
(2003) 11 AHC CK 0169
In the Allahabad High Court
Case No : C.M.W.P. No. 35569 of 2003

Maresh Chandra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Land Acquisition Act, 1894 — Section 17, 5, 5A, 6

Citation : (2004) 2 AWC 1222

Hon'ble Judges : R.K. Dash, J; Onkareshwar Bhatt, J

Bench : Division Bench

Advocate : B.B. Paul, for the Appellant; R.K. Awasthi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Dash, J.—In the instant writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs :

(1) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to enforce the impugned land acquisition proceedings against the petitioners on any ground and in any manner whatsoever.

(2) To Issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere with the actual physical possession of the petitioners in respect of Plot No. 322 area 3-3-15 situate in village pargana, Tehsil Khairagarh, district Agra.

(3) To Issue a writ, order or direction in the nature of mandamus commanding the respondents to take follow up action in pursuance of orders of civil court dated 31.5.1984 and 22.8.1990.

(4) To issue ad interim mandamus commanding the respondents neither to interfere with the actual physical possession of the petitioners in respect of Plot No. 322, area 3-3-15, situate in village pargana, Tehsil Khairagarh, district Agra

nor to otherwise dispossesses the petitioners from the property in question on any ground and in any manner whatsoever.

(5) To Issue any other suitable writ, order or direction as this Hon"ble Court may deem fit and proper in the peculiar facts and circumstances of the case to meet the ends of justice."

2. Shortly stated, petitioner"s case is that they are the Bhumidhars of plot No. 322 of village and tehsll Khairagarh in the district of Agra. Without their knowledge, the said plot was acquired under the Land Acquisition Act (hereinafter referred to as "the Act") and necessary correction was made in the revenue record in the name of the State without issuing any notice to them. It is urged that though acquisition was made for some public purpose and notification was issued under Sections 6 and 9 of the Act and symbolic possession was taken on 7.8.1982, but after acquisition, neither any development was made nor compensation was paid and petitioners were allowed to continue to possess as before. So, they filed a civil suit bearing O.S. No. 306 of 1982 for permanent injunction against the State and its officials and ultimately it was decreed by the XVIth Additional Munsif, Agra vide judgment and order dated 31.5.1984. Appeal preferred by the State was also dismissed for default.

3. Despite civil court"s decree, no steps have been taken to delete the name of the State from the revenue record concerning the aforementioned plot. Such inaction on the part of the officials, forced the petitioners to file the present writ petition seeking the reliefs as extracted above.

4. Learned standing counsel has filed a written note of submission challenging the maintainability of the writ petition and also questioning the legality of the decree passed by the civil court. It is stated that notifications under Sections 4, 6 and 9 of the Act were issued on 16.2.1982, 13.3.1982 and 26.9.1982 respectively. After issuance of notification u/s 4, Section 17 was invoked and possession was taken and thereafter necessary entries were made in the revenue records. In Khasra and Khatauni, plot in question has been shown as State"s property. Predecessor in interest of the petitioners filed civil suit bearing O.S. No. 306 of 1982 against the State seeking relief of prohibitory injunction and the suit was decreed on a short point that no publication of notification was made in two local newspapers.

5. Challenging the judgment and decree, appeal was preferred, but the same was dismissed for default. It has been urged that the writ petition is not maintainable since no writ in the nature of mandamus can be issued to execute the civil court"s decree. Besides, writ petition is also not maintainable as the petitioners have failed to show any enforceable right in their favour.

6. Relying upon the decision of the Supreme Court in the case of Yadu Nandan Garg Vs. State of Rajasthan and Others, learned standing counsel has contended that once acquisition is finalised and possession is taken, the State is entitled to possess with absolute title free from all encumbrances and the erstwhile land

owner cannot get any title much less any valid title. With regard to maintainability of the suit, it is urged that in view of the law laid down by the Supreme Court in the case of *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, that where the statute gives finality to the orders of the special tribunals, the civil court's jurisdiction must be held to have been excluded if there is adequate remedy to do what the civil court would normally do in a suit. In that view of the matter, the suit filed by the petitioners' predecessor should not have been entertained being without jurisdiction. It is further submitted that the civil court while passing the decree, failed to notice that Section 4(1) of the Act was amended by Land Acquisition (U. P. Amendment) Act No. XXII of 1954 dispensing publication of notification in the locality where authorities have waived the enquiry u/s 5A in the case where the land is urgently needed. Besides, It is urged, that once the land acquisition proceeding has reached its finality and the possession of the land has been taken, the only course open to the land owner or his successor to challenge the acquisition in the manner as provided in the Act or by approaching the High Court by way of filing writ petition under Article 226 of the Constitution and not by filing a civil suit.

7. The Act being a complete Code in itself, contends the counsel, jurisdiction of the civil court is impliedly barred and if any interference is made by the civil court in the proceedings, either pending or disposed of, the purpose for which the Act has been enacted, will be frustrated. Therefore, the Court for the interest of justice should declare the civil court's decree passed in favour of the petitioner's predecessor as a nullity being without jurisdiction and dismissed the writ petition in limine.

8. We have gone through the averments made in the petition and the documents annexed thereto, more particularly the decree of the civil court and have considered the submissions made by the learned counsel for the parties. Way back in 1982 notifications under Sections 4, 6 and 9 of the Act were published and by invoking emergency clause of Section 17, possession was taken and necessary correction was made in the revenue records deleting name of the land owners and inserting name of the State. In order to nullify the orders of the authority passed under the Act, petitioners' predecessor filed civil suit No. 306 of 1982. Learned Additional Munsif, Agra framed four issues of which issue Nos. 2 and 3 were as to whether the property in suit was acquired by the State and whether the acquisition was lawful and valid. Upon hearing the counsel appearing for the parties and making reference to relevant provisions of the Act, the Court held that for acquisition of the land in question, mandatory provision regarding publication of notice was not complied with and therefore, in the eye of law there was no acquisition. Having so held, the learned Munsif decreed the suit and restrained the State and its officials from interfering in plaintiff's possession. True it is, Section 4 of the Act envisages that where the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the official Gazette and in two daily newspapers having circulation in that locality of which at least one shall be

in the regional language. But by U. P. Amendment Act of XXII of 1954, the mandatory requirement of publication of notification in the locality has been done away with in the case where the Government is of the opinion that the land is urgently needed and the authorities have dispensed with the inquiry u/s 5A of the Act. The Apex Court took note of the aforesaid State amendment in the case of Ghaziabad Development Authority Vs. Jan Kaluan Samiti, Sheopuri, Ghaziabad and another, and held that notification u/s 4(1) is not vitiated for non-publication of notification in the local newspaper. Unfortunately, the State amendment was not brought to the notice of the learned Munsif nor the Munsif took pains to have a glimpse of the Act as well as the amendment before giving his verdict. Besides the Act being a special Statute and the authorities having exercised their power in accordance with law and the procedure, the learned Munsif should have held to have no jurisdiction to decide the question of validity of acquisition.

9, in the case of Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, the validity of acquisition and award passed under the Act were challenged by filing a civil suit. On a preliminary issue, the civil court held that suit was not maintainable. The matter was then carried to the High Court. The order of the civil court was upheld by the learned single Judge and upon appeal, by the Division Bench. Lastly, the matter was carried to the Supreme Court. In paragraph 3 of the judgment, the Court observed as under ;

"It would, thus, be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of Jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act."

10. The object of the Act to acquire any land for public purpose or for any company would be frustrated if steps taken by the authority in acquiring any land are interfered by the civil court on approach being made by the land owner. So, when a suit is filed to invalidate any action taken in pursuance of the Act, civil court should be loathe to exercise power and before hearing the suit on merit, should first decide the question of maintainability of the suit. In the present case, had the learned Munsif taken pains to decide the question of maintainability and decided the same against the plaintiffs, the present writ petition would not have been filed. In our opinion, the decree passed by the civil court being nullity cannot be put to action and none of the reliefs as prayed for by the petitioners can be granted.

11. in the result, writ petition falls and the same is dismissed.