
(1999) 01 AHC CK 0058
In the Allahabad High Court
Case No : C.M.W.P. No. 25313 of 1990

Lal Bahadur and another	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 25-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 16, 4, 6, 9

Citation : (1999) 2 AWC 1049

Hon'ble Judges : D.S. Sinha, J;B.K. Sharma, J

Bench : Division Bench

Advocate : Sankatha Rai, for the Appellant; S.G. Hasnain, A.C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha and B.K. Sharma, JJ.—No body appears for the petitioners though the petition has been taken up for consideration on revision of the cause list.

2. Heard Sri S. G. Hasnain, learned Additional Chief Standing Counsel representing the respondents.

3. Notifications dated 4th November, 1988 and 22nd April, 1989, issued under Sections 4 and 6 of the Land Acquisition Act. 1894, respectively and the notice dated 30th July. 1990, issued u/s 9 of the Act, relating to the proceedings for acquisition of land for construction of High Distributary in the District of Allahabad, are under challenge in this writ petition under Article 226 of the Constitution of India. In paragraph 26 of the petition, it is stated that the petitioners are in possession of their land sought to be acquired.

4. The writ petition received consideration of the Court on 23rd October 1990 and it directed the standing counsel to file counter-affidavit within two weeks and required the petition to be listed for admission on 22nd November. 1990. The Court also granted Interim order, to be operative upto 29th November, 1990,

directing that the petitioners would not be dispossessed from the land in question, if they had not already been dispossessed therefrom.

5. Thereafter, the petition came up on 2nd January, 1991. By that time, no counter-affidavit had been filed by the respondents. Therefore, the Court admitted the petition and directed that until further orders the interim order dated 23rd October, 1990 should continue if, in the meanwhile, the petitioners had not been dispossessed from the land in dispute.

6. A counter-affidavit on behalf of the respondents was filed on 24th September, 1991, after serving a copy thereof on the learned counsel of the petitioners. In paragraph 26 of the counter-affidavit. It is asserted that award by the Collector had already been given on 14th September, 1990 and the possession of the disputed land had been obtained on 18th September, 1990. It is also stated in the counter-affidavit that the construction of High Distributary is already complete.

7. The above averments made in paragraph 26 of the counter-affidavit have not been controverted by the petitioners. No rejoinder-affidavit is available on record. The office report dated 24th November, 1998 also points out that no rejoinder-affidavit has been filed. Thus, the averments of paragraph 26 of the counter-affidavit, being unchallenged, are accepted.

8. On the date when the petition was filed in this Court, the petitioners were not in possession and the assertion in paragraph 26 of the petition that they were in possession of disputed land was incorrect, rather false. If the correct position had been placed before the Court, the Court may not have passed the interim orders. Thus, the petitioners obtained the interim orders by misrepresentation and making false statement. Therefore, they have forfeited their claim for any discretionary favour of the Court under Article 226 of the Constitution of India. This apart, the award having already been made u/s 11 of the Act and possession of the disputed land having already been taken, before the petitioners approached this Court, the disputed land stands vested absolutely in the Government free from all encumbrances u/s 16 of the Act rendering the petition infructuous.

9. On the facts and the circumstances and for the reasons given above, the petition is dismissed. The interim order/orders shall stand vacated,

10. There is no order as to cost.