
(2004) 07 AHC CK 0133
In the Allahabad High Court
Case No : C.M.W.P. No. 16562 of 2004

Kashi Prasad Dwivedi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2004) 4 AWC 3072 : (2004) 97 RD 309

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : R.N. Singh and V.K.S. Chandel, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the respondents to pay compensation for the petitioners land, or in the alternative to restore back possession of the said land which has been illegally occupied by the respondents and to pay damages.

2. We have heard Sri Ram Niwas Singh and V. K. S. Chandel learned counsel for the petitioners and learned standing counsel for the respondents.

3. In this case on 23.4.2004 learned standing counsel was granted one month's time to file counter-affidavit but no counter-affidavit was filed. Thereafter on 28.5.2004 again one month's further time was granted to file counter-affidavit and it was ordered that the writ petition will be listed peremptorily in the week commencing 5.7.2004. However, despite this order no counter-affidavit was filed. We are not inclined to grant any further time and we are treating the allegations in the petition to be correct.

4. It is alleged in paragraph 4 of the petition that the petitioners are the bhumidhars of the land in question. Photostat copy of C.H. Form 45 of khata No. 137 of village Ben is annexed as Annexure-1 to the writ petition. Photostat copy of khata No. 18 of khatauni 1407 fasli to 1412 fasli of village Ben is annexed as

Annexure-II to the writ petition. The plot Nos. 670 ka. gha, anga, pa etc. of village Ben, Pargana Kera Magraur, Tehsil Chakiya, district Varanasi, is alleged to be bhumidhari land of the petitioners.

5. Since the above facts are not disputed and no counter-affidavit has been filed we have to take them as correct. Photostat of the receipt dated 27.3.2004 showing payment of revenue is Annexure-III to the writ petition.

6. It is alleged in paragraph 5 of the petition that a canal was constructed on the aforesaid land which was neither acquired nor requisitioned under any law nor compensation has been paid for the same. In this connection representations were made as stated in paragraphs 7 to 10 of the writ petition, but to no avail.

7. It is alleged in paragraph 12 of the petition that the canal was constructed over the petitioners land without any acquisition or requisition in accordance with law. and this is violative of Article 300A of the Constitution. It is alleged that the land was acquired illegally and without paying any compensation.

8. This is one of the series of cases which has come before us in which the possession of the land of the citizens has been taken over by the Government authorities ostensibly for constructing a canal or road etc. without following the procedure under the Land Acquisition Act or the U. P. Development (Requisitioning of Land) Act, 1947, or some other enactment, and without even paying any compensation. A series of such case have come before us showing the highhandedness and arbitrariness of the authorities.

9. Thus in Writ Petition No. 43908 of 2002, Amar Nath Shukla v. State of U.P. and Ors., decided on 7.4.2004, a Division Bench of this Court observed :

"In case after case which is coming up before us, we find that the land of a person has been taken over by the Government on the pretext that a canal or road or a building is to be built upon it but without following the procedure of the Land Acquisition Act or any other statutory enactment. In our opinion, this is wholly illegal, being violative of Article 300A of the Constitution. We fail to understand why the State Government has been repeatedly doing such illegal acts when it has power to acquire the land under the Land Acquisition Act or to requisition it under the U. P. Rural Development (Requisitioning of Land) Act, 1947, or some other enactment. The time has now come when this highhandedness, which has repeatedly been committed by the State Government, must be stopped."

10. Article 300A of the Constitution states :

"No person shall be deprived of his property save by authority of law."

11. The above Constitutional provision clearly implies that the property of a person cannot be taken over by anyone without authority of law. The word "law" in Article 300A, in our opinion, means statutory law and not a G.O. or an executive instruction.

12. Similarly in Civil Misc. Writ Petition No. 12781 of 2002, Shyam Narain and Anr. v. State of U. P. and Ors., decided on 25.2.2004, another Division Bench of this Court also found that possession of the land was taken over without following the procedure under the Land Acquisition Act or any other enactment and without paying any compensation. In that decision the Court directed possession of the land to be restored forthwith and the State Government was directed to pay exemplary cost of Rs. 1 lakh to the petitioner within one month for their illegal and arbitrary action.

13. The State Government is expected to act in a fair and just manner, but in the series of cases which have come before us (some of which have been referred to above) we find that the State Government is acting totally illegally in gross violation of Article 300A of the Constitution. The same is the position here.

14. It is quite understandable that the land may have to be acquired for constructing a canal or road but if that has to be done then proceedings have to be taken under the Land Acquisition Act or some other enactment. The State authorities cannot simply walk into someone's land and take possession of the same, as that would be wholly illegal.

15. On the facts of the case we direct that either possession of the land in question shall be restored forthwith to the petitioner or they shall be paid the entire compensation as provided in the Land Acquisition Act including additional compensation, solatium and interest which shall be determined by the District Judge, Varanasi, within four months from today. The compensation determined by the District Judge shall be paid to the petitioner within two months from the date the order is passed by him.

16. Apart from the above we further direct that the State Government shall also pay Rs. 1 lakh to each of the petitioners as exemplary costs for their highhandedness and unlawful act, and this additional amount shall be paid within two months from today (In addition to the compensation mentioned above). We make it clear that the compensation under the Land Acquisition Act shall be paid at the present rate, i.e., the date of the Judgment.

17. With these observations the petition is allowed.

18. Let a copy of this judgment be given to the learned counsel for the parties by tomorrow on payment of usual charges. The Registrar General of this Court will send a copy of this judgment to the Chief Secretary, U.P., who will circulate this order to all the Commissioners and District Magistrates of the State.