
(2012) 04 AHC CK 0009
In the Allahabad High Court
Case No : Second Appeal No. 52 of 2012

Mithai Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 22, 11, 16, 18
Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 11, 11A, 12, 17, 17(4)

Citation : (2012) 6 ADJ 772 : (2012) 5 AWC 4916

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.N. Singh, A.K. Rai and Vishnu Kumar Singh, for the Appellant; Ajit Kr. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble S.U. Khan, J.—Heard Sri R.N. Singh, learned senior counsel assisted by Sri A.K. Rai and Sri V.K. Singh, learned counsel for appellant and learned standing counsel for State of U.P. and its authorities respondent Nos. 1 to 4 and learned standing counsel for respondent Nos. 5 and 6 Nagar Maha Palika (N.M.P.) Varanasi and Varanasi Development Authority (V.D.A.) Varanasi. The only point which has been argued is that Civil Court has got jurisdiction to entertain suit in respect of acquisition under U.P. Nagar Mahapalika Adhiniyam (now U.P. Municipal Corporation Act) even though Civil Court has got no jurisdiction to entertain a suit challenging land acquisition under Land Acquisition Act. Learned counsel for the respondents 1 to 6 have argued that land acquisition either under land Acquisition Act or U.P. Nagar Mahapalika Adhiniyam (U.P.M.C. Act) cannot be challenged in a suit before Civil Court.

2. This Second appeal arises out of O.S. No. 176 of 1977 which was filed by the appellants against the respondents connected with original suit No. 274 of 1977 filed by Kedarnath and 9 others. The suit was filed after 15 years as acquisition

had taken place in 1967. Some of the appellants (plaintiffs of O.S. No. 176 of 1977) had also filed writ petition in this Court challenging the Acquisition which was dismissed in default.

3. The grounds of challenge were that award was given in 1973 while it ought to have been given within 5 years from Acquisition i.e. till 1972 and the extension of period for giving award from 5 years to 10 years was not applicable to the acquisition in question. Award was given on 31.12.1973. The other grounds taken were that prior to the notice under 9(3) no other notice was served upon the plaintiffs" that plaintiffs were not aware of the proceedings they ought to have been provided opportunity of hearing which was not done; that notice u/s 357 of U.P. Nagar Mahapalika Adhiniyam was not published in accordance with law that notice in respect of land acquisition was not published etc. The land was acquired for Bhadau Lower Income Housing Scheme. The trial Court/Civil Judge/Additional J.S.C.C. Varanasi through judgment and decree dated 2.2.1995 held that provisions of Sections 357, 358 and 365 of U.P. Nagar Palika Adhiniyam were not followed. Accordingly, both the suits were decreed. However, the trial Court decreed the suits only for injunction but dismissed the same for possession holding the plaintiffs to be in possession. Nagar Mahapalika Varanasi, Varanasi Development authority and State and its authorities respondent No. 1 to 6 in the Second appeal did not file any appeal, however, plaintiffs filed appeal being Civil appeal No. 36 of 2005 against judgment and decree passed by the trial Court complaining that suit for possession should have been decreed after holding the acquisition to be null and void. The appeal was dismissed on 27.9.2011 by A.D.J. Court No. 14 Varanasi hence this Second appeal.

4. In para 3 of its judgment the lower appellate Court held that in view of Supreme Court authority reported in State of Bihar Vs. Dharendra Kumar and others, , acquisition could not be challenged before the Civil Court. The contention of the appellant that State and Nagar Maha Palika and V.D.A. had not filed appeal hence lower appellate Court could not reverse any finding which had been recorded by the trial Court in favour of the appellant was not accepted by lower appellate Court. In my opinion under Order 41 Rule 22 C.P.C. such a plea could be raised by State N.M.P. and V.D.A. who were respondents in the appeal before the L.A.C. It was also contended by the appellants that in two other suits i.e. O.S. No. 285 of 1972 and O.S. No. 274 of 1977 same acquisition proceedings had been declared to be null and void. Lower appellate Court held that the said decisions were not binding upon it.

5. The trial Court under issue Nos. 6 and 19 had held that plaintiffs were in possession.

6. Learned counsel for the appellant has placed reliance upon the constitution Bench authority of the Supreme Court reported in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , which is leading authority on the question of bar of jurisdiction of Civil Court. The other authority of the Supreme Court which has been cited by learned counsel for the appellant is reported in

State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, , which deals with the scope of the suit before Civil Court in view of A.P. Charitable and Hindu Religious (I. and E.) Act 1966.

7. Para 3 of Supreme Court authority of State of Bihar Vs. Dharendra Kumar and others, , is quoted below:

3. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued u/s 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publication envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration u/s 6, the public purpose gets crystalised and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11A now prescribes limitation to make the award within 2 years from the last date of publication envisaged u/s 6 of the Act. In an appropriate case, where the Govt. needs possession of the land urgently, it would exercise the power u/s 17(4) of the Act and dispense with the enquiry u/s 5A. Thereon, the State is entitled to issue notice to the parties u/s 9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award u/s 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the Civil Court to take cognizance of the case u/s 9 of CPC stands excluded, and a Civil Court has no jurisdiction to go into the question of the validity or legality of the notification u/s 4 and declaration u/s 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial Court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction.

8. Similarly, paras 2 and 3 of Supreme Court authority in Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, , is quoted below:

2. The contention raised by the learned Counsel for the petitioner is that the acquisition proceedings having been dropped by the Land Acquisition Officer, he had no jurisdiction or power to reopen the same and to make the award u/s 11 of the Act. The award is, therefore, clearly illegal for want of jurisdiction. It would appear that after the High Court had upheld the validity of the notification u/s 4(1) and the declaration u/s 6, an application was filed in the High Court for claiming value of the property in which the high Court determined market value

at Rs. 7,000 per acre and also other values of the trees and buildings etc. and the application was dismissed. The order dated January 23, 1970 was upheld by this Court by dismissing the special leave petition. While the enquiry was in progress, it would appear that the Gram Panchayat had stated before the Land Acquisition Officer that it had no funds so as to proceed with the award and requested him to drop the proceedings. On that basis, report was submitted to the Government and the Land Acquisition Officer had stopped further action. The Government did not accede to the request. No notification under Sub-section (1) of Section 48 of the Act withdrawing acquisition of land, possession of which had not been taken, was published in the Gazette. Admittedly, the Government thereby had neither withdrawn from the acquisition nor published the same in the Gazette. Therefore, the mere fact that the Land Acquisition Officer had stopped further action to make the award did not divest him of his power and jurisdiction to make the award. It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the Civil Court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification u/s 4 and declaration u/s 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made u/s 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference u/s 18 and a further appeal u/s 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated u/s 48 requires to be adhered to. If possession is taken it stands vested u/s 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. 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. The only right an aggrieved person has is to approach the Constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restriction on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

9. There is no such distinction between the provisions of land Acquisition Act and U.P. Nagar Maha Palika Adhiniyam on the basis of which it may be argued and held that the above authorities of the Supreme Court apply to the land acquisition under Land Acquisition Act but not to the land acquisition under U.P. Nagar Mahapalika Adhiniyam. Section 365(2) of U.P. Nagar Mahapalika Adhiniyam 1959 itself refers to land Acquisition Act 1894. The said sub-section is quoted below:

The Mahapalika may for the purposes of an improvement scheme sanctioned under this Chapter acquire land or interest in land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Chapter.

10. Under the Bangalore Development Authority Act complete procedure for acquisition has been provided still the Supreme Court in Commissioner, Bangalore Development Authority Vs. K.S. Narayan, , applied both the above authorities to the acquisition under the said Act and held that acquisition under V.D.A. Act cannot be challenged in the Civil Court. Paras 10 and 14 of the said authority are quoted below:

10. The provisions of Sections 17 and 19 are somewhat similar to the provisions of Sections 4 and 6 of the Land Acquisition Act. Sub-section (5) of Section 17 of the Act mandates that after the publication of the notification in the Official Gazette the authority shall, during the period of next thirty days, serve a notice on every person whose name appears in the assessment list of the Local Authority or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment of any building or land which is proposed to be acquired in executing the scheme or in regard to which the authority proposes to recover betterment tax. The person on whom the notice is served is entitled to raise objection regarding the proposed acquisition within thirty days.

14. In our opinion the view taken by the High Court is wholly erroneous. It is not the case of the plaintiffs that the plaint scheduled property is not covered by the notification issued u/s 17 of the Act. As a matter of fact, there is no dispute that the land regarding which the suits have been filed is covered by the notification. The main ground on which the suits have been filed is that the notice as required by Sub-section (5) of Section 17 of the Act was not served upon the plaintiffs.

The plaintiffs are claiming title to the property and are seeking the relief of possession on the ground that the notification has been rendered invalid on account of non service of notice upon them under sub-section (5) of Section 17 of the Act. The plaintiffs are clearly assailing the validity of the acquisition proceedings. It is not their case that the plaint scheduled property is outside the purview of the land regarding which the notification u/s 17 had been issued. The ground for assailing the notification, namely, that notice under Sub-section (5) of Section 17 of the Act was not served upon the plaintiffs and its effect could only be examined in a writ petition filed under Article 226 of the Constitution before the High Court and not by the Civil Court. The judgments and decrees passed by the High Court are, therefore, clearly illegal and have to be set aside.

11. The position under U.P. Municipal Corporation Act stands on a better footing as under this Act reference is made to Land Acquisition Act.

12. Accordingly the above authority of the Supreme Court ousting the jurisdiction of the Civil Court to entertain suit challenging land acquisition under a local Act squarely applies to the acquisition for schemes under U.P. Nagar Maha Palika

Adhiniyam (U.P.M.C. Act). Accordingly, I agree with the view of the lower appellate Court that acquisition could not be challenged before the Civil Court. The Second appeal is, therefore dismissed under Order 41 Rule 11 C.P.C.