
(2009) 11 AHC CK 0049
In the Allahabad High Court

Harijan Sewak Sangh and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4(11)

Citation : (2010) 2 AWC 1145 : (2010) 2 UPLBEC 1595

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—Heard Shri G.N. Verma, Senior Advocate assisted by Shri R.K. Srivastava, and Shri Krishna Mohan, learned Counsel for the petitioners. Shri Ajay Kumar Mishra appears for Allahabad Development Authority. Learned standing counsel appears for the State of U.P.

2. The "Harijan Sewak Sangh, Allahabad" and "Ishwar Saran Ashram", the societies registered under the Societies Registration Act, 1860, have filed this writ petition through their President Shri R.K. Srivastava, advocate for quashing the notification dated 6.3.1987 under Sub-section (11) of Section 4 of the Land Acquisition Act, 1894 (in short, "the Act") with the opinion of the State Government that the provisions of Sub-sections (1) and (1A) (as amended by U.P. Act No. 22 of 1954) of Section 17 of the Act are attracted and applying Sub-section (4) of Section 17 of the Act for acquiring the land in village Chandpur Salori, Pargana Chail, district Allahabad, the details of which are given in the notification for "planned development scheme". The notification u/s 6, in furtherance to the notification under Sub-section (1) of Section 4 read with Sub-section (4) of Section 17 of the Act, declaring the acquisition of plots mentioned in the notification in the same village was published on 16.4.1987, as annexed as Annexures-3 and 4 to the writ petition.

3. A notice under Sub-section (3) of Section 9 of the Act for taking possession of

the land was issued to "Ishwar Saran Ashram" by the Special Land Acquisition Officer, (Nagar Mahapalika), Allahabad dated 27.12.1987, for handing over possession of all 11 plots (namely plot Nos. 312/3, 313, 316, 317, 319, 320, 328/1, 327, 330/1, 335 and 336) measuring 13 bighas 7 biswas of land.

4. It is stated in the writ petition that the petitioner-society is registered under the Societies Registration Act, 1860, and is a branch of "All India Harijan Sewak Sangh, New Delhi" founded by late Mahatma Gandhi. The society was established at Allahabad by late Munshi Ishwar Saran for welfare and upliftment of the Harijans and weaker sections of the society. The society has established a number of institutions including Degree College, Intermediate College for boys, Intermediate College for Girls and High School for denotified tribes. The society has also constructed hostels. These institutions are running for last more than 50 years. Paragraph 5 relevant for the purposes of grant of lease to the society is quoted as below :

5. That the respondent No. 1 by its G.O. No. 400/IX-556 dated 8.4.1936 and G.O. No. 5418-A/LX-556-1934 dated 9.4.1941 granted lease of 20 acres of nazal land to the petitioner. The State Government was further pleased to grant a further lease or nazul land measuring 8 bighas 2 biswas 13 biswansis (dhurs) vide Commissioner's letter No. 304/23/219 dated 24.6.1943 and thus, the petitioner society is the lessee of plot No. 312/3 (measuring 1 bigha 3 biswas), 313 measuring 1 bigha 5 biswas, 316 measuring 1 bigha 8 biswas, 317 measuring 1 bigha 7 biswas, 319 measuring 17 biswas, 320 measuring 1 bigha 9 biswas, 328/1 measuring 1 bigha 15 biswas, 329/1 measuring 19 biswas 334/1 measuring 15 biswas, 335 measuring 1 bigha 2 biswas and 336 measuring 1 bigha 12 biswas (total area 13 bighas 7 biswas) situate in village Chandpur Salori, Pargana Chail, District Allahabad and the society has been in possession over the plots in dispute since the grant of lease in its favour.

5. The petitioners have not brought on record the lease deeds. Their claim is based only on the averments made in the writ petition.

6. It is stated that on 20.12.1986 the officers of the Allahabad Development Authority visited the Ashram and went to the premises of the Intermediate College, where they put some bamboos and wires to show petitioners' illegal possession, on which a writ petition was filed which was disposed of by this Court on 28.12.1986, with the directions that the respondents shall not dispossess the petitioners except in accordance with the law. The petitioners were thereafter served with a notice under Sub-section (3) of Section 9 of the Act informing that the possession will be taken on 11.1.1988. The notice was received on 31.12.1987 and thereafter the notifications u/s 4 of the Act were issued invoking Sub-section (1) of Section 17 and Sub-section (4) of Section 17 of the Act. The notifications have been challenged on the ground that the land sought to be acquired is covered by the building of Vikas Vidyalaya, its two hostels : Primary Girl Hostels : Ishwar Saran Degree College Hostel : residence of Superintendent and play ground of Vikas Vidyalaya. All these institutions have been established

to serve public purpose. The acquisition is in colourable exercise of powers only for profiteering and commercial motives. There has been no compliance of provisions of Section 5A and that there was no material to invoke Sub-section (1) of Section 17 of the Act. There is no plan framed, sanctioned or notified by the Allahabad Development Authority, to acquire the land.

7. An interim order was made on 12.1.1988, staying petitioners' dispossession from the land and the building and that the writ petition is pending for last 21 years. It was twice dismissed for want of prosecution and restored. The petitioners have taken several adjournments on one ground or other.

8. In the counter-affidavit of Shri S.P. Singh, Special Land Acquisition Officer, (Nagar Mahapalika), Allahabad, it is stated that the land in dispute is a State land, and is so recorded in the revenue records in khatauni of 1413 fasli, annexed as CA-1 and CA-2 respectively. The notice under Sub-section (3) of Section 9 of the Act was given after the land was acquired invoking the urgency clause. In paragraphs 9, 10 and 13, it is stated as follows :

9. That, in reply to the contents of paragraph No. 18 of the writ petition, it is stated that the land in dispute are recorded in the name of State and in view of the report dated 6.9.2009 submitted by the Tehsildar, spot situation of different plots have been described and according to the said report 400 square metre area of plot No. 312 is used as rasta and road and 2000 square metre area is lying vacant and remaining area of the plot is covered by abadi. The total area of plot No. 313 lying vacant, 840 square metre area of plot No. 316 is covered by khadhanja and pakka well whereas 150 square metre area is covered by residential houses and 1,700 square metre area situated towards east is lying vacant and the remaining area is covered by Vikas Vidhyalaya whereon pakka well also situated. Over plot No. 319 the Government Development, Hostel is situated and over plot No. 320 the Ishwar Saran Balika Inter College, (Primary Section) is situated over 1000 square metre area, rest of the land of the said plot is covered by residential houses and kharanja. The 500 square metre area of plot No. 328 situated towards west, the lying vacant and remaining area of the said plot is covered by Ishwar Saran Balika Inter College. Over plot Nos. 329, 334, 335 and 336 the residential campus and Ishwar Saran Balika Inter College is situated the total area of plot No. 332 and partial area of plot Nos. 331 and 333 is covered by the power house under construction. The power house is being constructed over an area of 30 x 57 square metre. All the aforesaid plots are entered as State land and new parti in the revenue records, allegations to the contrary are denied.

10. That, in reply to the contents of paragraph Nos. 19 to 21 of the writ petition are that the proceedings for acquisition of the land was initiated and in this regard notification was also issued but in fact the land has not been acquired rather subsequently a letter was written by the then Special Land "Acquisition Officer, Allahabad to the Joint Secretary Government of U.P. in regard to Vikas Anubhag-5, Lucknow vide its letter dated 2.9.1989 requested that except plot

No. 362 area, 18 bighas, 17 biswas. The rest of the plots may be denotified inasmuch as, in view of the letter sent by the Secretary, Allahabad Development Authority, there is no requirement of area of plot under notification. In this view of the matter the petitioner may not have any grievance and he is not going to be effected from the said notification regarding the Land Acquisition Act.

13. That, in reply to the contents of paragraph Nos. 26 to 28 of the writ petition, it is stated that since the land dispute are already recorded in the name of State, therefore, there is no need of its acquisition. Vide impugned notification ; an area of 18 bighas, 17 biswas of plot No. 362 was acquired by the Allahabad Development Authority. It is situated in village Chandpur Salori, Pargana Chail, district Allahabad and award for the same has already been made on 10.9.1989 and other remaining plot effected by the notification are no more acquired nor any further proceeding in this regard is going on. In this view of the matter, the petitioner can have no grievances and the writ petition is not maintainable.

9. The petitioners have not annexed the lease deeds executed by the State Government in their favour. During the course of argument, a specific question was put to the counsel for petitioners, whether they are in possession of the lease deeds and the reasons as to why they have not filed the lease deeds to demonstrate the terms, conditions and the period of the lease of the demised land. The counsel for the petitioners did not give any specific reply and rather stated that the Courts should enquire about these facts and direct the respondents to file the lease deeds on record.

10. The petitioners' right to occupy the land and to make constructions on the land flows from the lease deeds executed by the State Government. They have not annexed the documents of title with the writ petition and have not given specific reply to the question, whether they are in possession of the lease deeds, and the period, when the lease deeds expired. The petitioners have also not given any reasons as to why they cannot produce the lease deeds and for summoning the records from the State Government. The Court is thus constrained to draw adverse inference against the petitioners.

11. In the counter-affidavit, a specific plea has been taken that the land in dispute is the State land and plots in dispute are actually recorded as State land in the revenue records. It is stated in paragraph 8 of the writ petition that the notifications Under Sections 4(1) and 6(1) as well as Section 17 of the Act were issued by the State and in paragraph 5 that the notice under Sub-section (3) of Section 9 was issued on 27.12.1987 and received by the petitioner on 31.12.1987. In paragraph 10 of the counter-affidavit of Shri S.P. Singh, Special Land Acquisition Officer (Nagar Mahapalika) Allahabad, a specific plea has been taken that the notification was issued but that the land has not been acquired rather subsequently a letter was written by the then Land Acquisition Officer, Allahabad to Joint Secretary, Government of U.P. dated 2.9.1989 with the request that except plot No. 362 area 18 bighas 17 biswas, the rest of the plot may be de-notified inasmuch as in view of the letter sent by the Secretary,

Allahabad Development Authority, there is no requirement of area of plots under notification. In this letter, it is stated that the notification u/s 4 of the Act was published in official Gazette on 6.3.1987 and the notification u/s 6 was published on 16.4.1987 but that the Secretary, Allahabad Development Authority is only interested in gata No. 362 area 18-17-0 bigha and the award was made on 10.9.1989. There is no further averments whether the State Government has actually de-notified the other plots.

12. In the amendment application filed on behalf of the petitioners on 19.5.2004, they have prayed for changing the description of respondent No. 1 and to add "Secretary, Awas Avam Shahari Niyojan Vibhag, Anubhag-4, U.P. Shasan, Lucknow" and further to add paragraphs 30(A) to 30(D) : grounds (n) and (o) and the prayers to quash the notice of which the date has not been given annexed as Annexure-9 to the writ petition and to decide fresh lease matter in pursuance of letter dated 24.4.2004.

13. In paragraphs 30(A) to 30(D) it is stated that the land in dispute is the nazul property, which is being managed by the Nagar Nigam, Allahabad. They have been receiving rent against rent receipt Nos. 75 and 76 dated 30.6.2004 annexed as Annexures-6 and 6A to the application. The nazul lease was granted to the petitioners after expiry of the lease deed and the petitioners submitted to respondents for fresh nazul patta vide application dated 29.2.2004 for which the letter of recommendation has been issued on 24.4.2004 by Shri Ravindra Nath Tripathi, the then District Magistrate, Allahabad to the Secretary, Awas Avam Shahari Niyojan Vibhag, Government of Uttar Pradesh. In this recommendation, it is stated that the lease for 20 acres, i.e., (80,934.48 square metres) was sanctioned for 30 years from 29.3.1936 and had expired on 28.3.1966. Another lease deed of 8 bighas 3 biswas and 15 biswansi (23,636.54 square metres) was sanctioned w.e.f. 3.5.1945, which had expired on 2.5.1975. The District Magistrate requested the State Government to extend the lease for a further period of 30 years.

14. The notice of the Allahabad Development Authority sought to be quashed by adding the prayers in the amendment application advertises a housing scheme known as "Chandpur Salori Housing Scheme" inviting applications for allotment for 114 plots of various sizes.

15. The amendment application is allowed.

16. Shri G.N. Verma, learned Counsel for petitioners submits that the petitioners have a right to renewal of lease deeds, for which the District Magistrate has made recommendations and that their application is still pending for consideration with the State Government. The State does not have a right to acquire its own land. He relies upon Sharda Devi Vs. State of Bihar and Another, in which the Supreme Court held that if the land was Government land, there was no question of initiating proceedings for acquisition at all. The Government would not acquire the land which already vests in it. A dispute as to the

preexisting right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated or referred to the civil court for determination either u/s 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and that the civil court ought to have refused to entertain the reference and ought to have rejected the same. The Supreme Court quashed the entire proceedings u/s 30 of the Act beginning from the reference to the adjudication.

17. In *State of U.P. and Others Vs. Lalji Tandon (Dead)*, the Supreme Court considered the renewal clauses in the lease deeds of land of which ownership vests in the State Government. Shri Lalji Tandon was claiming the exercise of option for renewal in the lease deed executed in 1945. It was held that where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, where the renewed lease shall also contain similar clause for renewal, would depend on the wording of the covenant for renewal contained in the principal lease, the intention of the parties as reflected therein and as determinable in the light of the surrounding relevant circumstances. The Supreme Court also pointed out the difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and a renewal of lease, again in accordance with the covenant for renewal contained in the original lease. In case of extension it is not necessary to have a fresh deed of lease executed. However, option for renewal consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, Anr. lease for a fixed term shall not come into existence, though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be. In India the law does not prohibit perpetual lease : clear and unambiguous language would be required to infer such a lease.

18. The Supreme Court held in *Lalji Tandon's* case that to answer the question whether a covenant for renewal, contained in the lease deed entitles the tenant to continue as long as he chooses, by exercising the option of renewal at the end of successive periods, is subject to the same terms and conditions, and depends upon the deed of lease being read as a whole, and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so as to defeat other clauses. The interpretation must be reasonable, harmonious and be deduced from the language of the document. The Court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous. Thereafter, in paragraph 20 the Court held after relying upon *Sharda Devi v. State of Bihar* (supra) observed as

follows :

20. The other two pleas raised on behalf of the appellant State merit a short and summary burial. The appellant's plea that the land having been acquired there could be no renewal of lease has been termed by the High Court as "ridiculous" and we find no reason to take a different view. Suffice it to refer to a recent decision of this Court in *Sharda Devi v. State of Bihar*, wherein it has been held that the Land Acquisition Act, 1894 cannot be invoked by the Government to acquire its own property. It would be an absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. The notification and declaration Under Sections 4 and 6 of the Land Acquisition Act for acquisition of the land, i.e., the site below the bungalow are meaningless. It would have been different if the State would have proposed the acquisition of leasehold rights and/or the superstructure standing thereon, as the case may be. But that has not been done. The renewal of lease cannot be denied in the garb of so-called acquisition notification and declaration which have to be just ignored.

19. In the present case, the lease deeds have not been produced. It is difficult to believe that the petitioners do not possess the lease deeds as they have applied for its renewal to the District Magistrate. It is thus apparent that for the reasons best known and for which adverse inference has been drawn, the petitioners do not want to produce the lease deeds. The letter of the District Magistrate clearly states that the period of lease for 20 acres had expired on 28.3.1966 and the period of lease for 8 bighas 3 biswas 15 biswansi expired on 2.5.1975. A request was made for new lease deeds for a period of 30 years. The period had not expired on 24.4.2004, when the recommendation was made, but that how that period has also expired. The petitioners have not brought on record any further correspondence, or the stage at which the recommendation for execution of fresh lease is pending.

20. The notifications Under Sections 4 and 6 and the notice u/s 9 of the Act for acquiring the land, which actually belongs to the State Government, and for which the lease executed in favour of the petitioner has expired, are thus meaningless. The land belonged to and would continue to belong to the State Government.

21. In the counter-affidavit of Shri S.P. Singh, Assistant Law Officer, Allahabad Development Authority filed to the amendment application, it is stated in paragraph 4 that the land sought to be acquired and which is subject-matter of the writ petition does not contain any building or play ground. The land is vacant for last several years. The notifications u/s 4(1) of the Land Acquisition Act dated 6.3.1987 for planned development of the Allahabad Development Authority were issued for constructions of residential colonies for medium income group, lower income group and economically weaker section of the society, the matter being of urgency for construction of residential colonies under 20-Point Programme of the Government. As the plots were vacant, the Collector has, after taking

possession of the land, handed over the possession to the Allahabad Development Authority on 6.12.1986. The Allahabad Development Authority has not acquired any building, hostel, play ground or school land or land appurtenant thereto, but that portion of land being acquired which was lying vacant without any use by the petitioners. The Allahabad Development Authority had taken over possession of 18 bighas 17 biswas land in plot No. 362, from the District Magistrate. If the petitioners have raised any constructions over this land, such constructions and development is wholly unauthorised and is liable to be demolished and possession restored to the State Government.

22. In the absence of lease deeds, we are unable to record any findings regarding the right to renewal, and have to rely upon the letter of the District Magistrate annexed to the amendment application in which the recommendation was made to execute fresh lease deed for a period of 30 years. The recommended period for renewal of 20 acres land would have expired on 28.3.1996, and for 8 bighas 3 biswas 15 biswansi land on 2.5.1975. The petitioners, therefore, do not have the right to occupy the entire land. They only have a right to hold over the lease deeds until fresh lease deeds are executed. If the State Government decides not to execute fresh lease deeds the petitioners can be evicted from the entire land of which the possession has not been taken so far by taking appropriate measures in accordance with the law. This Court had in a writ petition filed by the petitioners protected their interest by judgment and order dated 28.12.1986 and had allowed the State Government to take possession in accordance with the law.

23. The writ petition is dismissed.