
(2009) 07 AHC CK 0198

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42040 of 2000

Jagat Narain Singh

APPELLANT

Vs

Collector/District Magistrate, Varanasi and Others

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0198

Hon'ble Judges : Sunil Ambwani, J and Ran Vijai Singh, J

Final Decision : Allowed

Judgement

1. Heard Shri Anurag Pathak, learned counsel for the petitioner. Learned standing counsel appears for the respondents.

2. The petitioner is owner of plot No. 191 area 0.8 decimal (32 Ayar) situated in Mauja Ghatampur, Pargana Kaswar Raja, District Varanasi. In CH Form 2Ka the plot is shown to be measuring 28 Ayar. In the year 1981 the possession of the plot No. 191 was taken by the Irrigation Department for installation of a government tubewell without acquiring the land or paying any compensation. The petitioner made several representations in the years 1986, 1991, and 1999 to the Executive Engineer, Tubewell Constructions DivisionI, Varanasi without any result. He filed a Writ Petition No. 3816 of 2000 in which this Court, by its order dated 27.1.2000, directed the District Magistrate, Varanasi to decide his representation. The District Magistrate, Varanasi issued notices to the petitioner and the Executive Engineer, Tubewell Constructions DivisionI, Varanasi. In his order dated 29.3.2002 the District Magistrate observed that the Executive Engineer in his letter No. 832 dated 3.3.2000 has accepted that tubewell No. 3 was constructed in the year 1981 but for some reasons he did not forward the proposals for acquisition of the land on which the farmers have not received any compensation. The proceedings have been initiated now for purchasing the land by settlement after which the compensation will be paid with the approval of the Committee constituted by the State Government.

3. The District Magistrate found that the petitioner's land was taken away in the

year 1981 for constructions to install tubewell without making any proposal for acquisition of the land or paying any compensation. He directed the petitioner to approach the executive engineer for purchase of land by settlement and to pay the compensation. The negotiation proceedings were directed to be completed within one month, failing which proceedings were to be initiated, for acquisition of the land so that the compensation could be determined.

4. This writ petition was filed on 8.9.2000 for a writ of mandamus directing the Executive Engineer, Tubewell Construction DivisionI, Varanasi respondent No. 2 to pay the sale price of the petitioner's land acquired by the department with interest on the allegations that after the order of the District Magistrate the petitioner has approached respondent no.2 several times and made representations but no steps were taken in the matter.

5. In the counter affidavit of Shri M.R. Dhiman, Additional City MagistrateIII/ Incharge Special Land Acquisition Officer, Varanasi the fact of construction to install a tubewell over plot No. 191 is admitted. However, it is stated:

"3. However, certain developments took place during the enquiry made by the Committee constituted by the order of the Collector and it was detected that the land against which compensation is being sought by the petitioner went in the chak of the third party on the basis of a compromise entered into before the consolidation officer to which the petitioner was also one of the party. Accordingly, the said committee reported that the petitioner has no right to receive compensation as he ceases to be the owner of the land in question. The petitioner having come to know of the subsequent developments filed an application for exclusion of plot No. 191/2 area 28 Ares from the order accepting compromise passed by the Consolidation Officer. The said application was rejected against which an appeal was filed before the Settlement Officer, Consolidation, Varanasi. The Settlement Officer, Consolidation, however, allowed the appeal in respect to the plot in question. But it appears that the other party of the compromise has filed some application before the Settlement Officer, Consolidation and the Settlement Officer, Consolidation, Varanasi stayed the operation of his order allowing the petitioner's appeal. The matter of title, therefore, is still subjudice before the Settlement Officer, Consolidation, Varanasi and so long the same is not decided, the petitioner cannot maintain this writ petition for issuance of a mandamus commanding the respondents to pay compensation in respect to the land over which the respondent No. 2 constructed tubewell. However, it is submitted that as soon as the title of the petitioner is cleared by the consolidation authorities, the amount of damages/compensation would be settled and paid to the petitioner as directed by the District Magistrate vide his order dated 29.3.2000."

6. The Committee examined the records of the consolidation department and found that the petitioner Jagat Narain Singh, S/o late Kamla Singh was recorded as owner of the Gata No. 191/2 area 0.28 Ayar from 1981 to 27.12.1995 after which his ownership became doubtful. There was no proposal made for

acquisition of the land and that the consent of the tenure holder for construction of tubewell is not available on record. The Committee found that plot No. 191 was divided into three parts namely plot No. 191/1 area 018 Ayar; 191/2 area 028 Ayar and plot 191/3 area 007 Ayar. The plot No. 191/2 area 028 Ayar is recorded as Government tubewell and plot No. 191/3 area 007 Ayar was recorded as ""Nali" (drain) which has been kept out of the consolidation. There was a compromise between Jagat Narain and Vijai Bahadur on which the name of Vijai Bahadur was entered in CH Form 23. Jagat Narain made an application on 13.2.2000 to exclude plot No. 191/2 from compromise. The application was rejected by the Consolidation Officer on 29.11.2000. An appeal against the order was allowed and the order of the Consolidation Officer in respect of plot No. 191/2 area 0.28 Ayar was rejected. Thereafter by his order dated 4.1.2001, the Settlement Officer, Consolidation stayed his own order and had fixed 1.2.2001 for hearing. The matter is pending and thus it will be appropriate that the compensation be determined and paid only after the appeal is decided.

7. Learned counsel for the petitioner submits that in the year 1981, when the land was taken away from the petitioner, he was recorded as owner and that the District Magistrate has rightly found that the petitioner is entitled to compensation. The compromise with a cosharer was set aside by the Settlement Officer, Consolidation, and that the petitioner is still the owner of the land, which is in possession of the State for last 28 years without paying compensation. The petitioner has confined his reliefs for determination and payment of compensation.

8. Learned Standing Counsel, on the other hand, submits that the title of the petitioner had become doubtful. He has entered into the compromise with Shri Vijay Bahadur and that until the matter is decided by the appellate court, it will not be proper for the State to determine and pay the compensation.

9. The right to hold property was a fundamental right under the Constitution of India guaranteed by Article 31 of the Constitution of India, The Constitution (44th Amendment) Act, 1978. Article 31 was bodily lifted to make a new provision outside Part III of the Constitution of India and a new Article 300A was added with a new Chapter IV as ""right to property". The right to property has thereafter continued as a constitutional right leaving it to the legislature to deprive a person of his property by the authority of law. If such law takes away a man's property without payment of any compensation, he shall have no remedy before a court of law. The property including the land owned by a person may be acquired for public purpose by law enacted by State legislature or Parliament or by statutory rules, regulations or orders having force of law and not by executive fiat or order. The deprivation should be with sanction of law.

10. In *Jilu Bhai Nanbhai Khachar vs. State of Gujarat* AIR 1995 SC 142 the Supreme Court held that the word ""law" used under Article 300A must be an act of Parliament or of State legislature, a rule or statutory order having force of law, deprivation of property under Article 300A by acquisition or requisition or

taking possession or for a public purpose. There is no deprivation without any sanction of law. In other words, if there is no law, there is no deprivation. In paras 48, 49 and 51 of the judgment the Supreme Court said:

48. The word "property" used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Art. 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or of a State Legislature, a rule of a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the Judge to decide whether a purpose is a public purpose. But it is not the sole Judge. This will be subject to judicial review and it is the duty of the Court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purposes. But every public purpose does not fall under Art. 300A nor exercise of eminent domain an acquisition or taking possession under Art 300A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purpose. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Art. 300A. It would be by exercise of the Police power of the State. In other words, Art. 300A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Art. 300A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300A.

49. The question then is whether the owner of the property is entitled to compensation i.e. just equivalent or indemnification to the owner of the property expropriated. It is common knowledge that when the State exercises its executive power to acquire private property, it is under the Land Acquisition Act, 1894 or similar State laws. Acquisition thereunder though is for public purpose, payment of compensation at the prevailing market value as on the date of the relevant notification published in the official gazette is sine qua non. The State when exercises the power of eminent domain under Art. 300A and acquires or requisitions or takes possession of the property of a citizen to give effect to any of the directive principles envisaged in Part IV of the Constitution, the question emerges whether the same yardstick of payment of just equivalent or indemnification to the owner of the property expropriated should be applicable or Art. 300A per force brings it in operation? Since Art. 30(2) itself provided payment of compensation, when property was acquired preceding 25th Constitution Amendment Act, 1971, this Court interpreted the word

"compensation" as aforesaid, but when Art. 30(2) itself was omitted from the Constitution, the question arises whether payment of compensation is a sine qua non for deprivation of property under Art. 300A? In any democracy governed by rule of law, Constitution is the supreme law of the land. Rescoe Pound, a sociological jurist whose writings have virtually opened new vistas in the sphere of justice, stated that "the justice meant not as an individual or ideal relations among men but a regime in which the adjustment of human relations and ordering of the human conduct for peaceful existence". According to him, "the means of satisfying human claims to have things and to do things should go around, as far as possible, with least friction and waste. In his "A Survey of Social Interests", 57th, Harvard Law Review, 1 at 39(1943), he elaborated thus : "Looked at functionally, the law is an attempt to satisfy, to reconcile, to harmonize, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or through securing certain individual interests or through delimitations or compromises of individual interests, so as to give effect to the greatest total of interests or to the interests that weigh more in our civilisation with the least sacrifice of the scheme of interests as a whole." In his "theory of justice", 1951 Edition, at page 31. "the law means to balance the competing interests of an individual along with the social interests of the society." In his work, "Justice According to Law", he observed : "We come to an idea of maximum satisfaction of human wants or expectations. What we have to do in social control and so in law is to reconcile and adjust these desires or want or expectations, so far as we can, so as to secure as much of the totality of them as we can." According to him, therefore, that the claims or interests, namely, individual, physical, social or public interest should harmoniously be reconciled "to the balancing of social interests through the instrument of social control; a task assigned to public law for that matter."

51. The Constitution of India, on the other hand in its historical background provided Directive Principles visavis the fundamental rights to realise social and economic democracy for successful working of political democracy in which the state is bound to provide to every person in the society equality of opportunity in economic arrangements. Material resources and operation of the economic system shall be so organised as to establish the egalitarian social order. Though Articles 31 and 19(1)(f) of the Constitution accorded to "property" the status as a fundamental right, there emerged conflict between the animation of the founding fathers and the judicial interpretation on the word "compensation" when private property was expropriated to subserve common good or to prevent common detriment."

11. In Vimalben Ajitbhan Patil vs. Vatsala Ben Ashok Bhai Patel AIR 2008 SC 2675 the Supreme Court held in para 42 that the right of property is no longer a fundamental right. But still it is a constitutional right. Apart from constitutional right it is also a human right. The procedures laid down for deprivation must be scrupulously complied with.

12. The District Magistrate, in deciding the representation, issued directions to the Executive Engineer to enter into negotiated settlement to purchase the land and to pay the sale price, failing which a proposal be submitted for acquisition and compensation to the Special Land Acquisition Officer, Varanasi. The Committee, consisting of Executive Officer; Sub Divisional Officer, and Deputy Director, Consolidation went beyond the directions of the District Magistrate and recommended to await the decision of the appeal in the matter of compromise between the petitioner and his cosharers.

13. The District Magistrate has found that in the year 1981, when the land was taken away from the petitioner for the purposes of construction of tubewell, the petitioner was the recorded tenure holder. The petitioner had a right to protect his ownership, even if the possession was not with him, so long as the land was not acquired under any valid law. The petitioner as tenure holder continued to be the owner of the land. The compromise between the petitioner and his cosharer is denied by him. In the report of the Committee dated 7.2.2001 it was found that the order of Settlement Officer Consolidation, excluding the concerned plot from the compromise was operative. The stay order passed by the Settlement Officer, Consolidation staying his own order, will not take away the effect of his earlier order by which the concerned plot was excluded from the compromise. In para 7 of the rejoinder affidavit, it is stated that the respondents have unnecessarily tried to deviate from the issue of payment of compensation to the petitioner.

14. The petitioner admits that the construction of the government tubewell is for public purpose. He has simply claimed compensation for the land taken away from him without authority of law. The petitioner was and is willing to enter into negotiated settlement, failing which he should be paid a fair and reasonable compensation. He has a constitutional right to compensation. The fact, that the land became subject matter of some compromise, would not be a ground to deprive him of the compensation both on the grounds that no one has raised any rival claim, and that if such claim is made, the petitioner may be asked to indemnify the state for any legal action and recovery of the amount paid to him.

15. We find substance in the contention of learned counsel for the petitioner, that the petitioner should not only be paid the fair and reasonable market value of the land when its possession was taken from him in the year 1981, but also solatium @ 30% and interest worked out at 15% per annum in accordance with the computation of compensation under the Land Acquisition Act.

16. The writ petition is allowed. The petitioner will serve a copy of this order on the District Magistrate, Varanasi and the Executive Engineer, Tubewell Construction Division I, Varanasi. The respondents will first take steps to enter into a negotiated settlement for purchase of the land, and for execution of the sale deed on paying the settled compensation within one month; failing which the District Magistrate, Varanasi will prepare a proposal for acquisition of the land and forward the same to the State Government for acquiring the land at the

current market value. The entire exercise will be completed within a period of 60 days. We also direct that if the land is acquired now under Land Acquisition Act., the petitioner shall also be paid a compensation for depriving him of the use and occupation of the land for last 29 years. Counsel for the petitioner submits that Rs. 5000/ per year would be the fair damages. We quantifies the amount at Rs. 1 lacs in lumpsum, to be paid in addition to the compensation worked out for acquisition of the land under the Land Acquisition Act. The petitioner shall also be entitled to Rs. 10,000/ as cost to pursue his rights in this writ petition.