
(2019) 05 UK CK 0312

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1100, 1890, 1954 Of 2007

Nakkal & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 40, 44B, 48(1)

Citation : (2019) 05 UK CK 0312

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : M.S. Tyagi, Bhupesh Kandpal, V. K. Kohli, Kanti Ram Sharma, Siddhartha Bankoti, Vipul Sharma

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, J

1. Since common question of law and facts are involved in these writ petitions, therefore, all the cases are being taken up together and are being adjudicated by this common judgment. However, for the sake of clarity, facts of WPMS No. 1100 of 2007.
2. The sole question, which falls for consideration in these writ petitions, is whether part of the acquired land, which remains unutilized, can be re-conveyed or re-assigned to the erstwhile owner.
3. According to the petitioners, in the year 1962 large parcel of land situate in villages Rawali Mahadood, Jamalpur, Roshnabad, Rinipur etc. in Haridwar Tehsil of District Saharanpur (now District Haridwar) was acquired under Land Acquisition Act, 1894 for setting up a unit of Bharat Heavy Electricals Ltd. (B.H.E.L. in short).
4. As per a document enclosed as Annexure CA-2 to the counter affidavit filed by respondent no. 5, possession of the acquired land was handed over to B.H.E.L. in

the year 1962 itself.

5. According to the petitioners, part of the land, which was acquired for B.H.E.L. remains unutilized, therefore petitioners as original tenure holders in respect of the surplus land were entitled for re-conveyance of the land subject to their depositing the amount of compensation received. By relying upon a letter dated 21.02.1971 issued by Joint Secretary, Industry Department, Government of U.P. to District Magistrate, Saharanpur, they made an application to the Special Land Acquisition Officer, Haridwar for returning the land to them. According to the petitioners in the year 2006, they also deposited the amount received as compensation in Government Treasury. The application for returning the land made by the petitioners has been rejected by Special Land Acquisition Officer vide orders dated 02.02.2007 on the ground that land once acquired for a public purpose cannot be returned back to the original tenure holders. Feeling aggrieved, by the order passed by Special Land Acquisition Officer, petitioners have filed these writ petitions.

6. It is the contention of learned counsel for the petitioners that State of U.P. had issued Government Order dated 21.02.1971, which provided that in case part of the acquired land is lying unutilized with B.H.E.L., then the previous owners, can get their land back by depositing the amount of compensation received by them. Learned counsel for the petitioners further submits that since petitioners are still in possession over the acquired land, therefore, State Government can withdraw from the acquisition under Section 48 (1) of Land Acquisition Act, 1894.

7. Per contra, Mr. V.K. Kohli, learned Senior Counsel appearing for B.H.E.L. referred to para 3(C) of the counter affidavit filed on behalf of B.H.E.L. and the Dhakhilnama enclosed as Annexure CA-2 to the said counter affidavit, in support of his contention that possession of the acquired land was delivered to B.H.E.L. on 17.03.1962.

8. In the writ petition, it has been pleaded that petitioners had requested the authorities for mutation of their names in place of B.H.E.L. in revenue records, which belies the contention made on behalf of the petitioners that they are still continuing in possession over the acquired land. It is thus, apparent that after acquisition, possession was delivered to B.H.E.L. and name of B.H.E.L. was also mutated in revenue records in place of the petitioners.

9. It is settled position in law that if a large chunk of land is acquired for public purpose, part of which remains unutilized, then such unutilized land cannot be returned back to the erstwhile owners and it can be used only for some other public purpose, as held by Hon'ble Supreme Court in the case of State of Kerala Vs. M. Bhaskaran Pillai, reported in (1997) 5 SCC 432. It was further held by Hon'ble Supreme Court in the said judgment that if there is no other public purpose for which land is needed, then instead of disposal by way sale to the erstwhile owner, the land should be put to public auction and the amount fetched in public auction can be better utilized for the public purpose envisaged in the

Directive Principles of the Constitution. Paragraph no. 4 of the said judgment is extracted below:-

"4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

10. Similar view was expressed by Hon'ble Supreme Court in the case of C. Padma and others Vs. Dy. Secretary to the Govt. of T.N. and others, reported in (1997) 2 SCC 627. Paragraph no. 5 of the said judgment is extracted below:

"5. Shri G. Ramaswamy, learned senior counsel appearing for the appellants, contends that when by operation of Section 44-B read with Section 40 of the Act, the public purpose ceased to be existing, the acquisition became bad and therefore, the G.O. was bad in law. We find no force in the contention. It is seen that after the notification in G.O.R. 1392 dated October 17, 1962 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State. In terms of the agreement as contemplated in Chapter VII of the Act, the company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd., 5th respondent which is also a subsidiary amalgamated company of the original company. Therefore, the public purpose for which acquisition was made was substituted for another public purpose. Moreover, the question stood final settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that either original purpose was not public purpose or the land cannot be used for any other purpose."

11. Similar view was expressed by Hon'ble Supreme Court in the case of Mahadeo v. State of U.P. reported in (2013) 4 SCC 524. Paragraph no. 16 of the said judgment is extracted below:-

"16. Indisputably, the land in question was acquired by the State Government for the purpose of expansion of the city i.e. construction of residential/commercial building under the planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilised by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the landowners. The impugned orders passed by the High Court directing the Authority to press the resolution are absolutely unwarranted in law."

12. Similar view has been taken by a Co-ordinate Bench of this Court, in its judgment dated 05.11.2008, passed in Writ Petition (M/S) No. 1047 of 2008. Paragraph no. 3 of the said judgment is extracted below:

"3) Brief facts of the case are that the land including that of the petitioner was acquired by the State way back in the year 1961-1962, for establishing a Public Sector Undertaking - Bharat Heavy Electricals Limited. The land acquired was handed over to said Organization. The compensation also appears to have been paid to the petitioner. Now, after 40 years, the petitioner wants his land be returned, as the same remained unutilized. In view of the principle of law laid down in C. Padam Vs. Deputy Secretary to the Government of Tamil Nadu (4997) 2 Supreme Court Cases 627, wherein it is held that after the compensation has been paid and possession has been taken over by the Government, the land of the claimant cannot be returned back to him. This Court does not find any error of law committed by the Special Land Acquisition Officer in rejecting the representation of the petitioner, which he made on 08.03.2007."

13. The Co-ordinate Bench of this Court has also taken the similar view, in its judgment dated 28.05.2015, passed in Writ Petition (M/S) No. 244 of 2009. Paragraph no. 7 of the said judgment is extracted below:

"7) It has further been held by the co-ordinate bench of this Court in Bashir Ahmed and others vs State of Uttarakhand and others, 2013 (2) U.D. 168, that the land once acquired vests in the acquiring authority free from all encumbrances and the erstwhile owners of the land whose land was so acquired cannot approach the court of law for re-conveyance of the said land in any manner. The erstwhile owners cannot claim for the reassignment of the excess land as a matter of right. The only option that they have is to take part in the public auction, if the acquiring authority decides to dispose of the excess land in that manner."

14. This being the legal position, the application made by the petitioners was misconceived and Special Land Acquisition Officer, Haridwar rightly rejected the same vide order dated 02.02.2007.

15. In such view of the matter, there is no scope for interference with the order passed by Special Land Acquisition Officer. Accordingly, the writ petitions fail and are dismissed.