
(1998) 12 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13083 of 1990

Nakchhed Singh (Dead) and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 5A

Citation : (1998) 12 AHC CK 0057

Hon'ble Judges : Binod Kumar Roy, J and R.K.Singh, J

Final Decision : Dismissed

Judgement

1. By filing the writ petition on 2451990 the 4 petitioners have come up with a prayer to quash the Notifications dated 20th June, 1981 under Section 4 of the Land Acquisition Act and 5th September, 1981 under Section 5(1) of the Land Acquisition Act respectively published in the U.P. Gazette acquiring their lands for construction of canal and the orders dated 2391986 and 331990 passed by the Special Land Acquisition Officer, Azamgarh (Respondent No.3). By the order dated 2391986 award (as contained in Annexure 5) was prepared though exparte. By the order dated 331990 (Annexure 7) the application filed by the petitioners to set aside order dated 2391986 was rejected holding that notice was refused to be accepted; that after non receipt of any objection, Award was made on 2391986, which was also filed under Section 12 of the Land Acquisition Act in the office of the Collector and had become final. The petitioners assert, inter alia, that they had no knowledge; that resort to emergent provision was arbitrary and unreasonable, and they they are still in pos session.

2. The Respondents in their Counter Affidavit, a copy of which was served on Mr. Misra on 28111990, had stated, inter alia, that action under Section 17 of the Act and other actions were taken and completed on 2391986; the award was also prepared; possession was also taken; land for construction of canal was urgently required; on account of taking time in the enquiry it cannot be said that the urgency has disappeared; for technical reasons also the lands in question were

found most appropriate for the construction of the canal which has already been completed and water is being supplied through canal; and the writ petition is liable to be dismissed.

3. No rejoinder to the counter affidavit was filed till 16th November, 1998 that is to say for about 8 years.

4. It was only on 17th November, 1998 a rejoinder has been filed to the counter affidavit sworn by substituted petitioner No. 1/1 asserting that the petitioners were never dispossessed and the" allegation made to the contrary in the counter are denied; the petitioners had no knowledge or information about the proceedings under the Land Acquisition Act relating to their lands in question till 28/9/1988; the award dated 23/8/1986 was made *ex parte* about which they had no knowledge till 28/9/1988; even to this day the Katargarh Distributory is not functional for a distance of about 15 kilometers away from village Dhianipur and water has not been supplied; there was no urgency and the enquiry under Section 5A of the Act could not be dispensed with; possession of the lands of the petitioners has not so far been taken by the Respondents; a Commission may kindly be issued to ascertain true facts and if the Respondents prove the facts then the petitioners will not press this writ petition.

5. Sri R.S. Misra, learned Counsel appearing in support of this writ petition, while placing reliance on a recent decision of the Supreme Court in *Om Prakash and another v. State of U.P. and others* 1998 JCLR 519(SC); J.T. 1998 (4) SC 601 contended that even though the Lands of the petitioners were sought to be acquired through the emergent provisions but as till today the petitioners are in possession of their lands and that no canal having been constructed for which the lands were sought to be acquired and the impugned orders were passed illegally and thus the prayers made in this writ petition are fit to be allowed.

6. Smt. Sarita Singh, learned standing Counsel on the other hand, contended that there is no merit in the arguments of Mr. Mishra. The facts have been correctly stated in the counter, which are now sought to be denied by the petitioner by filing a rejoinder after eight years by making self-serving statement, which be not accepted.

7. The solitary question before us is as to whether we should accept the correctness of the statements made in the counter, a copy of which was served on the petitioner on 28/11/1990, or in the writ petition, and the rejoinder, which has been filed after 8 years thereafter supported by the affidavit of Kalika Singh substituted petitioner No. 1/1 alone and not by any document.

8. Our answer is an obvious one (sic) From the impugned order dated 23/9/1986 it appears that notices under Section 9 were served on 29/9/1986 on refusal to accept them. Thus their plea that they learnt only on 28/9/1988 or on 28/9/1988 after inspection of the records is not acceptable. No reason whatsoever has been advanced as to why this rejoinder is being filed after a lapse of about 8 years. It has also not been stated as to why petitioner Nos. 1 to 4 had not filed their

rejoinder earlier and why at least Petitioner Nos. 2 to 4 has not come to swear the rejoinder. It has not been demonstrated in the rejoinder affidavit as to why the respondents will take recourse to falsehood in their counter. On going through the record we are inclined to accept the statements made in the counter affidavit.

9. Our country is by and large agriculture based. Construction of a canal is a very significant step for enriching our agricultural resources. Necessity of the lands of the petitioners for construction of the canal urgently should not be disbelieved in the absence of cogent materials before us and on belated selfserving statement of petitioner No. 1/1. It was not stated in the writ petition that no canal has been constructed though it has been stated that the lands are still in their possession. It is also significant to note that so long petitioner No. 1 was alive he or petitioner Nos. 2 to 4 never came up with the stand taken now in the rejoinder affidavit which also lends to support the submission of Mrs. Singh that the statement made in the rejoinder are incorrect and merely selfserving statements.

10. Initially the petitioners had denied to have any knowledge of the acquisition proceeding but hollowness of the stand exposed by the categorical statements made in the counter. We have also gone through the application filed by the petitioners for setting aside the order dated 23/9/1986, a copy of which they have brought on the record as Annexure 6. Nowhere therein they have asserted that they are still in possession of those lands. They assert that there is a devasthan which will be falling in the middle of the distributory and thus no local inspection was got made. No document was brought on the record by the petitioners at the time of hearing of their application before the authority. It has also not been stated whether the said devasthan is a pucca construction.

11. In the backdrop aforementioned the decision of the Supreme Court in Om Prakash strongly relied upon by Mr. Misra is of no help to him. We too would have given liberty for representation before the Government for exclusion of their lands still if really there are constructions on their lands bearing plot Nos. 3, 64, 124, and 138 of village Pakardiha but they are not sure as to on which plot there is a devasthan as claimed in paragraph 24 of the writ petition, which was strongly denied in paragraph 26 of the counter and no record has been brought to support this.

12. For the reasons aforementioned this writ petition is dismissed but in the peculiar facts and circumstances without there being any order as to cost.

13. The officer is directed to serve a copy of this order on Mrs. Singh by 23rd December, 1998.