
(1999) 04 AHC CK 0197
In the Allahabad High Court
Case No : C.M.W.P. No. 36208 of 1998

Haridas (Decd) through L.Rs.

APPELLANT

Vs

Collector, Mahoba and others

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (1999) 2 AWC 1737

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : Virendra Kumar Gupta and S.S.P. Gupta, for the Appellant; S.C. and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan and V.P. Goel, JJ.—In this matter, despite repeated " opportunities granted by Hon"ble Division Bench on 5.11.1998 and 7.12.1998, none of the respondents have filed a counter-affidavit. On 7.12.1998, the Division Bench recorded that further one month time and no more was permitted for filing a counter-affidavit. Yet, no counter-affidavit has been filed. The petition remains unanswered.

2. The petitioner has now been substituted by his son, Thakur Das, as the petitioner. Haridas, had died on 4 December, 1998. His son sought impleadment within time. Thus, in lieu of the petitioner, his son, Thakur Das, stands substituted. However, this does not affect the merits of the issues before this Court or before the authorities below.

3. The contention of the petitioner is that he held 5.51 acres of land in plot No. 2402. He says that he is a Chamar by caste and belongs to the scheduled caste and is living in village Chhikahara, Post and Tehsil Mahoba. District Mahoba. Plot No. 2402 bearing an area of 2.039 hectare at Village Chhikahara, Tehsil and District Mahoba had been inherited by him. He says that a part of this land was

subjected to land acquisition proceedings by which 0.47 decimal of land from the area of 5.51 acres had been acquired. The remaining part of the plot, the petitioner contends, had not been put under land acquisition proceedings. Yet, the respondents illegally occupied this plot and built a boundary wall around it and physically possessed this plot and deprived the petitioner of his property. The petitioner contends that this has resulted in the petitioner being deprived from his agricultural land without any procedure prescribed by law. The petitioner also contends that after having built a high boundary wall on the periphery of this entire land, the respondents have made constructions within it. To fortify his contention, the petitioner draws the attention of the Court to a letter which has been written by the Officer Incharge/Land Acquisition Officer, from the office of the District Magistrate, Mahoba, dated 21st February. 1997, No. 28/L.A.O. 8/96-97. Annexure-2 to the writ petition. In this communication, addressed to the Project Manager (Lands), Defence Research Development Organisation (D.R.D.O.). Chhikahara. District Mahoba. it is accepted that where as only 0.47 decimal of land had been acquired by law, the balance of 5.04 acres of land has been occupied by the Ministry of Defence, Government of India. In this communication. It is also recorded that the department of Government of India, that is. Ministry of Defence, has irregularly and without permission caused constructions to be made and this occupation and construction are the result of illegal occupation of the land. Further this communication also records that no steps were even suggested by this, department of Government of India to process land acquisition proceedings for the rest of the land, hitherto not acquired. The English translation of this entire letter is reproduced below ;

"Office of the District Magistrate. Mahoba.

No. 281/L.A.O. 8/96-97 dated 21.2.1997

Subject : About non-payment of compensation after acquisition of "Gala" No. 2402 area 2.039 H., by the Defence Research Development Organisation, Mahoba, of Sri Haridas S/o Parasdawa Chamar, Resident of village : Chhikahara, Tehsil Mahoba.

Project Manager (Lands)

D.R.D.O., Chhikahara.

District Mahoba

Kindly refer to letter No. June 25, 1996 of this office which was concerning the above subject and was addressed to the S.D.M., Mahoba, copy of which has been endorsed to you which is in context of raising of boundary wall after acquisition of Gata No. 2402 area 2.039 H. of Sri Haridas, son of Parasdawa Chamar, resident of Village Chhikahara. Tehsil Mahoba. In this context, it was brought to notice that as per the letter No. 229/8 S.L.A.O. dated 22.8.1995 of the Special Land Acquisition Officer. Irrigation. Hamirpur out of the total area of 5.51 acres of Gata No. 2402 of Sri Haridas, son of Sri Parasdawa, resident of Village

Chhikahara an area of 0.47 d. had been earlier acquired and a proposal for the remaining land of 5.04 acres had to be prepared.

The Special Acquisition Officer, Hamirpur, has intimated vide his letter No. 82/8 S.L.A.O., Hamirpur dated 21.6.1996 that you have taken unauthorised possession of an area of 2.039 H. of Gata No. 2402 of Sri Haridas, son of Sri Parasdawa without complying with the provisions of land acquisition and have also raised constructions and in spite of his request to you to prepare and send a supplementary proposal the said supplementary proposal has not been received in this office till date. The S.D.M., Mahoba got it enquired on the spot by the local officers and officials who have found unauthorised constructions and this has been affirmed by the S.D.M., Mahoba in his enquiry report. As you have taken unauthorised possession without complying with the provisions of land acquisition and a supplementary proposal for acquisition has been sent by your office as a result of which compensation could not be paid to the above person Sri Haridas, It is relevant to mention here that no amount for distribution as compensation to Sri Haridas is in balance.

It is, therefore, requested that kindly make arrangements for sending the supplementary proposal regarding acquisition of land of the aforesaid number of which you have taken unauthorised occupation and have raised construction, without complying with the provisions of land acquisition, within a period of one week by all means. If the said proposal is not sent by you then the responsibility of damage to the gateholder shall be of your department.

Sd/- Illegible Officer Incharge (L.A.) Mahoba."

No. and date as above Copy :

1. Sent to S.D.M., Mahoba, in sequence of his letter dated 15.2.1997 for necessary action and information.
2. For service on Sri Haridas, son of Parasdawa, Resident of Village Chhikahara. Tehsil Mahoba, through the Tehsildar, Mahoba.

Sd/- Illegible Officer Incharge (L.A.) Mahoba." 21.1.1997"

4. In the circumstances, with the respondents having chosen not to reply the petition by a counter-affidavit, submissions made by the petitioner stand uncontroverted.

5. Nothing more needs to be written by this Court except that 5.04 acres of the petitioner's land had been permitted to be occupied between the respondents, that is, the State of Uttar Pradesh and the Government of India. The occupation is illegal. By usurpation of the petitioner's land without authority of law and deprivation of his property arbitrarily, both the respondents have taken the law into their hands. Where the fault lies may be a matter between the State of Uttar Pradesh and the Union of India.

6. In the circumstances, this leaves the Court with no option, as the respondents

have elected not to reply to the petition by filing a counter-affidavit and it is on record that the Government of India has occupied the petitioner's land illegally, but to issue directions in the nature of mandamus to both the respondents that such land of the petitioner arising out of plot No. 2402, measuring 5.04 acres occupied and usurped illegally shall be returned to the petitioner forthwith.

7. For this illegal exercise which has been caused in occupying a citizen's property without authority of law, which this Court considers a brazen exercise to violate the law, ought not to be encouraged. Each of the respondents, that is, State of Uttar Pradesh and the Government of India shall pay to the petitioner cost of Rs. 50,000 each, within one month from today. These costs, two sets of Rs. 50,000 are to be deposited with the Registrar, High Court, and thereafter paid to the petitioner by an account payee cheque.

8. The petition succeeds with costs, as above.