

(1997) 12 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 31723 of 1993

Mahesh Chand Gupta and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 17, 17(1), 17(4), 18
Transfer of Property Act, 1882 — Section 6

Citation : (1998) 2 AWC 1002

Hon'ble Judges : S.P. Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Judgement

G.P. Mathur, J.—This petition under Article 226 of the Constitution has been filed praying that a writ of mandamus be issued directing the respondents to pay compensation to the petitioners which had been determined u/s 28A of the Land Acquisition Act (hereinafter referred to as the Act).

2. The affidavits filed by the parties show that three persons, namely, Ram Singh, Mahendra Singh and Hukum Singh were tenureholders of plot Nos. 351, 358, 360/4 and 361/3 of village Gailana Mustquil, pargana Sadar, district Agra. The aforesaid plots along with number of other plots were acquired by the State of U. P, for the purpose of construction of 400 Kv. Sub-Station by the U. P. State Electricity Board. The Notifications u/s 4(1) and Section 6 of the Act read with Section 17 were published in the Gazette on 17.4.1982. The possession of the land was taken by the Collector on 21.7.1982. The S.L.A.O, in L.A. Case No. 19 of 1982 made an award u/s 11 of the Act on 24.6.1986. One of the co-owners of the plots, namely. Ram Singh who had 1/3rd share. executed a sale deed of his existing rights in favour of Gopal Singh, Sobaran Singh and Mahesh Kumar son of Nathhu Singh by means of a registered sale deed dated 10.11.1986 and the sale deed was registered on 23.12.1986. The compensation determined by the Special Land Acquisition Officer in Case No. 19 of 1982 was then paid to Gopal Singh, Sobaran Singh and Mahesh Kumar son of Nathhu on 9.1.1987, it appears

that one Ram Chandra Gupta, whose plot No. 404 had been acquired under the same Notifications under Sections 4(1) and 6 of the Act but in whose case award had been made by the S.L.A.O, on 20.5.1987, made an application to the Collector for making a reference to the Court u/s 18 of the Act. The Collector made a reference and it was registered as L.A. Case .No. 271 of 1987 and this was decided by IXth Additional District Judge, Agra, by the Judgment and award dated 31.3.1990. The Additional District Judge enhanced the compensation from Rs. 45 per sq. yard as awarded by S.L.A.O, to Rs. 115 per sq. yard. Thereafter Gopal Singh and Sobaran Singh (but not Mahesh Kumar son of Nathhu, who was a co-vendee in the sale deed dated 10.11.1986) executed a sale deed of their rights in favour of Ram Swaroop Sharma and Ram Kumar Sharma (petitioner Nos. 3 and 4) on 31.5.1990. Gopal Singh and Sobaran Singh executed another sale deed of their rights in favour of Mahesh Kumar Gupta and R. K. Agrawal (petitioner Nos. 1 and 2) on 27.4.1991. Gopal Singh. Sobaran Singh and petitioner Nos. 3 and 4 moved an application u/s 28A of the Act before the S.L.A.O. Agra on 11.6.1990 stating that plot No. 404 belonging to Ram Chandra Gupta had been acquired by means of the same Notifications under Sections 4(1) and 6 of the Act and in his case, compensation amount had been enhanced by the judgment and award dated 31.3.1990 of IXth Additional District Judge, Agra in L.A. Case No. 271 of 1981 and, therefore, the compensation be redetermined with regard to plot Nos. 351, 358/2. 360/4 and 361/3, which right they had obtained by virtue of the sale deed in their favour. The S.L.A.O, then wrote a letter dated 4.9.1990 to the Executive Engineer of U.P.S.E.B. (respondent No. 3) asking him to remit an amount of Rs. 2,85,226.04 to be paid as compensation to the tenureholders of Plot Nos. 351, 358/2. 360/4 and 361/3 of Village Gailana at the rate of Rs. 115 per sq. yard in accordance with the judgment and award dated 31.3.1990 of the IXth Additional District Judge. Agra. This was followed by another letter dated 31.12.1990 by the S.L.A.O. wherein he directed the Executive Engineer to remit the aforesaid amount for payment to the tenureholders, it was further mentioned in the letter that in case the amount was not sent, the interest will go on mounting, which the department will have to bear. The petitioner Nos. 1 and 2. Mahesh Chandra Gupta and R. K. Agrawal gave an application before the Additional Collector/S.L.A.O. Agra on 30.4.1993 praying that the compensation amount with regard to the four plots be redetermined in accordance with the award of the Court. As the amount was not paid, the present petition has been filed for issuing a direction to the respondents to pay compensation to the petitioners.

The petitioner has been contested on behalf of the respondent No. 3, namely, Executive Engineer U.P.S.E.B, who has filed a counter-affidavit and the main plea taken therein that the petitioners had obtained the deed of conveyance in their favour long after the Notifications under Sections 4(1) and 6 of the Act had been issued and the award of S.L.A.O, had been made and, therefore, they are not entitled to any compensation.

3. The first question which requires consideration is whether on the facts and

circumstances of the case, the petitioners are entitled to claim redetermination of the amount of compensation u/s 28A of the Act. The facts mentioned above would show that Notification under Sections 4(1) and 6 of the Act were published in the Gazette on 17.4.1982 and the possession of the land was taken by the Collector on 21.7.1982 as the provisions of Section 17(1) and (4) had been invoked. The award of the S.L.A.O, was given on 24.6.1986 and it was thereafter that Ram Singh who was one of the original tenureholder of the plots executed a sale deed in favour of three persons, namely, Gopal Singh, Sobaran Singh and Mahesh Kumar son of Nathhu, in the sale deed, the fact about issuing of Notifications under Sections" 4(1) and 6 of the Act and taking of possession of the land has been mentioned. Section 16 provides that when the Collector has made an award u/s 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. However, in case of urgency where Government has taken recourse to Section 17(1) and (4) of the Act, the Collector may take possession of the land even though no award has been made, it has been held in Satendra Prasad Jain and Others Vs. State of U.P. and Others, , that when Section 17(1) is applied by reason of urgency, the Government takes possession of land prior to the making of the award u/s 11 and thereafter, the owner is divested of the title to the land which is vested in the Government- Therefore, the plots in dispute vested with the Government on 21.7.1982 free from all encumbrances when the possession of the same was taken over.

4. The first conveyance deed was executed by Ram Singh in favour of Gopal Singh, Sobaran Singh and Mahesh Kumar son of Nathhu, subsequent to taking of possession and making of the award by the S.L A.O. Obviously this conveyance deed could not transfer any right or title over the plots in dispute to the vendee. The petitioners claim the right and title from the conveyance deeds dated 31.5.1990 and 27.4.91 which were executed by Gopal Singh and Sobaran Singh who claim to have acquired 2/3rd share in the 1/3rd share of Ram Singh in the disputed plots, in their conveyance deeds also, the fact that land had been acquired by notification under Sections 4(1) and 6 of the Act and that the vendors had received compensation is clearly mentioned, it is, therefore, clear that the petitioners got absolutely no right or title over the acquired plots by virtue of the conveyance deed in their favour, in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , it has been held that purchaser of land after the Notification u/s 4(1) was published acquires no right, title or Interest in the land and the sale deed is void against the State.

5. Section 3(b) of the Act defines the expression "person interested" and it includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land. The expression has been given a wide meaning. However, what the petitioners are claiming is not compensation but a redetermination of compensation u/s 28A of

the Act. The compensation which may be awarded as a result of redetermination u/s 28A is different from the compensation which is determined by the Collector u/s 11 of the Act or by the Court on a reference u/s 18 of the Act. Section 28A was inserted by Land Acquisition (Amendment) Act, 1984 (Act No. 64 of 1984) by which major amendments in Land Acquisition Act, 1894 were Introduced. Para 1 of the statement of object and reasons reads as follows :

"With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them."

In para 2, the main proposals for amendment are given and clause (ix) reads as follows :

"Considering the right of reference to the civil court u/s 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent land-owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same Notification to seek redetermination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court u/s 18 of the Act."

6. The statement and object of the Amending Act shows that the amendments were made to balance the rights of the individual whose land is acquired which deprives him of his means of livelihood and to provide for adequate compensation for the loss suffered by him. Section 28A was Introduced for the benefit of inarticulate and poor people who usually do not ask for a reference to the civil court u/s 18 of the Act and to provide an opportunity to all aggrieved parties whose land is covered under the same Notification to seek redetermination of compensation. This provision came up for consideration in Mewa Ram (Deceased) by his Lrs. and Others Vs. State of Haryana through The Land Acquisition Collector, Gurgaon, , where it was observed as follows :

"Having regard to Para 2 (ix) of the statement of objects and reasons of the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) it is clear that Section

28A intended and meant for the inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court u/s 18 of the Land Acquisition Act, 1894."

The same view was reiterated in *Bobua Rom v. State of U. P.* JT 1994 (7) 377 . By the acquisition of the plots, the petitioners have not been deprived of their livelihood. As they have not been deprived of their proprietary rights over the land, they are not to be compensated for any loss. Moreover the petitioners are not inarticulate or poor people. The petitioner No. 4 is an Advocate and they all appear to be well-to-do people. Therefore, they have no right to move an application u/s 28A of the Act.

7. Section 28A gives a right to "persons aggrieved by the award of the Collector" to make an application to the Collector to redetermine the amount of compensation if the Court allows compensation in excess of the amount awarded by the Collector u/s 11 to a person who is covered by the same notification u/s 4(1) of the Act. Who is an aggrieved person has been explained in *Babua Ram* (supra) and in Paras 17 and 19 of the reports, it has been held as under:

"In other words, the owners of the lands possessing the same kind and same quality, etc, are entitled to parity in payment of compensation for their lands. Section 28A(1) is intended to overcome the hurdle created by Section 18(1) and 2nd proviso to Section 31(2) in the matter of obtaining equal compensation for similar acquired lands. Equal compensation for similar acquired lands could be got by all the interested persons, if their lands are acquired under the same Notification, in other words, if an owner falls to avail of the right and remedy u/s 18(1). Section 28A(1) grants an extra right and remedy for redetermination of the compensation payable to him for his land on the basis of an award of the Court giving to an owner of another land covered by the same Notification u/s 4(1) and under the same award.....

The person aggrieved must, therefore, be one who has suffered a legal grievance because of a decision pronounced by civil court giving higher compensation for an acquired lands similar to his own while he is denied of such higher compensation for his land because of operation of Section 18 read with Section 31 of the Act resulting in affectation of his pecuniary interest in his acquired land is directly and adversely in that award of the Collector made u/s 11, he becomes as such aggrieved person and entitled to avail of the right and remedy conferred upon him u/s 28A(1) to make good his denied right to receive compensation in excess of the amount awarded by the Collector/L.A.O."

It, therefore, shows that the person aggrieved in context of Section 28A must be a person who had at least some title if not the absolute ownership over the acquired land. One who has not even a semblance of a title over the acquired land cannot be a person aggrieved within the meaning of the section and he has got no right to make an application u/s 28A of the Act for redetermination of the compensation. As shown earlier, the petitioners were not tenureholders of the

plots which have been acquired. They have come into picture more than 8 years after the Notifications under Sections 4(1) and 6 of the Act had been issued and possession had been taken. Even the first conveyance deed by the original owner Ram Singh was executed in favour of Gopal Singh and Sobaran Singh after the land had vested with the Government free from all encumbrances and the conveyance deed in favour of the petitioners has been executed a long time thereafter. The petitioners, therefore, cannot be said to be "persons who are aggrieved by the award of the Collector" within the meaning of Section 28A(1) of the Act as they had absolutely no concern with the plots which have been acquired. A reading of Section 28A shows that it applies only to those who are aggrieved by the award of the Collector but had not made an application for making reference to a Court u/s 18 of the Act. The petitioners were nowhere in picture at the stage when the award of S.L.A.O, was given on 24.6.86, and, therefore, their making an application u/s 18 of the Act for making a reference to the Court did not arise at all. As the petitioners do not satisfy the aforesaid requirement of not making an application to the Collector u/s 18, the provision of Section 28A would not apply. This section applies only to those who could have made such an application but did not do so on account of their poverty, ignorance or some other similar reason, The application for redetermination of the compensation at the Instance of the petitioners is, therefore, not maintainable.

8. If such persons like the petitioners are given the right to ask for re-determination of compensation, it will lead to a queer results. A clever person can keep a watch over the land acquisition references pending in Courts and if a Judgment is given by which the compensation amount is enhanced, he may approach the original owner of the land, who has not asked for a reference u/s 18, to execute a deed in his favour. The erstwhile owner of the land having reconciled to his fate after receiving the compensation would be readily willing to execute any kind of deed with regard to the acquired property even for a paltry sum. After obtaining such a deed, which in reality would be nothing else but a paper transaction, he can earn a huge amount of money by getting re-determination of the compensation. This position is also illustrated by the case in hand. By the judgment and award, dated 31.3.90 of IXth Addl. District Judge, the market value of the land was enhanced from Rs. 45 per square yard to Rs. 115 per square yard, i.e., more than two and half times. The second conveyance deed dated 31.3.90 purports to have been executed in favour of petitioners No. 3 and 4 for a sum of Rs. 20,000. The S.L.A.O by his letter dated 31.12.90 (Annexure-2A to the writ petition) made a demand of Rs. 2,85,266 from the Executive Engineer of U.P.S.E.B, as additional compensation u/s 28A of the Act, it is also doubtful whether Rs. 20,000 was in fact paid by the petitioners No. 3 and 4 when the conveyance deed dated 31.5.90 was executed in their favour by Gopal Singh and Sobaran Singh. The petitioners No. 1 and 2 also obtained conveyance deed from the same persons, namely. Gopal Singh and Sobaran Singh on 27.4.91 for Rs. 15,000. This deed does not show that any amount was

paid before the Sub-registrar. If Gopal Singh and Sobaran Singh had transferred their entire rights in favour of petitioner Nos. 3 and 4 on 31.5.90, it is not understandable as to what right they could transfer to petitioner Nos. 1 and 2 when they executed a deed in their favour on 27.4.91. These features show that after the owners have received compensation and the land is vested with the Government, they may be willing to execute any kind of deed or deeds with regard to the acquired property and subsequent transferee can make huge amount of money without being owners of the land by taking advantage of a Judgment rendered by Court in the case of some other land owners who spent time, money and energy in fighting litigation. This can never be the intention of the Legislature for enacting Section 28A of the Act.

9. At this stage, it may be useful to examine the validity of the conveyance deeds which has been executed in favour of the petitioners. The deed is in Hindi and what was conveyed to petitioner Nos. 3 and 4 reads as follows :

"517 Varg gaz ke muavja va anya labh prapt, mukadmat aadi dayar karne ke samast haq huquq va akhtiyarat ko good title ke sath."

Translated into English, it will mean that entire rights with good title to file cases, for getting compensation and other benefits of 517 square yards. Section 6(e) of Transfer of Property Act lays down that a mere right to sue cannot be transferred. As shown earlier, the land had vested with the Government free from all encumbrances on 21.7.82 when the possession of the same was taken as the Government had invoked the provisions of Section 17(1) and (4) of the Act. The conveyance deed in favour of the petitioners have been executed long after on 31.5.90 and 27.4.91 respectively, in the deeds the fact that the Notifications had been issued under Sections 4(1) and 6 and compensation had already been taken is also mentioned. Therefore, both the vendors and vendees were fully aware that the land was not transferred. Since only a right to file cases to get compensation had been transferred, the conveyance deeds are clearly hit by Section 6(e) of Transfer of Property Act and are invalid. Section 6(e) recognises the principle what is known in English law as a "bare" right to sue cannot be transferred, in *Eilis v. Torrington* 1920 (1) KB 399 it was held that the rule that a bare right of action for damages is not assignable rested on the principle that the law will, not recognise any transaction savouring of maintenance or champerty, in *Basanta Kumar Das Vs. Nagendra Nath Pal*, , it was held as under :

"In this case the question is whether what was assigned was a mere right to sue or property with an incidental remedy for its recovery and consequential benefit. An assignment of a mere right to sue does not convey any property, e.g., if any person out of possession of Immovable property makes an assignment to the effect that the assignee would have a right to sue, without conveying any interest in property, the assignee would not be entitled to maintain any suit for the recovery of property. But it would be otherwise if the property itself is transferred."

The same view has been taken in *Ganga Din and Another Vs. Piyare and Jagannath Marwari Vs. Kalidas Raha*, it is crystal clear that in the present case, the land was not transferred but merely a right to file cases to recover compensation was transferred. This is clearly prohibited by Section 6(e) of the T. P. Act and, therefore, the conveyance deeds in favour of the petitioners are wholly invalid and they cannot maintain any claim on their basis.

10. The petitioners assert that S.L.A.O, passed an order in their favour but the Executive Engineer did not make payment of the amount to them. The petitioners rely upon two letters dated 4.9.90 and 31.12.90 sent by S.L.A.O, to the Executive Engineer asking him to" remit Rs. 2.85,226.04 as additional compensation u/s 28A of the Act on the basis of the judgment and award dated 31.3.90 of IXth Addl. District Judge, in our opinion, the procedure followed by S.L.A.O, in straightaway demanding additional amount on the basis of Rs. 115 per square yard as determined by the Court in its Judgment and award dated 31.3.90 is wholly Illegal. Section 28A requires redetermination of the amount and for this purpose all the relevant factors like the location, situation and quality of the land had to be taken into consideration. Again this could be done only after issuing notice and giving opportunity of hearing to the beneficiary, namely, the U.P.S.E.B, for whose benefit the land had been acquired. This has been held by a Constitution Bench in *U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc.*, and in *M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others*, . Therefore, the letters/orders of the S.L.A.O, demanding additional amount from the Executive Engineer are liable to be set aside.

11. In the result, there is no merit in this petition which is hereby dismissed, in order to avoid any complication in future the orders/letters dated 4.9.90 and 31.12.90 (Annexures-2 and 2A to the writ petition) sent by the S.L.A.O, to the Executive Engineer. U.P.S.E.B, demanding Rs. 2,85.226.04 to be paid as compensation u/s 28A of the Act are quashed, in the circumstances of the case, we direct the petitioner Nos. 1 and 2 to pay Rs. 2,000 as costs to respondent No. 3. The same amount of costs will also be paid by petitioner Nos. 3 and 4. If the costs as awarded is not paid by the petitioners within two months, it will be open to respondent No. 3 to apply before the Collector. Agra to recover the amount from the petitioners as arrears of land revenue.