

(2005) 09 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14046 of 2004

Godrej Industries Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 17(3A), 17(4), 18

Citation : (2006) 1 AWC 359

Hon'ble Judges : Shishir Kumar, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : Ravi Kiran Jain and Rishi Chadha, for the Appellant; Anurag Khanna and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 7.8.2003 (Annex 11), passed by the Additional District Magistrate, Gautam Budh Nagar, rejecting the application of the petitioner not to make the payment of compensation for the land acquired, to the respondent nos. 4 to 7, on the ground that petitioner had purchased the said land from their predecessor-in-interest vide Registered Sale Deed dated 21.12.1989 (Annex. 1).

2. The facts and circumstances giving rise to this case are that petitioner had purchased the land in dispute from the predecessor-in-interest, father of respondent nos. 4 to 7 vide Registered Sale Deed dated 21.12.1989. Notification u/s 4 of the Land Acquisition Act, 1894 (in short "Act") was issued in respect of a very large area, including the land in dispute on 27.11.2001. Applying the urgency clause, u/s 17(4), filing of objections u/s 5A of the Act were dispensed with. Declaration u/s 6 of the Act was made on 26.02.2002. The NOIDA made publication on 27.11.2001 in local newspapers, inviting objections, if any, for acquisition of land. In response to the same, petitioner submitted an application on 4.12.2001, intimating the NOIDA that it was the owner of the property mentioned at Sl. No. 66 of the said advertisement, and therefore, payment

should be made to it and not to any other person. Another application to the same effect was filed by the petitioner on 30.7.2002 before the respondent No. 3 who issued notice to the said respondent Nos. 4 to 7 on 18.10.2002 fixing 31.10.2002 for appearance. The respondent nos. 4 to 7 appeared before the respondent No. 3 on 10.12.2002 and filed the objection to the said application submitting that the amount had already been withdrawn by them on 18.06.2002. On the basis of the same, vide order dated 31.8.2003, application of the petitioner has been dismissed by the respondent No. 3 that as the amount had already been paid to respondent nos. 4 to 7, the application could not be allowed. Hence this petition.

3. Shri Rishi Chaddha, learned counsel for the petitioner has submitted that the petitioner had no notice or knowledge of the land acquisition proceedings under the Act. Publication was issued as explained above, inviting objections, and thus, petitioner submitted the objections. Respondent No. 3 could not have made the payment to the said respondent nos. 4 to 7, and thus, the order impugned dated 7.8.2003 is liable to be quashed, and Applications under Sections 18, 30 and 31 of the Act be referred to the Reference Court, and further this Court should direct the respondent nos. 4 to 7 to refund the amount of compensation to the petitioner. The petition deserves to be allowed.

4. Mr. Anurag Khanna, learned counsel appearing for NOIDA submitted that as the amount had already been withdrawn, no relief can be granted to the petitioner. The said respondent nos. 4 to 7 have filed a suit for cancellation of the Sale Deed dated 21st December, 1989, in December, 2002 wherein ? petitioner has already entered appearance and filed the written statement. The suit is pending before the civil court and petitioner can get all the reliefs therein or can file a separate suit for recovery. No relief can be claimed by the petitioner in writ jurisdiction. Hence the petition is liable to be dismissed.

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

6. Admittedly, there is no pleading herein to the effect that Award u/s 11 of the Act has been made. Therefore, the question of making reference under Sections 18, 30 and 31 does not arise. In Dr. G.H. Grant Vs. State of Bihar, , it has been held by the Hon''ble Supreme Court that in such a fact situation, suit for recovery is an appropriate remedy. The matter cannot be adjudicated upon in absence of pleadings, particularly, there is nothing on record to show that Award has ever been made in respect of the land in dispute. So far as payment of compensation is concerned, that can also be made prior to making of the Award, under the provisions of Section 17(3-A) of the Act, which provides that in case of urgency where possession of the land is to be taken, prior to making of the award, 80% of the estimate cost is to be paid before taking its possession.

7. Petitioner was fully aware of the acquisition proceedings from the very beginning. Notification u/s 4 of the Act was published on 27.11.2001. Petitioner

claims to have filed objection on 04.12.2001 before NOIDA. Mutation in favour of the petitioner is dated 20.06.2003 i.e. after fourteen years from the date of sale. Therefore, question of issuing notice to the petitioner u/s 9 of the Act could not arise. Even otherwise provisions of Section 9(3) of the Act are not mandatory. Acquisition proceedings do not stand vitiated for non-compliance of the said provision. (Vide State of Maharashtra and Another Vs. Umashankar Rajabhau and Others, ; and State of Tamil Nadu and Anr. v. Mahalakshmi Ammal and Ors. AIR 1996 SC 866).

8. Learned counsel for the petitioner submitted that in Awadh Bihari and Other Vs. State of Bihar and others, , the Apex Court held that in extra ordinary situations, even if the suit is-pending, relief can be granted by the writ Court, therefore, it is a fit case, where this Court must grant indulgence. The Apex Court in the said case held that such a course is permissible only where the orders passed by the Court are sought to be violated or thwarted with impunity. In this case, no order passed by any Court has. been violated by any person, Thus, the ratio of the said case does not apply herein.

9. A very heavy reliance has been placed by the petitioner's counsel on the judgment of the Hon'ble Supreme Court in Sharda Devi Vs. State of Bihar and Another, , wherein the Court explained the difference in references under Sections 12 and 30 of the Act observing that both the provisions operate independently and without overlapping. Section 18 reference is based on preexisting right or title by reference to the date of award, while reference u/s 30 is concerned with a right accrued or developed post award. The Court further held that the Collector is bound to make a reference, if the conditions mentioned therein are satisfied. The case herein stands entirely on a different fact-situation. Payment has already been withdrawn by the private respondents. Petitioner's prayer was limited only to the extent, of not making payment to the said respondents. Thus, the facts are quite distinguishable. Section 18 reference is meant for those, who do not accept the award. In this case, petitioner is not in a position to reveal as when the award was made. The question of its acceptance nor non-acceptance by the petitioner could not arise. Same remains the position in respect of Section 30/31 reference.

10. Petitioner ought to have filed the objections before respondent No. 3., the Land Acquisition Collector and not before NOIDA. It's application before respondent No. 3 was filed at a belated stage and in the meanwhile amount of compensation had been withdrawn by the said respondents. Even today, petitioner is not in a position to say as to whether award has been made or not. In such a fact-situation, no relief can be granted. Suit filed by the said respondent for cancellation of sale deed dated 21.12.1989 is still pending. The appropriate remedy for the petitioner is to file a suit for recovery. In this fact situation this Court cannot issue a direction to the* respondent nos. 4 to 7 to refund the said amount to the petitioner.

11. With these observations petition stands dismissed.