
(2001) 08 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33475 of 1995

Jagdish Saran (Dead) Through L.Rs.Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 16, 4, 6

Citation : (2001) 08 AHC CK 0060

Hon'ble Judges : D.S.Sinha, J and Lakshmi Bihari, J

Final Decision : Dismissed

Judgement

1. Heard Shri Navin Srivastava holding brief of Shri D.V Jaiswal, the learned Counsel appearing for the petitioners (the heirs and legal representatives of the sole deceased petitioner, Shri Jagdish Saran), and Shri Vinay Malviya, learned Standing Counsel of the State of U.P., representing the Respondent Nos. land 2,

2. By means of instant writ petition, under Article 226 of the Constitution of India, it is prayed that this Court may issue a writ, order or direction in the nature of mandamus, commanding the Respondent Nos. 1 and 2 not to dispossess the petitioners from the eastern portion of the Plot No. 189, measuring 0.34acres, situate in Village Mau, Tehsil and District Moradabad in pursuance of the notification and declaration dated 2()th March, 1967 and 24th May, 1967, respectively, issued under Sections 4 and 6 of the Land Acquisition Act, 1894, hereinafter called the Act.

3. It is not disputed that the notifications dated 20th March, 1967 and 24th May, 1967 have neither been withdrawn nor annulled by any competent Court of law. It is also not disputed that all further proceedings in pursuance of the aforesaid two notifications took place, and the Award was duly delivered within the prescribed period.

4. Section 16 of the Act empowers the Collector to take possession of the land under acquisition after an award under Section 11 has been made, and provides

that the land shall thereupon vest absolutely in the Government, free from all encumbrances.

5. As noticed earlier, the award in pursuance of the notifications, issued for the purpose of acquiring the land in dispute, was given by the Collector well within time. Under the circumstances, the Collector was, and is, legally empowered to take possession of the land in question. Issuance of any direction or writ in the nature of mandamus commanding the Respondent Nos. 1 and 2 not to dispossess the petitioners will be directly in contravention of the provisions of Section 16 of the Act. It cannot be gainsaid that no such writ can be issued by this Court in exercise of extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India which runs counter to the statutory provisions, which have not been either repealed or declared ultra vires.

6. In the opinion of the Court, the writ petition is misconceived, and devoid of substance. Accordingly, it is dismissed summarily. Petition dismissed.