
(2011) 08 AHC CK 0174
In the Allahabad High Court
Case No : Writ C No. 37443 of 2011

Gajraj and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 6

Citation : (2011) 08 AHC CK 0174

Hon'ble Judges : V.K. Shukla, J; Sibghat Ullah Khan, J; Ashok Bhushan, J

Bench : Full Bench

Judgement

1. This Full Bench has" been constituted by order of Hon"ble the Chief Justice dated 06/8/2011 which is to the following effect:

Hon"ble R.K. Agarwal, Hon"ble Ashok Bhushan and Hon"ble V.K. Shukha, JJ are nominated to deal with all connected matters.

2. The Bench was again reconstituted."

3. A Division Bench of this Court while hearing Writ Petition No. 37442/2011, Gajraj and Ors. Vs.State of U.P. and Ors., in which writ petition the land acquisition" vide notification dated 12/3/2008, u/s 4 of the Land Acquisition Act, 1894, invoking urgency clause and the notification dated 30/6/2008, issuing declaration u/s 6 of the Act pertaining to Village Patwari" was under challenge. The Division Bench took note of two Division Bench judgements of this Court " firstly, Writ Petition No. 45777/2008, Harish Chand and Ors. v. State of U.P. and Ors., decided on 25/11/2008 and another Division Bench judgement in Writ Petition 17068/2009, Har Karan Singh v. State of U.P. and Ors., decided on 19/7/2011. In the judgment of Harish Chand and Ors. (supra) invocation of Sections 17(1) and 17(4) by the State was upheld, whereas" in the subsequent judgment of Har Karan Singh (supra) decided on 19/7/2011 invocation of urgency clause was quashed by this Court. The Division Bench however noticing the aforesaid made following observations:

At this juncture, Mr. Dubey has contended before this Court that he has No. objection regarding hearing of such type of matters upon formation of a larger Bench, but the Petitioners are entitled for an interim order of status quo, which has been opposed by the Respondents by saying that since the writ petitions have been filed after 3-4 years of requisition and acquisition, at this stage there is No. necessity of passing any interim order, otherwise litigations will multiply.

It is pertinent to note that several applications have been made either by the respective builders and/or purchasers of flats and/or the banks for impleadment, which have been strongly opposed by the Petitioners by saying that they can not be made parties to these writ petitions as in the cases of land acquisition the land owners and the requiring bodies, sometime acquiring bodies, are the necessary parties and not others. On the part of one of the applicants it is submitted before this Court that as per the Rules of this High Court any aggrieved or affected party can be treated to be intervenor in any of the proceedings, therefore, No. one can be restrained from getting opportunity of hearing. In these special circumstances, they are required to be heard. However, at this stage we do not propose to entertain such applications.

The matters will appear on 17th August, 2011.

Let it be placed before the Hon"ble the Chief Justice/ Hon"ble Senior Judge, as per the Rules and practice of this Court, to take an administrative decision about formation of the larger Bench as early as possible, so that the matters can be placed before such larger Bench on the next date itself.

4. Learned Counsel for the parties have informed that subsequent to the order dated 26/7/2011, made by the Division Bench directing the matter to be placed before Hon"ble The Chief Justice to take a decision for constituting a Larger Bench, several other writ petitions (Numbering about" 490) challenging the land acquisition pertaining to villages of Greater Noida and Noida" Authority have been connected with this writ petition."

5. Shri L.Nageshwar Rao, learned Senior Counsel assisted by Shri M.C. Chaturvedi appearing for the State submitted that large number of writ petitions have been filed" in last 30 days and in several cases No. directions have yet been made by the Court for filing a counter affidavit.

6. Shri Ravindra Kumar and Shri Ramendra Pratap Singh appearing for the Authority submitted that although counter affidavit in Writ Petition 37443/2011, has been filed by the Authority including the counter affidavit filed in certain other cases, but in number of cases counter affidavits have yet to be filed by the authority.

7. Learned Counsel appearing for the State as well as for the Authority prays that in view of the fact that all the matters have been connected with this writ petition, they may be allowed time to file counter affidavit since the writ petitions might be finally decided by this Bench.

8. Shri S.P. Gupta, learned Senior Counsel appearing for the intervenor and other Counsel submitted that applications have been filed on behalf of the allottees/builders who have been given allotment orders" by the authority subsequent to the declaration u/s 6 of the Act and they be also heard.

9. Learned Counsel appearing for these applicants also submitted that they shall also be affected by the outcome of the writ petition, hence may also be impleaded. A request has also been made for granting time on their behalf to file an affidavit.

10. Shri S.P. Gupta, learned Senior Counsel appearing for such an intervenor submits that in some of the petitions acquisitions which have been challenged were made about a quarter century" ago."

11. Learned Counsel for the Petitioners opposing the submission made by such applicant contended that they have No. right to be impleaded. It has been further submitted that" the" Apex Court in Special Leave to Appeal (Civil) No. 16366 of 2011 reported in Greater Noida Indusl. Devt. Auth. Vs. Devendra Kumar and Others, has rejected the application for intervention on behalf of the builders.

12. Shri Amit Saxena, appearing for such an applicant submitted that the" Supreme Court has rejected the application on the ground that they were not before the High Court."

13. Shri Manish Goyal, learned Counsel appearing for some of the Petitioners submits that the National Capital Regional Planning Board through its Secretary" has been impleaded in several writ petitions who is represented by Shri W.H. Khan and J.H.Khan in some writ petitions. They are also allowed ten days time to file counter affidavit. "

14. After hearing learned Counsel for the parties, we are of the view that the applicants namely; allottees/builders shall be heard by this Court under Chapter XXII Rule 5A of the" High Court Rules without being formally impleaded to the writ petition.

15. In view of the aforesaid, hearing in the Writ Petition No. 37443/2011 and other connected matters cannot proceed. We are of the view that the State as well as the Authority and the applicants who want intervention in the matter should be allowed time to file affidavits.

16. Shri M.C. Chaturvedi, learned Chief Standing Counsel appearing for the State and the learned Counsel appearing for the Authority are allowed ten days time to file counter affidavit in all the matters.

17. Learned Counsel appearing for the intervenor may also file an application along with an affidavit if not already filed within the said period. The Petitioners may file rejoinder affidavit by the next date."

18. Learned Counsel for the parties further submit that large number of cases

have already been connected with regard to which directions for pleading is being issued today. Any further matter which is connected hereinafter shall be separately heard and the subsequent hearing in this matter be not adjourned on that ground.

19. In view of the aforesaid, we adjourn the hearing and fix the matter for 12/9/2011, with a clear understanding between the parties that the hearing may continue day to day basis.

20. Learned Chief Standing Counsel stated that original records of the State Government pertaining to acquisition in question shall also be produced for the perusal of the Court."

21. Learned Counsel for the parties shall also be at liberty to file written submissions on or before 09/9/2011 after serving a copy on other sides.