

(2012) 11 AHC CK 0182
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 69559, 61966, 69490, 69493, 69496, 70401, 70402, 70404, 70406, 71103, 71296, 72043, 72337, 72427, 72712, 72904, 73416, 74506, 74812, 74814, 75038, 75045 of 2010, 979, 984, 986, 2665, 2879, 3009, 4805, 12972, 20994,

Gyas Ali and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 17, 17(1)(4), 17(4), 3(f)

Citation : (2012) 11 ADJ 428 : (2013) 1 UPLBEC 108

Hon'ble Judges : Amitava Lala, Acting C.J.;Ashok Srivastava, J

Bench : Division Bench

Advocate : Shashi Nandan, Udayan Nandan, Surendra Tiwari, S.S. Shukla, Ashok Kumar, Swapnil Kumar, Raj Kumar, Madan Mohan, Gulrez Khan, J.H. Khan, Vidhu Prakash Pandey, R.K. Shukla, Dinesh Tiwari, Santosh Singh, S.K. Tyagi, Amit Krishan, Anil Sharma, A.N. Mishra, Satyendra Kumar Mishra, Girijesh Tiwari, Ashok Kumar Pandey, A.K. Singh, Gorakh Yadav, Dheeraj Singh Bohra, Sandeep Saxena, V.K. Tiwari and Kamal Kumar, for the Appellant; Ashwani Kumar Misra, Dr. Y.K. Srivastava and C.S.C., for the Respondent

Judgement

Amitava Lala, A.C.J.

1. All the aforesaid writ petitions upon being connected, on the request of Mr. Ashwani Kumar Misra, learned Counsel appearing for the respondents-Ghaziabad Development Authority, have been placed before this Court, therefore, the same have been heard analogously and are being decided by this common judgment. Though the judgment in all the aforesaid matters was reserved on the saying of the respondents that all the matters are similarly placed, but after reserving the judgment it has been reported to us that files of Civil Misc. Writ Petition Nos. 69490 of 2010, 2665 of 2011, 2879 of 2011, 3009 of 2011, 4805 of 2011, 20994 of 2011, 21068 of 2011, 26383 of 2011, 30183 of 2011, 44817 of 2011, 47906 of 2011, 48814 of 2011, 56189 of 2011 and 53276 of 2012 are not traceable.

Therefore, no order can be passed in these 14 writ petitions and the same are de-linked from this bunch.

2. So far as other writ petitions are concerned, Mr. Ashwani Kumar Misra, in presence of the learned Counsel appearing for the petitioners, has submitted before this Court that out of the remaining writ petitions, some of the writ petitions, being Civil Misc. Writ Petition Nos. 984 of 2011, 12972 of 2011 and 23097 of 2011, are covered by a judgment of this Bench in *Rajendra and Others Vs. State of U.P. and Others*, , delivered on 19th August, 2011, to which there is no objection on behalf of the petitioners in any of such writ petitions. Therefore, the order, which has been passed in *Rajendra* (supra) on 19th August, 2011 as contained in Paragraph-89 thereof, will be applicable in these three cases straightaway and accordingly, these writ petitions are disposed of in the same line and on the same terms as in *Rajendra* (supra).

3. So far as remaining writ petitions, leading case of which is Civil Misc. Writ Petition No. 69559 of 2010 (*Gyas Ali and others v. State of U.P. and others*) are concerned, it has been contended by Mr. Misra that these writ petitions are also covered by the judgment of this Bench in *Rajendra* (supra). However, Mr. Shashi Nandan, learned Senior Counsel appearing for the petitioners in the leading case, has argued the matter by saying that the judgments of the Supreme Court in *Devinder Singh and Others Vs. State of Punjab and Others*, and of the Division Bench of this Court in *Pooran and Others Vs. State of U.P. and Others* , were not brought to the notice of this Bench while hearing the matter of *Rajendra* (supra) to follow the same. We find that Paragraph-11 of *Devinder Singh* (supra) expresses the definition of the "company" whereas paragraph-44 thereof expresses the view, which is different from the "public purpose". *Pooran* (supra) has been relied upon by Mr. Shashi Nandan to establish that there is a distinction between the acquisition for "public purpose" and for "company", therefore, if the acquisition is made for the company, it cannot be construed as public purpose.

4. We have considered the rival contentions of the parties and gone through the judgment delivered by this Bench in re: *Rajendra* (supra). From paragraph-12 of *Rajendra* (supra) we find that some writ petitions pertaining to Village Dasna, which were related to some other project and were clubbed with bunch of *Rajendra* (supra), were de-linked. But so far as the question of law is concerned, that has been vividly considered in the judgment of *Rajendra* (supra) and ultimately the writ petitions therein were disposed of. The relevant paragraphs of such judgment i.e. *Rajendra* (supra) being paragraph Nos. 20, 21, 49, 56 and 58 are quoted below:

20. In the aforesaid manner, the very concept of establishment of Hi-Tech Townships is to provide extremely efficient modern townships to the members of the public at large. The actual beneficiary of the entire project is to be the public cause, public interest and public at large. It is with this public purpose in mind that the concept of Hi-Tech Township has been approved by the Government and is now being implemented, for which acquisition of land is proposed.

21. Since the acquisition of land proposed to be acquired under the respective notifications issued under Sections 4(1)/ 17(1)(4) on 27th November, 2009 and acquired u/s 6/ 17(1)(4) as per respective notifications of the years 2009 and 2010, which are impugned in the present writ petitions, is for establishment of a Hi-Tech Township in public interest, as per the salient features of the policy and also in terms of memorandum of understanding, the proceedings for acquisition have been validly initiated and undertaken as per the law and the provisions of the Act. Section 3(f) of the Act, as amended vide Act 68 of 1984, defines "public purpose" to include the provision of land for town planning. The proposed acquisition therefore, is covered by the definition of public purpose, and since the acquisition is for public interest, the same is to be undertaken as per the provisions of Part-II of the Act. Thus, the acquisition in question is not for a company, therefore, the provisions of Part-VII of the Act are not, in any manner, applicable upon the acquisition in question. As per the scheme and the notification, since the establishment of Hi-Tech Township is under the control and supervision of the State Government and the Development Authority, invocation of sovereign power to acquire the land for public purpose is valid.

49. Mr. Sinha has submitted that it is being argued on behalf of the petitioners that involvement of private entity taints the acquisition as it implies that the acquisition has been covered under Part VII of the Act. The said contention will have to be examined keeping in mind the fact that the project was conceived as a matter of policy much before any specific developer came on the scene. After the State Government conceived the project, it had inter alia taken a policy decision to implement the project in partnership with private sector. It provided both about the mode and manner in which the project was to be implemented. The land is being acquired only for the purposes of implementing the project so conceived by the State Government with the approval of the State Cabinet. It was much after the policy, so declared, that the selection process was set into motion and against 35 applicants, 6 developers were selected for carrying out the project of urban townships at 9 different places in the State.

56. Therefore, from the above discussions, the following issues stand settled:

- (i) Acquisition is not for a project of or conceived by the company.
- (ii) Acquisition is not presided by any application of the company for acquisition of a land for a project conceived by it or for its own works.
- (iii) Acquisition is for the development of urban township in the mode and the manner laid down in the project document and memorandum of understanding entered into with the development authorities.
- (iv) This is a public purpose.

(v) The land for the project is being provided by the State Government for implementation of a project conceived by the Government.

(vi) The land is being provided to the developer company on lease of 90 years and is to be reverted back to the acquiring body upon expiry of the term of the lease.

(vii) The payment of 90% of acquisition cost to be borne by private developer once received by the Ghaziabad Development Authority becomes its fund as it partakes the character of public revenue.

(viii) Since the payments have been made from or out of public revenue, provisions of Part-VII are not attracted.

(ix) 10% of land acquisition cost, in any view of the matter, is being incurred by the State only.

58. A detailed discussion with regard to payment of acquisition cost is required to be made hereunder. It may be noted that at all those relevant points of time when the policy was framed or offers were invited from intending developers or when they were selected, no land had been acquired by the Government but only sites for development of township have been broadly chosen. All that was on record, was the obligation of the State Government to provide land for the project. Acquisition cost incurred, in terms of the project policy and the memorandum of understanding, is to be borne by the developer company. More importantly, it is to be noted that payment is being made by the company to Ghaziabad Development Authority. It is Ghaziabad Development Authority, which in turn deposits the money with the Collector for disbursement to land owners. It is submission of Ghaziabad Development Authority that the compensation once paid to Ghaziabad Development Authority becomes its fund. How it utilizes the said fund, is for it to choose and decide. The moment compensation amount comes to the Ghaziabad Development Authority and stands credited to its account, it partakes the character of public revenue and it is from this public revenue that the estimated compensation is paid. Since the compensation is being paid from the public revenue, it is established that the acquisition is not for the company nor is it traceable to the provisions of Part-VII of the Act. The decision of this Court in *Balbir Singh (supra)* [*Balbir Singh and another v. State of U.P. and others*, 2009 (10) ADJ 441 (DB)] follows this reasoning based upon the decision of the Supreme Court in *Pratibha Nema and Others Vs. State of M.P. and Others*, wherein it was held that even if it was within the contemplation of the parties that the acquisition cost shall be borne by the company, the moment it went to the account of the acquiring body, it becomes public revenue. It was further held that the genesis of the fund which is not relevant and what was determinative was its ownership in present?. Similar view was also taken in *Naihati Municipality and others Vs. Chinmoyee Mukherjee and others*, wherein in paragraph-2 it was observed as follows:

...In view of the fact that at the relevant point of time the municipality did not have necessary funds to meet the cost of acquisition, they had requested hawkers' union to contribute the money for the acquisition. Consequentially, Rs. 3,90,000 came to be handed over to the Municipal Commissioner who had deposited the same into the funds of the municipality. Thereby, the amount had formed and fused into an integral part of the municipal funds... The meat of the matter is that after the deposit by the hawkers, they have no right to withdraw the said amount which formed part of the funds of the municipality. The High Court, therefore, was not right in holding that the amount has not become part of the funds managed or controlled by the local authority within the meaning of the second proviso to sub-section (1) of Section 6.

5. According to us, such type of issues cannot be resolved by strait-jacket formula but on the fact situation of each and every case. The cardinal principle is whether the company has applied for allotment of land for their purpose or an authority wanted to acquire or got allotment for the public purpose, which, in turn, made a partnership with any private party for the purpose of development. In the commercial parlance, such Public Private Partnership is commonly known as "PPP Model". As we find herein that the land has been acquired for the development authority for the establishment of Hi-Tech township scheme of the State Government, therefore, we do not find any reason to deviate from our judgment and order passed in *Rajendra* (supra). The State had also invoked the urgency clause u/s 17 of the Land Acquisition Act, 1894 (in short the "Act") therein, there fore, following observations were made in paragraph-89 of such judgment, which is as under:

89. The petitioner/s will make their application before the Collector within a period of fifteen days from the date of obtaining certified copy of this order, if not already made to him. Upon receipt of such application/s, the Collector will independently adjudge the demand of the petitioner/s about settlement of compensation and if necessary, he will also make survey of the land to support his independent view. He will also give an opportunity of hearing to all the petitioners. The petitioners will be able to take assistance of the pleader. The Collector will complete all exercise to make his report and sent the entire report to the State Government, for taking final decision in this regard, within a period of 21 days from the date of making application/s and in case the application has already been made, such period of 21 days will be counted after expiry of period of fifteen days granted for making applications. The State Government, who is the final authority, upon receipt of report will take a decision in the matter within a period of one month thereafter positively. The decision of the State will be final and binding upon all the parties. Physical possession of the land of the petitioners, if not taken by the Ghaziabad Development Authority, will be taken after completion of the course of action, as directed by this order, with regard to settlement of compensation to be paid to the petitioners. If this approach is made and the compensation amount is considered and if the petitioners are inclined to take compensation, it will be considered finally by following the Rules,

1997, Making of such applications, if any, for settlement will be totally optional on the part of the petitioner/s. If any unwilling petitioner wants to take advantage of Section 11A of the Act or u/s 48 of the Act, it is open for him to proceed accordingly. Such petitioner can also make appropriate applications before the authority concerned for due consideration of the cause u/s 11A and/or Section 48 of the Act, as the case may be, and a separate report will be prepared by the Collector and/or the authority concerned and the same will be sent to the State for the purpose of taking final decision. In case they become successful, immediate steps will be taken by the authority in accordance with law. If not, they will not be debarred from getting compensation following the same principle.

6. The above direction had to be given because that was a case where Section 17(4) of the Act was invoked and enquiry u/s 5A of the Act had been dispensed with. However, in the present bunch of cases Section 5A of the Act has not been dispensed with and it is after affording opportunity of hearing that declaration u/s 6 of the Act has been made, with regard to which no grievance has been raised. Hence, the position of the cases are worse than the cases in Rajendra (supra). Therefore, in totality, we find that the present bunch of writ petitions on the question as raised and argued is covered by the judgment in Rajendra (supra).

In view of the above, the writ petitions are accordingly disposed of.

However, no order is passed as to costs in any of the writ petitions.

Ashok Srivastava, J.

I agree.