

(2012) 01 AHC CK 0790

In the Allahabad High Court

Case No : Civil Miscellaneous Modification Application No. 20637 of 2012 in C.M.W.P. No. 22207 of 2011 c/w C.M.W.F. No's. 22686, 26292, 26294, 26038 and 38033 of 2011

Kalicharan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 17(4), 48, 5A

Citation : (2012) 133 FLR 778

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Advocate : D.V. Singh, Ashok Kumar Pandey, Chandra Kumar Rai, Amit Krishan, Rajiv Joshi and Shivaji Singh, for the Appellant; M.C. Chaturvedi, (C.S.C.), Akhileshwar Singh, (S.C.), Navin Sinha and Ashwani Kumar Misra, for the Respondent

Judgement

Amitava Lala, J.—This modification application has been filed on behalf of the Ghaziabad Development Authority to modify the judgment and order dated 13th January, 2012 delivered in the aforesaid writ petition as well as other connected writ petitions. By inserting the portions as marked in the photostat copy of the judgment dated 13th January, 2012 in the red ink, learned Counsel appearing for the applicant has prayed for modifications accordingly, to which there is no objection on behalf of other side. The Court has considered the submissions of the parties and found that if the judgment, which has been originally passed on 13th January, 2012, is modified as submitted by the parties, the same will not alter the ultimate result of the matter. Therefore, the modification application deserves to be allowed and is allowed, however, without imposing any cost. However, since the modification required to be made in the original judgment and order dated 13th January, 2012 is in the shape of insertion in the judgment, the judgment dated 13th January, 2012 is modified accordingly and the modified judgment is as follows:

First writ petition, being Civil Misc. Writ Petition No. 22207 of 2011, was directed to be connected with Civil Misc. Writ Petition No. 5236 of 2010 (Rajendra and others v. State of U.P. and others) by an order of the Division Bench of this Court dated 18th April, 2011, whereas other writ petitions have been connected with Civil Misc. Writ Petition No. 22207 of 2011. Civil Misc. Writ Petition No. 5236 of 2010 along with many other matters has already been decided by this Division Bench by judgment and order dated 19th August, 2011, which is in Rajendra and Others Vs. State of U.P. and Others, . Accordingly, all the aforesaid writ petitions being connected with each other have been placed before this Court for the purpose of analogous hearing.

The contentions of the respective contesting parties before us are that the disputes involved in these matters relate to same village i.e. Shahpur Bamhetta, which was also involved in the bunch decided by Rajendra and others (supra). The dispute resolved by this Court in Rajendra and others (supra) was in respect of Hi-Tech Township, whereas in the present cases the dispute is in respect of Integrated Township. Schemes of both the aforesaid townships are more or less similar with each other. The basic difference in these two bunch of cases, i.e. Rajendra and others (supra) and the present one, is that in the earlier one the land was acquired without giving any opportunity u/s 5A of the Land Acquisition Act, 1894 (in short called as the "Act"), whereas in the present bunch the requirement of section 5A has been complied with on the part of the respondents. Petitioners' main contention is that in the earlier cases the land acquired was agricultural land but in the present cases it is abadi land. No order u/s 5A of the Act was served upon the petitioners. The petitioners have relied upon the judgment reported in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , as was made in the earlier referred case, and contended that section 5A of the Act confers a valuable and important right in favour of a person, whose lands are sought to be acquired which is akin to fundamental right. The State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid. We find that so far as abadi land is concerned, the Supreme Court in its recent judgment reported in [Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, ,] held that in case of acquisition of abadi (residential) property of the appellant if no opportunity is given for hearing, the acquisition will be unsustainable in law. However, in the present cases we find that the interest of the petitioners is more for compensation than the need of keeping the land.

On the issue with regard to giving opportunity of hearing and not giving opportunity of hearing there can be no debate that it is so required u/s 5A of the Act. However, a perusal of Annexure-8 to the counter-affidavit shows that petitioner was specifically heard in support of his objection and it was thereafter only that objections were decided on 30th December, 2010 and Collector in terms of section 5A of the Act sent his recommendation to the State

Government. The factum of hearing having been afforded is also borne out from paragraphs 35 and 36 of the counter-affidavit, to which there is no specific denial in rejoinder-affidavit. Thus, we find that the acquisition in the present case does not suffer from any infirmity and the requirement of section 5A of the Act stands fully satisfied. In re: Rajendra and others (supra), we passed the order as contained in paragraph-89 of such judgment, which is as under:

89. The petitioner/s will make their application before the Collector within a period of fifteen days from the date of obtaining certified copy of this order, if not already made to him. Upon receipt of such application/s, the Collector will independently adjudge the demand of the petitioner/s about settlement of compensation and if necessary, he will also make survey of the land to support his independent view. He will also give an opportunity of hearing to all the petitioners. The petitioners will be able to take assistance of the pleader. The Collector will complete all exercise to make his report and sent the entire report to the State Government, for taking final decision in this regard, within a period of 21 days from the date of making application/s and in case the application has already been made, such period of 21 days will be counted after expiry of period of fifteen days granted for making applications. The State Government, who is the final authority, upon receipt of report will take a decision in the matter within a period of one month thereafter positively. The decision of the State will be final and binding upon all the parties. Physical possession of the land of the petitioners, if not taken by the Ghaziabad Development Authority, will be taken after completion of the course of action, as directed by this order, with regard to settlement of compensation to be paid to the petitioners. If this approach is made and the compensation amount is considered and if the petitioners are inclined to take compensation, it will be considered finally by following the Rules, 1997. Making of such applications, if any, for settlement will be totally optional on the part of the petitioner/s. If any unwilling petitioner wants to take advantage of section 11A of the Act or u/s 48 of the Act, it is open for him to proceed accordingly. Such petitioner can also make appropriate applications before the authority concerned for due consideration of the cause u/s 11A and/or section 48 of the Act, as the case may be, and a separate report will be prepared by the Collector and/or the authority concerned and the same will be sent to the State for the purpose of taking final decision. In case they become successful, immediate steps will be taken by the authority in accordance with law. If not, they will not be debarred from getting compensation following the same principle.

The above direction had to be given because that was a case where section 17(4) of the Act was invoked and enquiry u/s 5A of the Act had been dispensed with. As we have already observed, the petitioner's concern and rightly so, is for adequate compensation to be awarded, and disbursed at the earliest, we direct that the above observation, made in Rajendra and others (supra) may be read as in the context of enquiry under sections 9 and 11 of the Act. The respondent is directed to take steps forthwith and to ensure that award is given and compensation is disbursed in accordance with law.

Accordingly, the writ petitions are disposed of, however, without imposing any cost.

This modified judgment and order will be applicable in the connected matters also and the department is directed to issue the certified copy of the order accordingly.

Ashok Shrivastava, J.

I agree.