

(2017) 04 AHC CK 0164
In the Allahabad High Court
Case No : 13735 of 2017

MITHILESH KUMARI & ORS

APPELLANT

Vs

ADDITIONAL DISTRICT MAGISTRATE & ORS

RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 4](#), [Section 6](#), [Section 32](#), [Section 23](#), [Section 23\(1\)\(a\)](#), [Section 18](#), [Section 28](#), [Section 5](#), [Section 17](#), [Section 4\(1\)](#), [Section 23\(2\)](#), [Section 28A](#) - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose - Investment of money deposited In respect of lands belonging to persons incompetent to alienate - Matters to be considered In determining compensation - Matters to be considered In determining compensation - Reference to Court - Collector may be directed to pay Interest on excess compensation - Payment of damage - Special powers In cases of urgency - Publication of preliminary notification and powers of officers thereupon. - Matters to be considered In determining compensation - Re-determination of the amount of compensation on the basis of the award of the Court [Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965](#), [Section 55](#), [Section 55](#), [Section 55](#), [Section 55](#), [Section 55](#)

Citation : (2017) 04 AHC CK 0164

Hon'ble Judges : Krishna Murari, Ravindra Nath Kakkar

Bench : Division Bench

Judgement

1. These two writ petitions are based on same facts and raise common questions of law, hence, have been clubbed.

2. Writ Petition No. 13735 of 2017 has been filed by Smt. Mithilesh Kumari & 2 others, whose land was subject matter of acquisition by the U.P. Avas Evam Vikas Parishad (hereinafter referred to as the "Parishad"), seeking a mandamus commanding the Parishad to deposit enhanced amount of compensation along

with other statutory benefit and interest pursuant to the order dated 08.11.2016 passed under Section 28A of the Land Acquisition Act, 1894 (for short the "Act, 1894") within a reasonable time frame to be fixed by this Court. A mandamus has also been claimed commanding the Additional District Magistrate (Acquisition)/Special Land Acquisition Officer (Awas), respondent no. 1 to disburse the amount so deposited by the Parishad in favour of the petitioners.

3. Writ Petition No. 15134 of 2017 has been filed by U.P. Avas Evam Vikas Parishad challenging the order dated 08.11.2016 passed by Additional District Magistrate, Land Acquisition on the application filed by the claimants under Section 28A of the Act, 1894.

4. Pleadings have been exchanged and we have heard Shri H.N. Singh, learned Senior Counsel assisted by Shri L.K. Singh for the claimants and Shri N.C. Tripathi appearing for the U.P. Avas Evam Vikas Parishad.

5. Undisputed facts are that plot nos. 51/2, 80/2, 85, 86, 89, 91, 94, 96 and 97, wherein the claimants were having half share, were subject matter of acquisition by Parishad. Notifications under Sections 28 and 32 of the Act, 1894 were issued on 17.02.1973 and 27.02.1980 respectively. The possession was taken over on 09.07.1982. An award was declared by the Special Land Acquisition Officer on 31.03.1986 awarding compensation at the rate of Rs.4.28 per sq. yd. It is not in dispute that the claimants herein accepted the compensation without any protest. However, other tenure holders, whose land was also subject matter of same acquisition, notification, filed objections and a reference was made under Section 18 and forwarded to the District Judge for adjudication. One of the reference Case No. 157/70 of 1994, Smt. Srimati Vs. State of U.P. & Anr. came to be decided on 21.04.2000 by IV Additional District Judge, Kanpur Nagar. The market value of the land on the date of acquisition was determined to be Rs.45 per sq. yd. and, accordingly, the claimants were held entitled to the enhanced amount of compensation. The said order was challenged by Parishad by filing First Appeal No. 73 of 2001, which was dismissed vide order dated 09.07.2013. It is undisputed that the order dated 09.07.2013 has attained finality as the same has not been challenged. In the meantime, after decision on the reference under Section 18 of the Act, 1894 on 21.04.2000, the claimants herein made an application dated 13.07.2000 under Section 28A of the Act, 1894 for redetermination of the compensation payable to them on the basis of the order dated 21.04.2000 passed in Reference Case No. 157/70 of 1994, Smt. Srimati Vs. State of U.P. & Anr.

6. When the application remained pending and no decision was taken, the claimants approached this Court by filing Writ Petition No. 31436 of 2015, which was disposed of vide order dated 28.05.2015 directing the competent authority to pass appropriate orders on the application within three months from the date of production of a certified copy of the order. The application was heard by Additional District Judge, Kanpur Nagar and after hearing both the parties, namely, the claimants as well as Parishad, Additional District Judge vide order

dated 08.11.2016 allowed the same. On the basis of the order passed, a calculation chart dated 26.11.2016 was prepared by the Additional District Magistrate, wherein the claimants were found entitled for payment of a sum of Rs.36,24,607.26/-, which included compensation at the rate of Rs.45 per sq. yd. as determined by the reference court vide order dated 21.04.2000 along with interest payable under Section 23 (1) (A) and Section 28 and solatium etc. under Section 23 (2) of the Act, 1894. By the said order, Parishad was required to deposit the said amount with the Special Land Acquisition Officer for the purposes of making payment to the claimants. Parishad instead of depositing the amount determined under Section 28 A of the Act, 1894 has come up before this Court by filing connected Writ Petition No. 15134 of 2017 challenging the order dated 08.11.2016.

7. Learned counsel appearing for the Parishad contends that Section 28A was inserted in the Act, 1894 by way of amendment incorporated by Amending Act No. 68 of 1984. The provisions of the Act, 1894 have been incorporated by reference in the U.P. Avas Evam Vikas Parishad Adhiniyam (for short the "Adhiniyam") by virtue of Section 55 read with the Schedule to the Adhiniyam. As a consequence, any amendment made in the Act, 1894 after the enactment of the Adhiniyam does not ipso facto apply to an acquisition for the purpose of the Adhiniyam and, thus, the benefit of Section 28A of the Act, 1894 would not be available to the claimants and the order dated 08.11.2016 allowing their application is illegal and without jurisdiction.

8. The moot question which arises for our consideration is whether the provisions of the Act, 1894 have been incorporated by a reference in the Adhiniyam by virtue of Section 55 read with the Schedule to the Adhiniyam and, as a consequence, any amendment made in the Act, 1894 after the enactment of the Adhiniyam does not ipso facto apply to an acquisition for the purposes of Adhiniyam.

9. At this stage, it may be relevant to reproduce Section 55 of the Adhiniyam, which is reproduced hereunder. "55. Power to acquire land.-

(1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. 1 of 1894), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to this Act."

10. In the case of Gauri Shankar Gaur Vs. State of U.P., (1994) 1 SCC 92, a Bench of two Hon'ble Judges of the Apex Court had occasion to deal with the question regarding the applicability of the 1984 Act to the acquisition of land under the provisions of the Adhiniyam in the context of first proviso to Section 6 of the Act, 1894, which was substituted by 1984 Act by adding a proviso prescribing that no declaration in respect of any particular land covered by a notification under Section 4 (1) published after the commencement of the Land

Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of 1984 Act, shall be made after the expiry of three years from the date of publication of the notification.

11. In the aforesaid case of Gauri Shankar Gaur (supra), though both the Hon"ble Judges concurred in upholding the validity of the acquisition, but there was a difference of opinion insofar as the question whether the provisions of Act, 1894 have been incorporated by reference in the Adhiniyam by virtue of Section 55 read with the Schedule to the Adhiniyam and, as a consequence, any amendment made in the earlier Act, after the enactment of the Adhiniyam will not automatically apply to an acquisition for the purpose of the Adhiniyam.

12. One of the Hon"ble Judge was of the view that Section 55 of the Adhiniyam read with Schedule made an express incorporation of the provisions of Section 4 (1) and Section 6 as modified and incorporated in the Schedule and that the Schedule effected necessary structural amendments to Sections 4, 5, 17 and 23 incorporating therein the procedure and principles with necessary modifications and, thus, is a complete Code in itself and, accordingly, the subsequent amendments made in Section 6 of 1894 Act, will not become part of Adhiniyam and will have no effect on the operation of the provisions of the Adhiniyam.

13. The other Hon"ble Judge, however, took a contrary view. The dissenting view was that whether a legislation was by way of incorporation or by way of a reference is a matter of consideration by the courts keeping in view the language employed by the enactment, the purpose of referring or incorporating provisions of an existing Act and the effect of it on the day to day working. The contrary view taken was that such legislation by incorporation is subject to exceptions and that one such situation where legislation by incorporation is excluded is if it creates difficulty in day to day working. It was, thus, held that under our constitutional scheme, the exception can be extended further and the Courts should lean against a construction which may result in discrimination and, thus, it was held that the amendment in Schedule of Act, 1894 by Amending Act, 1984 would be applicable to acquisition of land for the purposes of Adhiniyam.

14. In view of the difference of opinion between the Hon"ble Judges on the question regarding the applicability of amendment incorporated in the Act, 1894 to the acquisition for the purposes of Adhiniyam, the matter was referred for adjudication by a three Judges Bench in the case of U.P. Avas Evam Vikas Parishad Vs. Jainul Islam, 1998 (2) SCC 467. After considering the issue in detail as well as provisions similar to Section 55 to the Adhiniyam found in other enactments, the larger Bench answered the issued in paragraphs 31 and 32 of the judgment as under. "31. Since the present case involves acquisition of land under the provisions of the L.A. Act as applicable under the Adhiniyam, it is fully covered by the law laid down by this Court in Nagpur Improvement Trust & Anr. (supra). Keeping in view the principles laid down in the said decision of this Court, it has to be held that if the provisions of the Adhiniyam are so construed as to mean that the provisions of the L.A. Act, as they stood on the date of

enactment of the Adhiniyam, would be applicable to acquisition of land for the purpose of the Adhiniyam and that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation are not applicable, the consequence would be that the provisions of the L.A. Act, as applicable under the Adhiniyam, would suffer from the vice of arbitrary and hostile discrimination. Such a consequence would be avoided if the provisions of the L.A. Act as amended by the 1984 Act, relating to determination and payment of compensation would apply to acquisition of land for the purposes of the Adhiniyam. There is nothing in the Adhiniyam which precludes adopting the latter construction. On the other hand, the provisions of the Adhiniyam show that the intention of the Legislature, while enacting the Adhiniyam, was to confer the benefit of solatium @ 15% by modifying Section 23 (2) in the Schedule, which benefit was not available under the provisions of the L.A. Act as it was applicable in the State of Uttar Pradesh at the time of enactment of the Adhiniyam. It cannot, therefore, be said that the intention of the Legislature, in enacting the Adhiniyam, was to deny to the landowners the benefits relating to determination and payment of compensation which would be available to them under any amendment made in the L.A. Act after the enactment of the Adhiniyam. We are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the L.A. Act in the Adhiniyam the intention of the Legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation, viz, Section 23 (1-A) and Section 23 (2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purposes of the Adhiniyam under Section 55 of the Adhiniyam. 32. In view of the construction placed by us on the provisions of Section 55 of the Adhiniyam that the provisions of the L.A. Act, as amended by the 1984 Act relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of the Adhiniyam, it is not necessary to deal with the submission that if the provisions of the 1984 Act are held to be not applicable in the matter of acquisition of land for the purposes of the Adhiniyam the provisions of the L.A. Act, as applicable under the Adhiniyam, would be void on the ground of repugnance under Article 254 of the Constitution."

15. In view of the settled law on the subject by the aforesaid pronouncement by the Hon'ble Apex Court, we do not find any substance in the submission urged on behalf of the Parishad.

16. The next submission of the learned counsel appearing for the Parishad is that since issue of applicability of Section 28A of the Act, 1894 was not raised or considered in the case of Jainul Islam (supra) as the only issue therein was regarding applicability of Section 23 (1) (A) and 23 (2) of the Act, 1894, hence, the said decision is not applicable to the facts of the present case.

17. This argument is totally misconceived and has only been raised to be rejected. It is well settled that it is the ratio decidendi of a judgment, which is applicable. Hon''ble Apex Court, in no uncertain terms, has laid down in the case of Jainul Islam (supra) that amendment introduced in the Act, 1894 relating to determination and payment of compensation would be applicable to the acquisition for the purposes of Adhiniyam under Section 55 of the Adhiniyam. Section 28A undoubtedly relates to re-determination and payment of compensation on the basis of award by the Court in cases where the person interested has not made any application under Section 18 of the Act.

18. In view of the above facts and discussions, Writ Petition No. 15134 of 2017 filed by the Parishad laying a challenge to the order dated 08.11.2016 passed under Section 28A of the Act, 1894 has no legs to stand and the impugned order allowing the application made by the claimants under Section 28A of the Act, 1894 cannot be faulted with and, thus, the writ petition is liable to be dismissed.

19. As regards the grievance of the claimants raised in Writ Petition No. 13735 of 2017 is concerned, the application made by them under Section 28A has been allowed in view of the order passed in reference proceedings under Section 18 of the Act awarding higher compensation, which came to be affirmed by this Court by disposal of the first appeal filed by the Parishad. Thus, again no fault can be found in the order dated 08.11.2016 and the Parishad is under an obligation to comply with the same. In view of the above facts and discussions, Writ Petition No. 15134 of 2017 filed by the Parishad stands dismissed, whereas other Writ Petition No. 13735 of 2017 filed by the claimants stands allowed.

20. A mandamus is issued commanding the Parishad to deposit the amount of compensation along with other statutory benefits and interest pursuant to the order dated 08.11.2016 within a period of three months from today with the appropriate authority. A further direction is issued to the appropriate authority to release such amount in accordance with law to the claimants within a further period of three weeks from the date of making of the deposit by the Parishad.

21. However, in the facts and circumstances, we do not make any order as to costs.