

(2014) 01 AHC CK 0180
In the Allahabad High Court
Case No : Misc. Bench No.-7782 of 2011

Gopal Das and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17 4 6

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 10 11 12 14 16

Citation : (2014) 2 ADJ 76 : (2014) 103 ALR 87

Hon'ble Judges : Devi Prasad Singh, J;A.P. Singh, J

Bench : Division Bench

Advocate : Manish Kumar, Surya Kant, for the Appellant; Rajesh Singh Chauhan, Shobhit, Mohan Shukla, for the Respondent

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Instant writ petition under Article 226 of the Constitution of India, has been preferred being aggrieved with the development charges imposed by the respondent Lucknow Development Authority, Lucknow (in short LDA) for a land which has been released after acquisition by the State Government. The question cropped up in the writ petition relates to interpretation of Section 17 of the Uttar Pradesh Urban Planning and Development Act, 1973 (in short the Act) whereby, development authorities have got right to impose development charges in view of the expenditure incurred after acquisition of land. State Government had acquired certain area of land in the year 1981 for plan development at Sitapur Road Extension Scheme. The original petitioner Gopal Das expired during pendency of writ petition (substituted by legal heirs), is the owner of Khasra Plot No. 416 and 417 situated in village Mohibullapur and has been running a paint shop by raising construction over it since almost 40 years.

2. After acquisition in accordance with provisions contained in Land Acquisition

Act, in the year 1981, the petitioners have not received any compensation. The original petitioner moved an application for release of land on the ground that premises in question has been utilised by him for commercial purpose. When the land was not released, he preferred Writ Petition No. 4906 (M/B) of 2010 which was decided by the judgment and order dated 21.5.2010. While deciding the case, this Court directed the respondent State to consider petitioner's application for release of land in pursuance of provisions contained in Section 17 of the Act.

In pursuance of the order passed by this Court, the Government considered for petitioner's case and by an office memorandum dated 23.5.2011, while exercising power conferred by sub-section (1) of Section 17 of the Act, released the land. The operative portion from the office memo dated 23.5.2011 contained in Annexure No. 1 to the writ petition is reproduced as under:-

3. After release of the land (supra) in pursuance of office memo dated 23.5.2011, the Secretary LDA, by the impugned order dated 29.7.2011 contained in Annexure No. 1 to the writ petition, directed the original petitioner for payment of 12% interest to the tune of Rs. 138780.00 assessed as amount incurred on acquisition of land. An additional amount of Rs. 15583276.00 was imposed as development charges.

4. While assailing the impugned order, it has been stated by the petitioner's counsel that no development has been done in the vicinity in question. Khasra plot No. 416 and 417 situated on one side of the railway line towards which no development work has been done except on other side where development work has been done in pursuance of notified scheme. The LDA while filing counter affidavit asserted that development charges sought to be recovered in pursuance of the impugned order is in accordance with statutory right conferred by Section 17 of the Act. It has been stated that notification u/s 4/17 of Land Acquisition Act, was issued on 12.11.1981 followed by notification u/s 6/17 of Land Acquisition Act, on 3.12.1981 and award was published on 15.1.1986. The possession of land was taken by the LDA between 1982 to 1984. Total land measuring 666 bighas-7 biswas-8 biswansis and 8 kachwansis was the subject matter of acquisition proceeding. The land in dispute was also the part of said acquisition which was done for plan development for construction of houses. It has been stated that development was started in 1983 and completed in 1987 and the Khasra plot No. 416 and 417 are situated adjoining to national highway No. 24 known as Sitapur Road. On southern side of plot also there is 18 metre wide road and the area of land is 1.200 hectares.

5. It has not been disputed that the land in dispute is situated between Aishbagh-Mailani Section of railway line and National Highway No. 24 of Sitapur Road. The case set up by the LDA is that under Aliganj Scheme, plan development has been done between railway line and national highway. Since external infrastructural development like road, electricity, water and sewer line has been made available, the LDA has got right to charge development charges. It has been stated that development means development in the whole of the area. Hence, even if at

some places no development has been done, LDA shall be entitled to impose development charges. It has been submitted that the scheme under which the petitioners' land falls i.e., Sector-A of Sitapur Extension Scheme, has been fully developed by the LDA and now, development has been completed. It has been stated that sewer line, pipe line for water supply, zonal road and pump house as well as electrification has been done in the vicinity in toto.

6. On the other hand, petitioners have filed an affidavit dated 18.12.2013 and stated that all development activities of Sector-A of Sitapur Road Extension Scheme, though have been completed but they have been done towards the east of railway line whereas, the land in question is situated towards west of Mohibullapur railway station. In para 4 of the affidavit the petitioners have categorically stated that neither any trunk drainage nor water pipe line nor any electrification has been done by the LDA on the land situated in between the national highway and railway line, nor any facility has been provided by the LDA to the residents of the area situated between the railway line and the national highway. To establish the case set up, the petitioners have filed a site plan along with affidavit (supra) to point out that development work has not been done on western side of the railway station. It has further been stated that Sector-A is more than one kilometre away from the petitioner's land. There is no sewer line and water pipe line etc., on or adjoining to petitioner's land towards western side of railway station.

7. Attention has been invited to certain photographs filed with the affidavit dated 11.11.2013 which prima facie reveals that no development work has been done in the vicinity of the disputed land in question. While issuing the office memo dated 23.5.2011, and releasing the land u/s 17 of the Act, following observations have been made on the basis of information provided by the LDA, to quote relevant portion as under:-

8. Subject to aforesaid factual background on record the question cropped up is whether the petitioners are liable to pay "development charges" in pursuance of provisions contained u/s 17 of the Act. Section 17 of the Act for convenience, is reproduced as under:-

17. Compulsory acquisition of land--If in the opinion of the State Government, any land is required for the purpose of development, or for any other purpose, under this Act the State Government may acquire such land under the provisions of the Land Acquisition Act, 1894:

Provided that any person from whom any land is so acquired may after the expiration of a period of five years from the date of such acquisition apply to the State Government for restoration of the land to him on the ground that the land has not been utilized within the period for the purpose for which it was acquired, and if the State Government is satisfied to that effect it shall order restoration of the land to him on re-payment of the charges which were incurred in connection with the acquisition together with interest at the rate of twelve per cent per

annum and such development charges, if any, as may have been incurred after acquisition.

(2) Where any land has been acquired by the State Government, that Government may, after it has taken possession of the land transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by Authority or the local Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

9. A plain reading of Section 17 of the Act reveals that the Government has been empowered to acquire land for the purpose of plan development. Under the proviso after expiry of period of five years, from the date of acquisition a person whose land has been acquired may apply to the State Government for restoration of land on the ground that land has not been utilized within the period for the purpose for which it was acquired.

10. Under the proviso of sub-section (1) of Section 17 of the Act in case the State Government is satisfied that land has not been utilised by the development authority in the preceding five years, then it may be restored to the recorded tenure holder on a repayment of charges which were incurred in connection with acquisition together with interest at the rate of 12 per cent per annum. Further, the recorded tenure holder may be liable to pay development charge if any as may have been incurred after acquisition.

11. Proviso of Section 17 has got two conditions with regard to payment of certain charges in lieu of the release of acquired land. Firstly, the payment of expenditure incurred in connection with the acquisition of land together with interest at the rate of 12% per annum. Secondly, the development charges if any, as may have been incurred after acquisition. The former condition relates to expenditure incurred upto date of acquisition and later relates to development work done over the acquired land.

12. So far as the expenditure incurred on acquisition is concerned, there appears to be no room of doubt that once a notification is issued u/s 4, 6 and 17 of the Land Acquisition Act, expenditure shall be deemed to be incurred for the purpose.

13. Accordingly, development authorities will have right to charge the expenditure incurred in connected with the acquisition together with interest at the rate of 12% per annum. It means the expenditure and in addition to it, interest over the expenditure incurred in acquisition upto the date of acquisition. So far as the payment of development charge is concerned, it co-relates to expenditure incurred on development work done with regard to plot in dispute or its close vicinity after acquisition.

14. Maxwell in his most celebrated treatise, "Interpretation of Statutes" (12th Edition-page 36), observed, to quote:-"A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus,

where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated."

15. In *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, , their lordships of Hon"ble Supreme Court held that function of the court is only to expound the law and not to legislate. A statute has to be construed according to the intent of the Legislature and the duty of the court is to act upon true intention of the legislature.

16. In *Dadi Jagannadham Vs. Jammulu Ramulu and Others*, , their lordships of Hon"ble Supreme Court held that while interpreting a statute the court must start with the presumption that legislature did not make any mistake and must interpret so as to carry out the obvious intention of legislature, it must not correct or makeup a deficiency, neither add nor read into a provision which are not there particularly when literal reading leads to an intelligent result.

17. In *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, , their lordships of Hon"ble Supreme Court held that while interpreting a statute every word and provision should be looked at generally and in the context in which it is used and not in isolation.

18. In *Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore*, , their lordships of Hon"ble Supreme Court held that where language is clear, court can not abstain from giving it effect to it merely because it would lead to some hardship.

19. In *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, , their lordships of Hon"ble Supreme Court held that a statute is to be read in its entirety and purport and the object of Act is to be given its full effect by applying principle of purposive construction.

20. In *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*, , their lordships of Hon"ble Supreme Court held that legislature is presumed to have made no mistake and that it intended to say what it said. Assuming there is a defect or an omission in the words used by the legislature, the court can not correct or make up the deficiency, especially where a literal reading there of produces an intelligible result the court is not authorized to alter words or provide a casus omissus.

21. In *Navjot Singh Sidhu Vs. State of Punjab and Another*, , their lordships of Hon"ble Supreme Court held that Court has to interpret a statute as it stands and not on consideration which may be perceived to be morally more correct and ethical.

22. In *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, , their lordships of Hon"ble Supreme Court held that while considering a statute the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word the relevant provision of statute

must thus be read harmoniously.

23. Hon"ble Supreme Court in *Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited*, , held that definite and clear meaning should be given irrespective of its consequences. In *State of Madhya Pradesh Vs. Balram Mihani and Others*, , while considering the basic Rules of contractual constructions, their lordships of Hon"ble Supreme Court held that where the language is clear, then meaning should be assigned to each and every word in reference to a context.

In *Sri Jeyaram Educational Trust and Others Vs. A.G. Syed Mohideen and Others*, , their lordships of Hon"ble Supreme Court reiterated the strict construction of statutes where the language is unambiguous.

24. A Division Bench of this Court of which one of us (Hon"ble Mr. Justice Devi Prasad Singh was a member), reported in *Rajesh Awasthi Vs. Nand Lal Jaiswal and Others*, , while considering the golden rule of interpretation, held that words or statutes must prima facie be given their ordinary meaning. There has to be concentrated focus on the purpose of the Legislation and the context of language, any deviation may likely to bring in hazardous result.

25. Hon"ble Supreme Court while applying the principle of "Contemporanea exposition", held it as a well established rule of interpretation of statutes. It is applied in interpreting the statutes with reference to exposition which the statute received from contemporary authorities. However, where language is plain and unambiguous, rule must give way. Their lordships further held that even if a provision causes hardship to anyone, it should be given effect, if the language is plain and unambiguous.

26. Section 8 of the Act deals with civil survey of, and master plan for the development area and Section 9 deals with zonal development plans. For convenience, Section 8 and 9 of the Act are reproduced as under:-

8. Civil survey of, and master plan for the development area--(1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall--

(a) define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of framework within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area.

9. Zonal Development plans.--(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may--

(a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

(c) show every area in the zone which may, in the opinion of the Authority, be required or declared for development or redevelopment; and

(d) in particular contain provisions regarding all or any of the following matters, namely--

(i) the division of any site Into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes;

(iii) the development of any area Into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;

(v) the alignment of buildings of any site;

(vi) the architectural features of the elevation or frontage of any building to be erected on any site;

(vii) the number of residential buildings which may be erected on plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided;

(ix) the prohibitions or restrictions regarding erection of shops. work-shops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;

(x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained;

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings;

any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly, in such zone or area.

27. From sub-section (2) of Section 9 of the Act for the purpose of plan development, the zonal development plan shall contain a site plan referable to plan development of the zone. It shall satisfy the standard of population density, building density and reference of various infrastructure which shall be required for plan development. u/s 10 of the Act, plan shall be sent to the State Government for its approval and the Government may either approve or disapprove it. For convenience, Section 10 of the Act is reproduced as under:-

10. Submission of plans to the State Government for approval.-

(1) In this section and in Sections 11, 12, 14 and 16 the word "plan" means the master plan as well as the zonal development plan for a zone.

(2) Every plan shall, as may be after its preparation be submitted by the Authority to the State Government for approval and that Government may either approve the plan without modification or with out modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions.

28. Hon"ble Supreme Court in the case reported in M.C. Mehta Vs. Union of India (UOI) and Others, and in one earlier judgment reported in Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, , defined the word, "development". Hon"ble Supreme Court held that with its grammatical variations, development means, "the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment".

29. In Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others, , while defining the word, "development", Hon"ble Supreme Court held as under:-

4. "Development" has been defined in Section 2(g) of the 1977 Act to mean:-

"development" with its grammatical variations means the carrying out of a building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, or in the use of either, and includes sub-division of any land;"

"Planning area" has been defined in Section 2(o) of the 1977 Act to mean:

planning area" means any area declared to be planning area under this Act;

30. Aforesaid interpretation of word, "development", has been affirmed by Hon"ble Supreme Court in other cases reported in S.N. Chandrashekar and

Another Vs. State of Karnataka and Others, ; P. Narayanappa and Another Vs. State of Karnataka and Others, ; Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, ; Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others, ; Gujarat Industrial Development Corporation etc. Vs. Commissioner of Income Tax, .

31. In Hotel Sea Gull Vs. State of West Bengal and Others, , Hon"ble Supreme Court held that raising a further construction over the existing first floor of Hotel Building comes within the expression of development.

32. In view of the aforesaid interpretation of word, "development", it shall be obligatory on the part of the development authorities like LDA in the present case, to make some development in accordance to statutory mandate over the land and its vicinity to make it entitle to impose development charges in terms of proviso of sub-section (1) of Section 17 of the Act. Further, the development charges co-relate with the expenditure incurred with regard to development activities. The development activities should be in the vicinity where citizens' plots, flats or houses exist. In the present case, from the lay out plan and material on record, it appears that no development activities have been done towards west side of the railway line. Whatever development has been done, it seems to have been done in the Sector-A of the Scheme towards eastern side of railway line. Neither any material has been brought on record nor there is any pleading on record that electricity, sewer line, road constructed by the LDA is utilized by the petitioner. There is no material on record which may prove that electricity connection has also been provided to the petitioner's premises from the infrastructure of the LDA. National Highway No. 24 is the old road connecting Lucknow and Sitapur and it does not seem to be part of the development project of the LDA.

33 Legislature to their wisdom, under the proviso of Section 17 of the Act, used the word, "development charges, if any, as may have been incurred", to mean that actual development which has been done over the plot in dispute and in its vicinity. The Legislature further used the word, "after acquisition", to mean that development must have been done after the acquisition of land under the Land Acquisition Act and the Rules framed thereunder. This includes the expenditure incurred with regard to development work after the acquisition of plot or land in terms of Section 8 and 9 of the Act.

Nothing has been brought on record to establish the expenditure incurred on development work done over the land in dispute or in its close vicinity in terms of Section 8 and 9 of the Act from which the petitioner may be benefited. In absence of any benefit provided to the petitioner by the development work done by the development authority or the Lucknow Development Authority as the case may be, the petitioner or a citizen may not be subjected to payment of development charges.

34. In view of the above, unless development authorities make certain

development to provide infrastructure in a vicinity calling on plan scheme by carrying out a building, engineering and other operations to make material change in the vicinity in any building or land or use of land or building or make structural change in any heritage building or its precincts or provide infrastructure for the common use of citizens individually or collectively, shall not be entitled to realise development charges. Expenditure incurred on development charges means actual expenditure incurred to provide infrastructure and not only paper work. Imposing development charges without providing any infrastructure or facilities to citizens, merely by paper work or preparation of lay out plan, shall amount to abuse of process of law and arbitrary exercise of power and may call for judicial review of State action by the citizens. By using the work "incurred", the Legislature has confined the right of development authorities to impose development charges keeping in view the actual expenditure incurred in the close vicinity to provide infrastructure.

35. LDA itself has informed (supra) the Government that no lay out plan has been prepared followed by development work (supra) and thereafter, the State Government released the land in question. Hence at later stage, LDA does not seem to have right to impose development charges on the petitioner. Of course, the LDA has right to recover the expenditure incurred on acquisition of land together with interest at the rate of 12% per annum from the petitioner.

36. While parting with the case, we express few words of caution. With the increase of information technology, social awakening, literacy followed by active media reporting (electronic and newspapers publication), peoples may not bear the apathy and inactive attitude on the part of the development authorities as well as the local bodies while dealing with their subject. They should stop pilferage of funds and provide full development in terms of statutory provisions and civic amenities while imposing development charges or taxes, otherwise, the day is not far away when peoples shall come to street to secure their interest. Imposition of tax without providing civil amenities by local bodies or imposition of development charges likely to cause public resentment and unrest.

37. Accordingly, the writ petition deserves to be allowed. Since the development charges have been imposed on the petitioner without any development work that too, under the teeth of communication made to State Government (supra), it is a fit case where the petitioner seems to be entitled for costs in view of law settled by Hon''ble Supreme court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . Accordingly, the writ petition is allowed with directions and orders as under:-

(i) The writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 29.7.2011 passed by the opposite party No. 3 contained in Annexure No. 1 to the writ petition with all consequential benefits.

(ii) The costs is quantified to Rs. 1,00,000/- (rupees one lakh) which shall be deposited in this Court within a period of two months. Out of the costs so

deposited, the petitioner shall be entitled to withdraw an amount of Rs. 50,000/- (fifty thousands) and rest of the amount of costs shall be remitted to Mediation and Conciliation Centre, High Court, Lucknow Bench, Lucknow. In case the costs is not deposited, it shall be recovered as arrears of land revenue. Registry of this Court to take follow up action.

(iii) It shall be open to the Principal Secretary, Housing and Urban Planning, Lucknow/Vice-Chairman, Lucknow Development Authority, Lucknow, to recover the costs from the authorities who have been instrumental in passing the impugned order. It shall be further open to Lucknow Development Authority, Lucknow, to pass a fresh order keeping in view the observations made in the body of the judgment in pursuance to power conferred by Section 17 of the Act.

(iv) The writ petition is allowed accordingly with costs.