
(2017) 01 AHC CK 0160
In the Allahabad High Court
Case No : C.M.W.P. No. 3233 of 2017

Hoshiyar Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Uttar Pradesh Industrial Area Development Act, 1976 — Section 12

Citation : (2017) 4 ADJ 235 : (2017) 2 AllWC 1741

Hon'ble Judges : Amreshwar Pratap Sahi and Prabhat Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Santosh Kumar Tiwari and Rajendra Kumar Pandey, Advocates, for the Petitioner; C.S.C., Anjali, Upadhya and Ramendra Pratap Singh, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Amreshwar Pratap Sahi and Prabhat Chandra Tripathi, JJ.— Heard Sri S.K. Tiwari, learned counsel for the petitioners.

2. The petitioners claimed themselves to be beneficiaries of the Full Bench judgment in the case of Gajraj and others v. State of U.P. and others [2011 (11) ADJ 1 (FB)] decided on 21.10.2011 and as affirmed by the Apex Court in the case of Savitri Devi v. State of Uttar Pradesh and others (2015) 7 Supreme Court Cases 21 decided on 14.5.2015.

3. It is undisputed between the parties that in compliance of the aforesaid judgment, the petitioners have been offered 10% of their acquired land in terms of the judgment of the High Court as well as the Apex Court.

4. The only dispute which has been raised in this petition, is about the power of the Development Authority to proceed to realize development charges as per the provisions of Section 12 of the U.P. Industrial Area Development Act, 1976 read with Chapter VII of the Uttar Pradesh Urban Planning and Development Act, 1973.

5. The contention of the petitioners is that this power cannot be invoked in so far as allotment made to the petitioners are concerned, keeping in view the ratio of the aforesaid two judgments as contained in paragraph 482 (b) of the Full Bench judgment of the High Court in the case of Gajraj (supra) that is extracted herein under:-

"(b) All the petitioners shall be entitled for allotment of developed Abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 square meters. We however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots."

and as per the ratio of the judgment of the Apex Court sustaining, the said directions in paragraph 46 of the Savitri Devi's case (supra) that is extracted herein under:-

"46. Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5-A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the landowners, developments have taken place in these villages and in most of the cases, third-party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in Bondu Ramaswamy came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the landowners in the form of compensation as well as allotment of developed abadi land at a higher rate i.e. 10% of the land acquired of each of the landowners against the eligibility and to (sic under) the policy to the extent of 5% and 6% of Noida and Greater Noida land respectively."

6. It is submitted that the direction which has been given by the Apex Court in paragraph 48 particularly in paragraph 48.2 also reaffirms the same that is extracted herein under:-

"48. To sum up, the following benefits are accorded to the landowners:

48.1. Increasing the compensation by 64.7%.

48.2. Directing allotment of developed abadi land to the extent of 10% of the land acquired of each of the landowners;

48.3. Compensation which is increased @ 64.7% is payable immediately without taking away the rights of the landowners to claim higher compensation under the machinery provided in the Land Acquisition Act wherein the matter would be examined on the basis of the evidence produced to arrive at just and fair market value."

7. Thus, according to the contentions that have been advanced, the petitioners are seeking protection of the judgment of the Full Bench of the High Court as well as the Apex Court to contend that the petitioners by way of compensation have been awarded 10% of the land that is to be allotted as developed abadi plot. Thus, they urge that the said land is free from levy of any charges which is now sought to be levied under the notice dated 29.06.2016, a copy whereof has been filed as Annexure-3 to the writ petition.

8. Learned counsel for the respondent authority submits that the aforesaid judgments do not prohibit levy of betterment or development charges and consequently, the inclusion of the development charges in the impugned notice dated 29.06.2016 does not in any way amount to contradicting the directions of the High Court and the Apex Court.

9. During the course of arguments, Sri Ramendra Singh for the respondent authority also invited the attention of the Court to an agreement said to have been arrived at between the authority and the representatives of the tenure holders in April, 2013 to be more precise as recorded in the proceedings dated 24.4.2013. According to said agreement arrived at, only 50% of the amount of the development or betterment charges were to be realized from such farmers whose land were acquired and was subject matter of these proceedings. He further submits that this issue which has been raised in Writ Petition No. 746 of 2017, has to be answered by filing an affidavit therein.

10. The question before us is as to whether the petitioners are liable to pay any development or betterment charges that is sought to be imposed on the petitioners in terms of the allotment letter dated 29.06.2016 or not.

11. Prima facie, we find that the judgments of the High Court and that of the Apex Court do not refer to any issue relating to imposition of betterment or development charges or otherwise it's exemption but the words used in both the judgments are to the effect that the petitioners would be entitled for allotment of developed abadi plots to the extent of 10% of their acquired land subject to maximum of 2500 square meters. The Apex Court in paragraph 46 of the judgment in the case of Savitri Devi (supra) has held that the High Court has considered the ground realities of the matter and has arrived at a more practical and workable solution by adequately compensating the landowners in the form of compensation as well as allotment of developed abadi land. In paragraph 48.2 of the said judgment, the Apex Court has indicated that the benefit that has been accorded to the landowners would include the directions for allotment of developed abadi land to the extent of 10% of the land acquired of each of the landowners.

12. Thus, the words used in the judgment are to the effect that developed abadi land has to be allotted to the landowners but it is a settled principle of law that a judgment has not to be read like statute. The judgment therefore has to be construed in the light of the background of the controversy and the intention of

adequately compensating the farmers by giving the said benefit of allotment of 10% of their land as developed abadi plots.

13. If there were negotiations as contended by the Development Authority on 24.4.2013 and the rate of development charges was reduced to 50% in such cases, then in that event it will have to be further seen as to whether such agreement had been entered into and whether it is binding between the parties or not.

14. Thirdly, there is yet another class of landowners whose land has been acquired and who have already been extended benefits to the extent of 6 to 10 % which is being adjusted as has been observed by the Full Bench of the High Court, and in the event any such allotment has preceded earlier then whether any such terms and conditions of realizing settlement/development charges had been imposed or not, and to what extent had that been accepted by the landowners.

15. The respondent Development Authority will therefore, specifically respond by filing an appropriate affidavit about the aforesaid facts as also whether any such decision was communicated to the farmers about the imposition of betterment charges after the judgment of the High Court dated 21.10.2011, and whether such an issue had been contested between the parties before the Apex Court or not.

16. Let the said affidavit be filed by the date already fixed in Writ Petition No. 746 of 2017 i.e. 7.2.2017.

17. Connect with Writ Petition No. 746 of 2017.