

(2008) 11 AHC CK 0167
In the Allahabad High Court

Jagat Narain Bajpai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 17(1)

Citation : (2008) 6 AWC 6319

Hon'ble Judges : Arun Tandon, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Tandon and A.P. Sahi, JJ.—The petitioners, in this writ petition, have come up with a prayer for issuance of a mandamus directing the respondents to release the land allegedly belonging to the petitioners and which was subject matter of acquisition under the Notifications dated 25.7.1959 and 23.12.1959 under the Urban Development Act No. 6 of 1945. In the alternative, a prayer has been made for paying the petitioners the entire enhanced amount which has been allegedly earned by the Government by selling the said land and a further claim of enhanced compensation has also been made.

2. We have heard Sri G.N. Verma, learned Counsel for the petitioners, learned Counsel for Kanpur Development Authority and learned Standing Counsel for Respondent Nos. 1, 4 and 5.

3. The relief claimed in the writ petition is founded on the allegation that inspite of the acquisition having been made, the land has not been utilized and, therefore, in view of the provisions of Section 17(1) of the U.P. Urban Planning and Development Act 1973, the Kanpur Development Authority and the State Government be commanded to release the land. It has further been submitted that the respondents could not have transferred the land to organisations like the Steel Authority of India Limited as the same would amount to change of purpose for which the land was acquired and further the possession of the petitioners

have not been disturbed with till date, as such, they are entitled for re-entry under Sub-section 1 of Section 17 of the 1973 Act quoted herein below:

17. Compulsory acquisition or land.- (1) 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 that land to him on the ground that the land has not been utilised 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.

4. It is submitted by Sri G.N. Verma that the course adopted by the Development Authority and the State in transferring the land in favour of organisations and a company like the Steel Authority of India Limited is in violation of the proposed Scheme for which the land was acquired, namely for a green belt area. An interim order was passed on 21.5.1990 staying the dispossession of the petitioners which was later on modified on 11.7.1990 and the petitioners were directed not to interfere with the possession of the plots which had been purchased by the Steel Authority of India Limited. The writ petition was subsequently admitted on 12.8.1994.

5. From the records, it appears that the implementation of the said scheme was subsequently challenged in various writ petitions including writ petition No. 863 of 1968 (Bishambhar Singh v. The Nagar Mahapalika, Kanpur and Ors.) and connected writ petition No. 4491 of 1968 (Laxmi v. State of U.P. and Ors.). It was contended therein that the order of the State Government extending the time period for making of the award was invalid.

6. The said writ petitions were allowed vide judgment dated 21.3.1969; a copy whereof has been appended as Annexure-2 to the writ petition. However, from the counter-affidavit filed on behalf of the respondent - Development Authority, we find that the said judgment was reversed in Special Appeal decided on 14.4.1977 keeping in view the retrospective application of amended Section 365 of the Uttar Pradesh Nagar Mahapalika Adhiniyam 1972. The contention of the petitioner is that the scheme could not be implemented for the past 50 years even though the purchaser - Steel Authority of India forcibly took the possession through police. We have perused the relevant revenue extracts of possession, namely Khasra of the land in question which has been appended as Annexure-5 to the writ petition and on which reliance has been placed by Sri G.N. Verma, who contends that the said Khasra reflects that agricultural operations were

being carried on the plots of the petitioner and, therefore, the petitioners were in possession. On the strength of the said document, it was submitted that de facto possession of the petitioners was continuing and, as such, in view of the provisions of Section 17(1) of the U.P. Planning and Development Act, the petitioners are entitled for an order of re-entry to be passed by the State Government.

7. From the records, we further find that earlier writ petition No. 5595 of 1988 had been filed by the petitioners raising the same issues on the strength of the proviso contained in Section 17(1) of the U.P. Planning and Development Act 1973. The writ petition was dismissed on the ground that the Court was not inclined to entertain the writ petition at that point of time and that the petitioners should have approached the State Government by a proper representation before coming to the Court. The petitioners now contend that they moved a representation before the State Government but till date the State Government has not taken any decision at all. It is in these circumstances, the petitioners have again approached this Court by means of this petition alleging inaction on the part of the State Government.

8. Learned Counsel for the Development Authority and the learned Standing Counsel have urged that second writ petition for the same cause of action would not be maintainable in view of the dismissal of the earlier writ petition No. 29488 of 1988 and further that the land has already been utilized and possession taken, as such, there is no question of invoking the provisions of Section 17(1) of the 1973 Act. They further contend that there is no bar in putting the land to any other use of public purpose keeping in view the large tract of land which was acquired and that the petitioners, as a matter of fact, have no semblance of right existing, so as to maintain their petition for the relief claimed for.

9. We have considered the rival submissions and we find that the acquisition was made in the year 1959. The petitioners appear to have received the compensation and as a matter of fact the acquisition was upheld by this Court as reflected in the decision of the special appeal decided in 1977. The petitioners appear to have taken a fresh stand on the strength of Section 17(1) of the 1973 Act which Act was enforced much after the acquisition. They approached this Court earlier but their writ petition was dismissed on 29.4.1988 observing that the petitioners ought to have approached the State Government first before coming to this Court and, therefore, the writ petition was not entertained.

10. Section 17 of the 1973 Act provides that after the expiration of 5 years from the date of acquisition, in case the acquired land has not been utilized, then the person, from whom the land had been acquired, has a right to move an application seeking restoration of the said land.

11. In the instant case, from a perusal of the counter-affidavit filed on behalf of the Development Authority, to be specific paragraphs 12 and 14 thereof, it is evident that the land has been utilized by developing the same, raising

constructions of almost 40,000 houses and carving out 30,000 plots, coupled with allotment to various government and semi government organisations like the Railway Coach Factory, Fertilizer Unit, Indian Oil Corporation and Steel Authority of India Limited. The contention of the learned Counsel for the petitioners that the land has not been utilized, therefore, does not appear to be correct. It is, therefore, evident that the very factual foundation which is required for invoking the provisions of Section 17 does not exist and is not available for invoking Section 17 (Proviso) of the Act 1973.

12. The second limb of the argument of Sri Verma to the effect that there has been a change of purpose is also untenable inasmuch as the land was acquired for public purpose and it still continues to be utilized for a changed public purpose. This change of purpose would not invalidate the acquisition proceedings and even otherwise the said ground cannot be the basis for invoking the provisions of Sub-section 1 (proviso) of Section 17 of the Act inasmuch as the said provision only requires that restoration would be permissible in case the land has not been utilized. As indicated above, the land has been utilized for public purpose of housing development as well as industrial development.

13. The aforesaid view finds support from the decision of the Apex Court in the case of Gulam Mustafa and Others Vs. The State of Maharashtra and Others, whereof is quoted below for ready reference:

5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration.

14. Even otherwise the issue of change of purpose is relevant only when acquisition proceedings are challenged. No such situation is available in the present case at all as the acquisition had become final long back with the disposal of the Special Appeal in 1977.

15. There is yet another aspect of the matter namely the question of possession. The Khasras, which have been relied upon and have been appended as Annexure-5 to the writ petition, clearly indicate that the name of Nagar Mahapalika, Kanpur, has been entered in the column referable to the name of the tenure holder. The same, therefore, reflects the possession of the Nagar Mahapalika in the revenue records. The argument of Sri Verma that since some agricultural operations are also reflected in the said Khasra, cannot raise a presumption of possession in favour of the petitioners. Thus, the stand of the petitioners on this basis is also untenable. We may reiterate that an interim order

passed in this writ petition earlier had been substantially modified on 7.11.1990 itself.

16. Apart from this, we are also of the opinion that the State Government in the aforesaid set of circumstances could not have passed an order of release once the land had been utilized. The counter-affidavit of the Steel Authority of India brings on record the progress made with regard to constructions raised over the land that had been purchased by them. On a conspectus of the entire facts and circumstances of the case and the submissions advanced, we are of the firm opinion that the acquisition had become complete and the possession has been taken over lawfully by the respondent where after the land had been utilized, as such, there is no scope for invoking the provisions of Section 17(1) of the 1973 Act. The writ petition lacks merits and is, accordingly, dismissed.