

(1990) 04 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4063 of 1979

Kapoor Chand and Another

APPELLANT

Vs

Development Authority and Others

RESPONDENT

Date of Decision : 16-04-1990

Acts Referred:

General Clauses Act, 1897 — Section 21, 7
Land Acquisition Act, 1894 — Section 11, 15, 4, 48, 48(1)
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 363, 365(4), 59, 59(1)
Uttar Pradesh Town Improvement Act, 1919 — Section 36
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 59(13), 59(14)

Citation : (1990) 1 AWC 743 : (1990) RD 312

Hon'ble Judges : V.K. Khanna, J; R.A. Sharma, J

Bench : Division Bench

Advocate : Sarad Varma and S.N. Varma, for the Appellant; S.S. Chauhan, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—The notification u/s 36 of the U.P. Town Improvement Act, 1919 was issued on 23-1-1960, proposing to acquire the land of the Petitioners for a scheme called Fatehpur Sikri Road Housing Accommodation and Street Scheme. This U.P. Town Improvement Act, 1919 was repealed by U.P. Nagar Mahapalika Adhiniyam (hereinafter referred to as the Adhiniyam), and as such, the final notification was issued u/s 363 of the Adhiniyam, which was published in the U.P. Gazette dated 7-6-1969. As the land in dispute was sought to be acquired for the Nagar Mahapalika, Agra and it failed to deposit the requisite amount of compensation inspite of several requests made by the Government, possession of the land in dispute was not taken and ultimately the Government withdrew these acquisition proceedings vide order dated 10-1-1972. The Administrator, Nagar Mahapalika, Agra was duly informed of the withdrawal of the acquisition proceedings vide letter dated 20th September, 1973.

2. However, on 28-4-1979 and on subsequent dates notices were issued to the

Petitioners by the Agra Development Authority, informing them that the land in dispute is sought to be acquired for Fatehpur Sikri Road Housing Accommodation and Street Scheme. Petitioners raised objections against these notices and have filed this writ petition before this Court, challenging the notices and the action of the Agra Development Authority for acquiring the land in question. A counter affidavit has been filed on behalf of the Land Acquisition Officer, Nagar Mahapalika, Agra in which it has admitted that the Government has withdrawn the acquisition proceedings in respect of the land in dispute. The relevant portion from paragraph 6 of this counter affidavit is extracted below:

In the circumstances when the land was being acquired for Nagar Mahapalika, Agra and it had failed to deposit the amount, the State Government was left with no option but to drop the acquisition proceedings and the acquisition proceedings with respect to land in dispute were dropped vide order dated 10-1-1972. Consequently the scheme as such also was dropped on 8-8-1972 and consequently the District Magistrate, Agra dropped all the acquisition proceedings and the dropping is in accordance with law. The Administrator of Nagar Mahapalika, Agra was also apprised of the dropping of the acquisition proceedings by the Land Acquisition Officer vide its letter dated 20th Sept., 1973 An. 3 is not disputed.

It has also been admitted in paragraph 13 of the counter affidavit that no other scheme has been published for this Housing Scheme and the scheme for which the land was sought to be acquired in 1960 was dropped and acquisition proceedings were withdrawn. In paragraph 6 of the counter affidavit filed on behalf of the Agra Development Authority it has been admitted that the Special Land Acquisition Officer had informed the Administrator, Nagar Mahapalika, Agra about the withdrawal of the acquisition proceedings by means of letter dated 20-9-1973, which has been filed as Annexure 3 to the writ petition. But it is further asserted that there is no record with them to show that the scheme was abandoned altogether.

3. Learned Counsel for the Petitioners has challenged the impugned notices and the action of the Agra Development Authority before us on the following two grounds: (i) the acquisition proceedings having been withdrawn by the Government in 1972 and no fresh notification for acquisition having been issued thereafter, the action of the Agra Development Authority for acquiring the land of the Petitioners is without any authority of law, and (ii) even if the acquisition proceedings are treated not to have been withdrawn by the State, the final notification u/s 363 of the Ahiniyam, published in the U.P. gazette dated 7-6-1969 has lapsed and ceased to be effective in view of the provisions of Section 365(4) of the Adhiniyam read with Section 59 (13) and (14) of the U.P. Urban Planning and Development Act (here-in-after referred to as the Development Act).

4. Preliminary notification and final notification issued under the Ahiniyam for acquiring the land have the same effect as a Notification u/s 4 and declaration u/

s 6 of the Land Acquisition Act. u/s 48 of the Land Acquisition Act, Government has power to withdraw from the acquisition of any land of which possession has not been taken. It is admitted to the Respondents that possession of the land in dispute was not taken by the Respondents from the Petitioners and the Petitioners have remained in possession through out. State as such has the power to drop the acquisition proceedings. Supreme Court in the State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, has upheld the power of the State Government to withdraw from the acquisition of any land. Relevant extract from the said judgment is quoted below:

Section 48(1) thus gives power to Government to withdraw from the acquisition without canceling the notifications under Sections 4 and 6 after notice u/s 9(1) has been issued and before possession is taken. This power can be exercised even after the Collector has made the award u/s 11 but before he takes possession u/s 15. Section 48(2) provides for compensation in such a case. The argument that Section 48(1) is the only method in which the Government can withdraw from the acquisition has therefore, no force because the Government can always cancel the notifications under Sections 4 and 6 by virtue of its power u/s 21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action u/s 7.

5. After withdrawal of the acquisition proceedings by the Government in 1972, it is not open to the Agra Development Authority to revive the same scheme by issuing notice in 1979 for taking possession of the land in question.

6. There is substance in the second submission also of the learned Counsel for the Petitioners. Section 365(4) of the Adhiniyam lays down that all acquisition of land shall be completed upto the stage of making of the award within a period of five years from the date of Notification u/s 363 and any land in respect of which acquisition is not so completed, shall cease to be subject of any liabilities. By proviso (b), period in relation to any improvement scheme notified u/s 363 before the commencement of 1972 Amendment has been prescribed as ten years. The effect of these provisions is that if within ten years from the date of notification u/s 363 acquisition of the land up to the stage of making the award is not completed, the acquisition will lapse. In paragraph 14 of the counter affidavit filed on behalf of the Agra Development Authority, it has been admitted that award in this case was given after the lapse of ten years. The award not having been given within ten years, the acquisition has lapsed automatically by force of Sub-section (4) of Section 365 of the Adhiniyam.

7. State of U.P. has enacted U.P. Urban Planning and Development Act, 1973 for development of the land so as to solve the town planning and urban development and for this purpose development authorities have been constituted under the Act for the urban areas, and these development authorities are successors of Municipal Boards and Corporations so far it relates to the development of the land and urban planning. By Section 59(1)(a) various provisions of the U.P. Nagar Mahapalika Adhiniyam and Municipalities Act relating

to the urban planning and development of the land have been superseded. By Sub-section (13)(14) of Section 59 all acquisition of land and interest therein for improvement scheme shall be completed upto the stage of making of award before the date specified therein. It is not disputed that the award not made within time specified by the aforesaid provisions. In view of this position also the acquisition proceedings have lapsed.

8. It is thus clear that the Government has withdrawn acquisition proceedings in respect of the land in dispute in 1972 and thereafter it is not open to the Respondents to revive the same proceedings and take possession of the land. Even if no notice is taken of the withdrawal of the acquisition proceedings by the Government, acquisition has lapsed as award was not given within the time specified by the Adhinyam and the Development Act. Looking from every angle the notice issued by the Development Authorities to the Petitioners and there acts for acquiring the Petitioners' land are without jurisdiction and it is not open to them to disturb the possession of the Petitioners on the basis of the acquisition proceedings which have ceased to be effective long ago. It is admitted to the Respondents that no other acquisition proceedings have been initiated for acquiring the land in dispute.

9. The writ petition is accordingly allowed with costs and notices issued by the Agra Development Authority to the Petitioners are quashed. The Respondents are directed not to disturb the possession of the Petitioners over the land in dispute in pursuance of the Notifications dated 23-1-1960 and 7-6-1969.