
(2012) 05 AHC CK 0050
In the Allahabad High Court
Case No : Writ C No. 7080 of 2002

Dau Dayal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 15A, 17, 18

Citation : (2012) 05 AHC CK 0050

Hon'ble Judges : Yatindra Singh, J; Mohd. Tahir, J

Bench : Division Bench

Advocate : Ashok Tripathi, for the Appellant; V.K. Birla, for the Respondent

Judgement

1. The only point involved in these writ petitions is, whether an award can be challenged by the land holders (persons whose land is acquired) on the ground that no prior approval was taken under first proviso to sub-section (1) of section 11 {section 11(1)} of the Land Acquisition Act, 1894 (the Act).

THE FACTS

A huge piece of land in district Agra was acquired under the Act for the benefit of the Agra Development Authority (the ADA) for construction of Taj Nagri residential scheme (Phase-II).

2. In this respect notifications under sections 4 and 6 of the Act dated 30.1.1989 and 8.2.1990 were published. In this acquisition, section 17 was made applicable and inquiry u/s 5A of the Act was dispensed with.

3. The aforesaid notifications came to be challenged in a bunch of writ petitions. In this bunch, WP 5452 of 1990 was the leading writ petition.

4. The aforesaid bunch was allowed by this court on 20.8.1993. The notification u/s 6 of the Act was quashed and the Collector was directed to make inquiry u/s 5A of the Act.

5. During pendency of the aforesaid writ petitions, the Special Land Acquisition Officer, Agra (the SLAO) gave an award on 29.2.1992. By this award he awarded Rs. 130/-per square yard for the land within Agra municipal area and `97.50/- per square yard for the land out side the municipal area. The ADA filed WP 31481 of 1992 against this award.

6. During pendency of the writ petition filed by the ADA, the notification u/s 6 dated 16.1.1995 was again published. A bunch of writ petitions were filed challenging the fresh notification u/s 6 of the Act.

7. Some writ petitions were also filed for a direction that compensation according to award dated 29.2.1992 be disbursed. Thus, there were three kinds of writ petitions relating to this acquisition.

8. The aforesaid three groups of writ petitions were decided together on 5.1.2000 and the judgement is reported in Agra Development Authority Vs. Special Land Acquisition Officer, Agra and others, . By this judgement,

? Some of the writ petitions challenging the notification u/s 6 were allowed in respect of the land involved in those writ petitions though most of such writ petitions were dismissed;

? The writ petition filed by the ADA challenging the award dated 29.2.1992 was dismissed;

? The writ petitions of the land holders for direction to give them compensation in terms of the award dated 29.2.1992 were allowed.

9. Against the aforesaid decision, the ADA filed Civil Appeal No. 1085 of 2001 before the Supreme Court. This appeal was disposed of by the Supreme Court on 7.2.2001 and the judgement is reported in Agra Development Authority vs SLAO: 2001 (2) SCC 646.

10 The Supreme Court set aside the award of the SLAO dated 29.2.1992 on the ground that no opportunity was given to the ADA. The SLAO was directed to make fresh award within six months from the date of the judgement of the Supreme Court after affording opportunity to the ADA.

11. The SLAO proposed an award and sent it to the Board of Revenue for its approval through the letter of the Commissioner dated 18.7.7.2001. In this letter, it was mentioned that:

? The proposed award was made in pursuance of the order of the Supreme Court and normal scrutiny is not necessary as the award was already declared;

? The award was to be declared before 6.8.2001 otherwise there may be contempt of the order of the Supreme Court.

12. The Board of Revenue sent letter dated 10.8.2001 asking the SLAO not to declare the award and seeking some clarifications. This was beyond six months" period time sanctioned by the Supreme Court.

13. The ADA filed an application before the Supreme Court for extension of time to make the award. The Supreme Court granted three months' further time on 5.10.2001. This extended time was to expire on 10.11.2001.

14. There is neither anything on record to show whether any clarification was sent by the SLAO nor is there anything on record to show that any approval was granted by the Board of Revenue. However, the SLAO declared the proposed award on 5.11.2001.

15. By the award dated 5.11.2001, Rs. 49/-per square yard was given for the land within the municipal area and Rs. 39.20/-per square yard was given for the land out side the municipal area.

16. These writ petitions have been filed challenging the award.

PETITIONERS' SUBMISSIONS

17. We have heard Sri Ashok Tripathi, counsel for the petitioners, the standing counsel for the State and its' official and Sri VK Birla, for the ADA. The counsel for the petitioners submits that:

? Under the first proviso to section 11(1) of the Act, the award could not be made without previous approval of the State government or such officer as the State government may authorise in this behalf;

? The State government has authorised the Board of Revenue in this behalf; and

? The award is illegal as there is no approval by the Board of Revenue.

THE DECISION

18. The first proviso to section 11(1) of the Act provides obtaining prior approval of the government or such officer as may be authorised by the State government.

19. The second proviso to section 11 of the Act provides that appropriate Government can also direct the Collector to make award without approval in class of cases.

20. Nevertheless, it is not disputed that in this case, the approval of Board of Revenue was necessary. The question is, whether the award is vitiated merely because the approval was not taken.

21. The award given by the SLAO is an offer by the government or the acquiring body; it is minimum amount that is required to be given; it cannot be reduced. The award given by the SLAO is not subject to challenge by the government or by the acquiring body.

22. The purpose of the first proviso to section 11(1) is to protect the interest of the government or the acquiring body; It is for their benefit. It is a kind of check that the SLAO may not fix arbitrary or irrational amount.

23. The proviso is not for the benefit of the land holders. Section 18 of the Act is

already there for the benefit of the landholders. In case the landholders think that award is less than the market value, then they can always file application to refer the matter to the Civil Court.

24. In *State of Bihar and Others Vs. D.N. Singh (Dead) by Lrs. and Others*, (the DN-Singh case), it was held that person authorised under the first proviso to section 11(1) of the Act has power to reduce the award.

25. In *Vijayadevi Navalkishore Bhartia and Another Vs. Land Acquisition Officer and Another*, (the Vijayadevi case) another bench of the Supreme Court did not agree with the aforesaid conclusion of the DN-Singh case and referred it to a larger bench. The bench was of the view that if the authorised officer thought that compensation award was unreasonable and on the higher side then he could refer the matter to the State government to exercise power u/s 15A of the Act.

26. In the Vijayadevi case, the bench also observed that:

"This is only an administrative power which limits the jurisdiction of the authority to apply its mind to see whether the proposed award is acceptable to the Government or not."

27. The larger bench did not decide the Vijayadevi case as the land holder had already sought reference before the Civil Court (see order dated 12.2.2004 in Civil Appeal no. 2045 of 2003). However, the aforementioned observations show that power under the first proviso to section 11(1) of the Act is to check arbitrary award of compensation and for protection of government rather than of the land holders.

28. The land was acquired for the ADA; it is the acquiring body. The provision is for its benefit. It is not challenging the award. The award can not be faulted at the instance of land holders on the ground that prior approval of Board of Revenue was not taken.

29. Apart from above, in our opinion, it is also not a fit case for exercise of writ jurisdiction for the following reasons:

? The proposed award was sent for approval to the Board of Revenue, whose approval was to be taken. The Award was to be made within six months, thereafter extension of three months granted. No further extension was granted. In case award was not passed then there would have been violation of the Supreme Court order and might have resulted in the contempt of that court. There was urgency in the matter;

? The amount in the award can always be challenged by the land holders by filing application to refer the case u/s 18 of the Act.

A CLARIFICATION

30. In case amount offered in an award is not just or less than the market value, then it can always be challenged by the land holder by filing an application u/s

18 or 28A of the Act. However, there is limitation for filing these applications: it is already expired: the time has been spent here in prosecuting these writ petitions.

31. It is clarified that in case any application is filed u/s 18 or 28A of the Act, then time taken in prosecuting these writ petitions before this court and in obtaining the certified copy of this order, will be excluded while calculating the limitation.

CONCLUSIONS

32. Our conclusions are as follows:

(a) The first proviso to section 11(1) of the Act is for protection of the State or the acquiring body;

(b) An award cannot be set aside at the instance of land holder on the ground that no previous approval was taken under the first proviso to section 11(1) of the Act;

(c) A land holder, who is dissatisfied with the amount in the award, can always invoke section 18 or 28A of the Act as the case may be;

(d) Considering the circumstances of the case, the time taken in prosecuting these writ petitions or obtaining certified copy of the order shall be excluded from calculating the limitation u/s 18 or 28A of the Act.

With the aforesaid observations, the writ petitions are disposed off.