
(2004) 07 AHC CK 0052

In the Allahabad High Court

Case No : C.M.W.P. No's. 11811 of 2000 and 16134 of 2004

Methodist Church and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 300A
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2004) 4 AWC 3157(2)

Hon'ble Judges : M. Katju, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Vivek Chaudhary, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. These petitions reveal a deplorable state of affairs and the high handedness of the authorities.

3. The petitioner No. 1 is a society registered under the Societies Registration Act and the petitioner No. 2 is its secretary. Petitioner No. 1 is the owner of a building along with open space of land forming part of Khasra No. 424 situate at village Chawnl Tehsil and district Moradabad. The said property was purchased by the petitioner No, 1 by way of a sale deed dated 26.12.1859 [vide Annexure-1 to the writ petition). True copy of the site map of property is Annexure-2 to the petition.

4. Khasra No. 424A is an area of 4.853 hectare which is equal to 12.07 acre. The area of Khasra No. 424B is 2.578 hectare which is equal to 6.40 acres. Thus, the total area of Khasra No. 424 is 7.431 hectare which is equal to 18.47 acres. Out of the aforesaid land 11.99 acres of land is recorded as Nazul land in the records of the Nagar Nigam, Moradabad, while the remaining 6.48 acres is freehold properties of individuals including the disputed land belonging to the petitioner.

5. Out of the total lease land of 11.99 acres, 10.7 acres is from Plot No. 424A and 1.06 acres is from plot No. 424B. Out of the aforesaid lease land 10.7 acres was leased to the petitioner out of plot No. 424A by way of lease deed dated 14.1.1951 and .28 acres from plot No. 424B was leased to the petitioner by way of lease deed dated 13.7.1939. True copies of the lease deeds are Annexures-3 and 4 to the writ petition.

6. A part of the freehold property of the petitioner was requisitioned by the State Government u/s 221 of the Defence and Internal Security India Act, 1971, by orders of the District Magistrate, Moradabad, dated 19.11.1976. However by order dated 20.7.1977 the District Magistrate de-requisitioned the aforesaid property. A true copy of the order of the de-requisition/release dated 20.7.1977 is Annexure-5 to the writ petition.

7. However. In spite of the order dated 20.7.1977, passed by the District Magistrate, Moradabad the possession of the property in dispute was never given to the petitioner, and instead in the year 1977 itself the property de-requisitioned/released was again taken over by the local intelligence unit of police forcibly. The petitioner strongly objected to the aforesaid action of the police and on the objection of the petitioner, in the year 1987, the S.S.P. Moradabad offered to pay a rent of Rs. 510 per month to the petitioner. True copy of the letter of the S.S.P. dated 11.8.1987 is Annexure-6 to the writ petition. It does not appear that the petitioner ever accepted this offer.

8. In 1977 the Executive Officer of the Nagar Pallka sent a letter dated 21.6.1977 certifying that the house in dispute is situated on the property of the petitioner, and is not situated on the Nazul Land. True copy of the said letter of the Executive Officer is Annexure-7 to the writ petition.

9. It is alleged in para 7 of the writ petition that the local intelligence unit did not use the house for a very long period as the said house is a very old house and is not a very poor and deteriorating condition and is not even in a habitable condition. The petitioner repeatedly requested the District Magistrate, Moradabad, to hand over the possession of the property in dispute to the petitioner as the same was released, but the District Magistrate/S.S.P. never gave the possession of the property to the petitioner.

10. It is alleged in para 8 of the petition that the S.S.P., Moradabad was interested in taking over the property and for the said purpose he wrote a letter dated 6.3.1999 to the District Magistrate, Moradabad, asking him to cancel the lease in favour of the petitioner and allot the said property to the police department. Before issuing the said letter the S.S.P. neither issued any notice to the petitioner nor heard them, nor made any inquiry pertaining to the status of the property. True copy of the said letter is Annexure-8 to the writ petition.

11. It is alleged that the District Magistrate under pressure and in collusion with the S.S.P., Moradabad, wrote a letter to the State Government dated 28.12.1999, whereby he stated that disputed house is situated on Nazul land and the same

may be leased in favour of the police department after cancelling the lease in favour of the petitioner. True copy of the order dated 28.12.1999 is Annexure-9 to the writ petition.

12. It is alleged that the said order is an ex parte order without making any inquiry as to whether the land is lease land or freehold land and without giving opportunity of hearing to the petitioner. It is alleged that the said order was passed ex parte. It is further stated that the District Magistrate has no authority or jurisdiction under the policy pertaining to the Nazul land of the State of U. P. and the said order dated 28.12.1999 was issued without any jurisdiction.

13. It is alleged in para 14 of the petition that the house in dispute is situated on the land belonging to the petitioner, and it is not the Nazul land of the State Government, and has never been leased out to the petitioner. No proceedings under the Land Acquisition Act have been taken, and the disputed house and land is freehold property of the petitioner,

14. A supplementary-affidavit has also been filed and we have perused the same.

15. It is alleged in para 2 of the supplementary-affidavit that certain developments have taken place after filing of the instant writ petition due to which it became necessary to file a supplementary-affidavit. It is alleged in para 3 that in respect of the property in dispute a detailed report was obtained from the Tehsildar by the District Magistrate, Moradabad. The Tehsildar submitted his report dated 18.10.2001 and 29.9.2001 categorically stating therein that the property in question was not Nazul land and was a purchased property of the petitioner. True copy of the said report dated 18.10.2001 is Annexure-S.A. 1.

16. On the said report the Additional District Magistrate issued a letter dated 8.10.2001 calling upon the Tehsildar to submit a separate report in respect of the plot in question afresh. True copy of the said letter is Annexure-S.A. 2.

17. Accordingly the Tehsildar submitted a fresh report along with the map as prepared by him on the basis of "on-spot" inspection dated 18.10.2001 and in the said report it was again pointed out that the property in question was not a Nazul Property, A copy of the report dated 18.10.2001 along with tin" map submitted by the Tehsildar afresh is Annexure-S.A. 3.

18. The Nagar Nigam, Moradabad. by letter dated 12.12.2000 addressed to the District Magistrate, Moradabad, categorically stated that the property in question was not a Nazul property but was the property of the Mission owned by it. True copy of the said letter is Annexure-S.A. 4. An earlier letter to the same effect is Annexure-S.A. 5.

19. On the basis of the aforesaid report and on spot inspection the District Magistrate, Moradabad, finally submitted his report before the State Government vide letter dated 12.11.2001, categorically stating that the property on which the Local Intelligence Unit has established its office is not Nazul property and is a property purchased by the Church itself. True copy of the said letter dated

12.11.2001 is Annexure-S.A. 6.

20. The State Government after considering all the reports and records passed a specific order dated 14.12.2001 stating that the property in question on which the office of the Local Intelligence Unit has been established was not Nazul property, and hence the property cannot be allotted to the Local Intelligence Unit. True copy of the said letter issued by the State Government is Annexure-S.A. 7. It was clarified in that letter that in respect of the other properties, which were Nazul properties and were leased out in favour of the Methodist Church, efforts should be made to get the lease hold land converted into freehold land according to the policy decision of the Government as issued from time to time.

21. It is alleged in para 12 of the supplementary-affidavit that with the issuance of the said letter of the State Government the chapter stood closed and there was no occasion for further harassment to the petitioner by not handing over the peaceful possession of the said property to the petitioner.

22. In para 13 of the supplementary-affidavit it is alleged that surprisingly without any basis on 24.1.2002 the Under Secretary of the Government had sent a letter to the District Magistrate, Moradabad, for obtaining fresh report in respect of the land in question, in pursuance of letter of the S.S.P. dated 27.11.2001. True copy of the said letter dated 24.1.2002 is Annexure-S.A. 8.

23. It is alleged in para 14 of the supplementary-affidavit that the letter of the S.S.P., Moradabad, dated 27.11.2001 was very much on record on the date when the State Government passed the order dated 14.12.2001, and there was no occasion for reopening the issue afresh. It is alleged that the petitioner has reason to believe that the letter dated 14.1.2002 has been obtained by the District Magistrate and the S.S.P., Moradabad, to harass the petitioner and to continue the illegal occupation over the land.

24. In para 15 of the supplementary-affidavit it is alleged that on the basis of the letter dated 24.1.2002, the District Magistrate, Moradabad, has alleged to have submitted a report dated 16.3.2002 and by means of the said report the entire controversy has been sidetracked on manifest incorrect statements. It is being suggested that the land in question is although not a Nazul land but is a Government property, and hence may be transferred to the police department through the Revenue department. True copy of the said letter dated 16.3.2002 is Annexure-S.A. 9.

25. In para 16 of the supplementary-affidavit it is alleged that the said report is false inasmuch as the police department was not in possession of the land in question since 1930. They came into possession under the requisitioning order on 19.11.1976 but the possession became illegal once the property was de-requisitioned on 20.7.1977.

26. It is alleged in para 16 (b) of the supplementary-affidavit that when the sale deed was executed in favour of the Methodist Church on 26.12.1859, there was

no provision for any registration of a document nor was any registration department established in the State of U. P. Consequently, the report of the District Magistrate that the sale deed is not registered and the deed does not find mention in the records of the registration department is perverse and misleading.

27. In this case this Court passed an order dated 7.3.2000. granting the respondents six weeks time to file counter-affidavit. Thereafter on 25.7.2003 again standing counsel was granted one months time to file counter-affidavit and thereafter on 20.5.2004, again one month time was allowed to file counter-affidavit. However, as yet no counter-affidavit has been filed, and hence we are presuming the allegations in the petition to be correct. The allegations in the petition and supplementary-affidavit clearly show the arbitrary acts of the respondents to harass the petitioner. Once the property had been de-requisitioned by order dated 20.7.1977 the possession should have immediately been handed over to the petitioner but that has not yet been done although 27 years have elapsed since then. Instead, on one pretext or the other the respondents have avoided handing over the possession of the property to the petitioner.

28. Subsequent to the filing of Writ Petition No. 11811 of 2000 it appears that a letter has been issued by the District Magistrate, Moradabad, dated 16.2.2002 against which the petitioner was compelled to file the Writ Petition No. 16134 of 2004.

29. In Writ Petition No. 16134 of 2004 this Court by order dated 20.5.2004 had granted one month time to the respondents to file counter-affidavit but as yet counter-affidavit has not been filed in this petition also. Hence we are treating the allegations in Writ Petition No. 16134 of 2004 to be correct.

30. We have perused the impugned order dated 16.2.2002 and we are of the opinion that the said order has made false statements both factual and legal. It has been falsely stated in the said order that the police department has been holding possession over the property since 1930 and that the plot is Government land and is not Nazul land. In our opinion the police detained possession only when the requisitioning order was passed on 19.11.1976.

31. Since the allegations in both the writ petitions being Writ Petition Nos. 11811 of 2000 and 16134 of 2004 are unrebutted despite time being granted to the respondents to file counter-affidavit we have to treat all the allegations in the petitions to be correct. We are clearly of the opinion that the respondents have acted in an arbitrary and high handed manner which was not expected from such Senior Officers. After the derequisitioning order dated 20.7.1977 possession should have immediately been handed over to the petitioner but it was not given to him.

32. Article 300A of the Constitution states ;

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

33. The word "law*" under Article 300A means statutory law and not executive action. No proceedings under the Land Acquisition Act were taken in respect of the disputed property as stated in para 15 of the Writ Petition No. 11811 of 2000. The allegations in paragraphs 14 and 16 of the Writ Petition No. 11811 of 2000 that the disputed land is freehold property of the petitioner is unrebutted and no counter-affidavit has been filed. Hence, the allegations have to be treated as correct.

34. In these circumstances both the petitions are allowed. Impugned order dated 16.2.2002 is quashed. Respondents are directed to immediately hand over possession of the property in dispute to the petitioner forthwith. Sine the respondents have acted in a highly improper, high handed and arbitrary manner and they deprived the petitioner of possession to which he is entitled since 20.7.1977, i.e., about 24 years, we further direct that the respondents must pay the compensation of Rs. 1 lac to the petitioner for depriving them of possession of the said property for such a long period.