upheld, therefore, it is not open for him to make any submission on those counts. His limited prayer is that as the land had been acquired for the purposes of establishing residential/ commercial area, it will not serve any purpose demolishing the duly constructed residential house of the petitioner and allot the land to someone else for the same purposes. However, petitioner would be satisfied if his duly constructed house constructed, prior to the issue of notification u/s 4, is saved/exempted from the acquisition proceedings.

3. On the contrary, Sri B. Dayal, learned counsel appearing for the respondent No. 2, Development Authority and learned standing counsel appearing for the respondent No. 1, have vehemently opposed the writ petition contending, that

there is nothing on the record to show as to whether the land in which petitioner's house is situate, has been used for developing the residential area. In absence of any pleading or record, they are not in a position to point out as to how the request made by learned counsel for the petitioner can be considered and, thus, the petition is liable to be rejected.

4. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

5. The Hon'ble Apex Court has considered the issue as to whether establishing a residential or commercial area require considering the applications of those whose residential/commercial establishment are already existing on the date of issuance of Section 4 notification and particularly its publication in the official Gazette, in Union of India and Anr. v. Bal Ram Singh and Anr. 1992 Suppl (2) SCC 136, and held that if the petitioner makes an application in such a circumstances and satisfies that his establishment is for residential purposes and the respondents have to establish the residential colonies and its existence would not by any means hinder development of the residential colonies, the authorities should consider his case sympathetically.

6. Similar view has been reiterated in State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, and Sube Singh and Others Vs. State of Haryana and Others,

7. This Court has also adopted the same course while disposing of large number of writ petitions giving the leading judgment in Writ Petition No. 18896 of 1987, J. Sons Engineer Corporation v. State of U. P. and Ors., by the Division Bench on 11.9.1991, issuing following directions :

"It will be open to the petitioners to make representation before the M.D.A. for exemption of their land on which there existed the construction, residential commercial and industrial, before publication of the impugned notification u/s 4 of the Act, within six weeks from today. If such representation are filed before the M.D.A. It will investigate into the matter and get the plots concerned surveyed and thereafter decide it on the basis of material produced by the petitioners and its own record, after sending intimation to the concerned parties of the date on which the matter will be considered by it. This decision shall be taken by the M.D.A. as far as possible within two months from the date of receipt of representation, along with certified copy of this order. Decision so taken shall be communicated to the concerned parties within two weeks thereafter. In case the M.D.A. finds that the petitioner's plots have pre-notification construction it will make a necessary recommendation to the State Government for exemption as in the case of 35 plots aforementioned. However, if the M.D.A. decides against any of the petitioners it will be open to them to make representation before the Government within a month after the decision of the M.D.A. and the Government will look into the grievance of the petitioners and pass appropriate order expeditiously.

Till Government decides the question of grant of exemption, status quo, as on today, shall be maintained by the parties."

8. The said Judgment was approved and followed by the Division Bench of this Court while deciding the Writ Petition No. 35489 of 1996, Senior Manager (Technical) Asha Lata Singh v. State of U. P. and Anr., decided on 11.2.1999.

9. Thus, in view of the above, we dispose of this writ petition with the direction that petitioner may make an application before the Meerut Development Authority, Meerut, within a period of four weeks from today, ventilating his grievances and praying for exemption from land acquisition proceedings on the ground that the constructions raised by the petitioner was prior to publication of Section 4 notification of the Act in U. P. Official Gazette and substantiate the same by annexing the documents in support thereof and he is still, in possession of the said construction, as this Court had passed a conditional interim order pointing out that he shall not be dispossessed, if he is in possession, we request the authority concerned to decide the case after being satisfied on factual issues expeditiously preferably within a period of three months thereafter.

10. Till the application of the petitioner is decided and the petitioner, if he is still in possession, shall not be dispossessed.

11. No order as to costs.