

(2003) 09 AHC CK 0152

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16228 of 1992

Naseeb Ahmad (Minor) and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 114, 45

Land Acquisition Act, 1894 — Section 11, 17, 17(1A), 4, 5A

Citation : (2003) 09 AHC CK 0152

Hon'ble Judges : B.S.Chauhan, J and D.P.Gupta, J

Judgement

Dr. B.S. Chauhan, J.—This writ petition has been filed for restraining the respondents from interfering with the peaceful possession of the petitioners over the land in dispute, which had been subject matter of the land acquisition proceedings and declare that the said proceedings stood lapsed.

2. Facts and circumstances giving rise to this case are that the respondents issued a notification under Section 4 of the Land Acquisition Act, 1894, hereinafter called "the Act", and the same was published on 6.6.1983 in the U.P. Gazette, in respect of 3621214 bighas comprising in revenue estate of 23 villages. It included the land of the petitioner No. 4 consisting of Khasra No. 4 measuring 1 bighas 10 biswas. Declaration under Section 6 of the Act was published in respect of the said entire land on 16.6.1983 along with a notification under Sections 17 and 17(1A) of the Act. Thus, the provisions of Section 5A of the Act were dispensed with. On 2.4.1985, the possession of the most of land had been taken but certain plots were left out. The award was made on 22.9.1986 but it was not in respect of Khasra No. 4, i.e., land in dispute. However, on the said date, supplementary award was made in respect of the left out plots including the land of petitioner No. 4. The writ petition has been filed challenging the said supplementary award on the ground that by virtue of the amendment in Act, which came into force on 24.9.1984, the award could be made only up to 23.9.1986 and not at subsequent stage, as it would lapse by

virtue of the provisions of Section 11 A of the Act and the supplementary award was made subsequently, though purported to have been made on 22.9.1986 and it is not the real and genuine award. Signature of the then Special Land Acquisition Officer have been forged.

3. We have heard Shri D.V. Jaiswal, learned Counsel for the petitioners; Shri C.K. Rai, learned Standing Counsel for the State and Shri Ashok Mohiley, learned Counsel for other respondents.

4. It has been submitted by the learned Counsel for the petitioners that the petitioner's land had not been include in the main award made on 22.9.1986. Thus, there was no occasion for the respondents to make the supplementary award on the same day for the left out lands. The supplementary award is definitely an antedated document and. thus, is liable to be quashed and as there was no award in fact within a period of two years from the date of commencement of the Amendment Act, the proceedings stood lapsed.

5. On the contrary, it has been submitted by the learned Counsel for the respondents that the award was made in 1986. the writ petition has been filed in 1992. i.e. after expiry of more than 16 years of the said award. Petitioners No. 1, 2 and 3 are the purchaser of the land by agreement to sell without any registered sale deed in their favour dated 11.2.1987 which is not only subsequent to Section 4 notification but also after making of the supplementary award. Petitioner Nos. 1 to 3 claim that they had paid the entire consideration to the petitioner No. 4. The agreement to sell itself is void. More so, the agreement to sell does not confer any title on them. If the petitioner No. 4 has taken the entire amount and had no interest in the property, the petition itself is not maintainable at his behest. The possession of the land has been taken from the petitioner No. 4 on 5.12.1986, therefore, the petitioner No. 4 did not possess any title to transfer to the petitioner Nos. 1, 2 and 3 for the reason that once the land vested in the State by virtue of the provisions of Section 16 of the Act, it cannot be divested. The total land acquired measured 3621214 bighas. Petitioner No. 4 claims to own only 1 bigha 10 biswas. Land acquisition proceedings cannot be challenged by any means on any ground by him as it would hamper the entire purpose for which the land had been acquired. The allegations that the supplementary award is antedated and forged document, is false, as the petitioner has not produced any evidence to that effect. More so, supplementary award was given in respect of large area of land belonging to large number of land owners. Had it been so, other persons could also have challenged the proceedings. As everybody was satisfied, the issue is not worth examining at the behest of the petitioners alone having such a small area, that too, after by executing agreement to sell by petitioner No. 4 in favour of petitioners No. 1, 2 and 3. As the agreement is in contravention of the public policy, it is void and docs not have any sanctity. Thus, the petition is liable to be dismissed.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

7. Admitted position remains that in the main award made on 22.9.1986, petitioners' land was not included. However, in the supplementary award, several lands owned by large number of persons were included. It was in respect of the petitioners' land also. Other persons have not challenged the proceedings. Petitioner No. 4 owns a small part of land, i.e. 1 bigha 10 biswas and claims to have executed an agreement to sell subsequent to the date of award in 1987 in favour of the petitioners No. 1, 2 and 3 and no explanation has been furnished by the petitioners as why the writ petition has been filed after expiry of more than 6 years from the date of award.

8. When a person challenges Section 4 Notification on any ground, it should be challenged within reasonable period and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count, as explained by the Hon'ble Supreme Court in the case of Hari Singh and others v. State of U.P., AIR 1984 SC 1020, wherein it has been held that where a large area of land is acquired and the plots, which are subject to acquisition, belong to large number of persons, if other persons have not challenged the acquisition proceedings, it is difficult to believe that appellant was not aware of the initiation of the acquisition proceedings as the acquisition of the said land would be the talk of the town in a short time and if the person interested failed to approach the Writ Court within reasonable period, the petition should fail only on the ground of delay.

9. A Constitution Bench of the Hon'ble Supreme Court, in Aflatoon and others v. Lt. Governor, Delhi and others, AIR 1974 SC 2077, has observed as under:

".....to have sat in" fence and allowed the Government to complete the acquisition on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioner."

10. Same view has been taken by the Hon'ble Supreme Court in state of Mysore v. V.K. Kangan, AIR 1975 SC 2190, wherein it was observed that respondent was not entitled to challenge the validity of Section 4 notification after an unreasonable lapse of time. If public notice, as required by Section 4 of the Act, was not given and that would per se vitiate the notification under Section 4, the person interested should have challenged its validity within a reasonable time of the publication of the notification under Section 4 of the Act.

11. The issue of delay in filing the writ petition was considered by the Hon'ble Apex Court in Smt. Sudama Devi v. Commissioner and others, (1983) 2 SCC 1, wherein the Apex Court has observed as under :

"There is no period of limitation prescribed by any law for filing the writ petition under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and

beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or by practice. For every case, it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner."

12. In *State of Tamil Nadu v. L. Khshnan*, AIR 1996 SC 497, the Apex Court held that "the delay in challenging the notification was fatal and the writ petitions were liable to be dismissed on the ground of laches only" and exercise of power under Article 226, after the award had been made, was held to be unjustified.

13. Similarly, in *State of Maharashtra v. Digambar*, AIR 1995 SC 1991; and *State of Orissa v. Dhobei Sethi and another*, (1995) 5 SCC 583, the Apex Court held that if the land acquisition proceedings stood finalised, interference by the Writ Court, quashing notification and declaration under Sections 4 and 6 respectively, was unwarranted and uncalled for. Exercise of jurisdiction in such a case cannot be said to be judicious and reasonable.

14. Similar view has been reiterated in *Girdharan Prasad Missir v. State of Bihar* (1980) 2 SCC 83; *H.D. Vora v. State of Maharashtra*, AIR 1984 SC 866; *Ram ("hand v. Union of India*, (1994) 1 SCC 44; *Bhoop Singh v. Union of India*, AIR 1992 SC 1414, and *C. Padma v. Deputy Secretary to Govt. of Tamil Nadu*, (199?) 2 SCC 627.

15. In *Municipal Corporation of Greater Bombay v. I.D.I. Co. (Pvt.) Ltd.*, AIR 1997 SC 482 the Hon"ble Supreme Court observed as under

"If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vest in the State free from all in cumbrances, the slumbered interested person would be told off the gates of the Court that his grievance should not be entertained when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary power under Article 226 of the Constitution to quash the notification under Section 4(1) and Declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not exercise its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference."

16. Similar view has been reiterated in *State of Rajastkcin and others v. D.R. Laxmi and others*. (1996) 6 SCC 445, wherein the Apex Court has held that even the void proceedings need not be set at naught if the party has not approached the Court within reasonable time, as judicial review is not permissible at a

belated stage.

17. In *Hindustan Petroleum Corporation v. Dolly Das*. (1994) 4 SCC 450, the Apex Court held as under:

"So far as the contention regarding laches of the respondents in filing the writ petition is concerned, delay, by itself, may not defeat the claim for relief unless the position of payment had been so altered which cannot be retraced on account of lapse of time or inaction of the other party. This aspect, being dependant upon the examination of the facts of the case and such a contention not having been raised before the High Court, it would not be appropriate to allow the appellants to raise such a contention for the first time before us. Besides, where the mode is that the period for which the option of renewal has been exercised, has not come to an end. During the subsistence of such a period, certainly the respondents could make a complaint that such exercise of option was not available to the appellants and, therefore, the jurisdiction of the High Court could be invoked even at a later stage. Further, the appellants are not put to undue hardship in any manner by reason of this delay in approaching the High Court for a relief."

18. In view of the above, as the petitioner has not approached the Court within reasonable time and allowed the completion of the acquisition proceedings, the petition is liable to be rejected only on the ground of delay.

19. In *State of U.P. v. Smt. Pista Devi*. AIR 1986 SC 2025, the Hon''ble Apex Court has observed that where a large track of land is acquired and the land belong to large number of persons, challenging the entire acquisition at the instance of one or few persons should not be entertained, as it would hamper the development of the entire land and purpose, for which the land is sought to be acquired, would stood frustrated at the behest of few persons though the other affected persons have accepted the acquisition proceedings and accepted the award etc.

20. In the instant case, the total land acquisition is 3621214 bighas and petitioner No. 4 had an area only to the extent of 1 bighas 10 biswas. This is negligible considering the total area acquired. Thus, the petition is liable to be dismissed on the ground that the acquisition proceedings could not be quashed at the behest of a person having such a small fraction of land unless there are compelling circumstances to do so.

21. In *State of Tamil Nadu and another v. Mahalakshmi Ammal and others*, AIR 1996 SC 866, the Supreme Court held that possession of the acquired land is to be taken only by way of memorandum/Panchnama, which is a legally accepted norm and it may not be possible for the party to take actual physical possession. Therefore, subsequent continuation, if any, held by the which owner is only illegal and unlawful possession which docs not bind the Government, nor vested under Section 16, divested in the illegal occupant.

22. In *Satendra Prasad Jain v. State of U.P. and others*, AIR 1993 SC 2517, the Hon'ble Supreme Court held that once land vests in the State free from all incumbrances, it cannot be divested or retested and proceedings under the Act would not lapse even if award is not made within the statutory period. Only relief which landowner can claim to have compensation for the land. The same view has been reiterated in *Awadh Behari Yadav v. State of Bihar and others*, (1995) 6 SCC 31; *UP. Jal Nigam v. Kalra Properties (P) Ltd.*, AIR 1996 SC 1170; *Allahabad Development Authority v. Nasiruzzaman and others*, JT 1996(8) SC 429; and *Niladri Narayan Chandradhurja v. State of West Bengal and others*, AIR 2002 SC 2532.

23. In view of the above, there may be some substance in legal submissions on behalf of the respondents in this respect, but in the fact situation of this case, no help can be taken from it, as the respondents in their counter affidavit have stated that they had taken the possession on 5.12.1986, i.e., after making of the supplementary award. But we failed to understand how either of the petitioner's can claim to be in possession of the land after 5.12.1986.

24. Petitioners No. 1, 2 and 3 are the persons claiming to have executed an agreement to sell with petitioner No. 4 subsequent to not only Section 4 notification but after the date of award. It is settled legal proposition that any person who purchases land after Section 4 notification, does not have a right to maintain a writ challenging the acquisition proceedings.

25. In *Pandit Leela Ram v. Union of India*, AIR 1975 SC 2112, the Apex Court has held that any one who deals with the land subsequent to Section 4 notification, would do so at his own peril. In *Sneh Prabha v. State of Uttar Pradesh*, AIR 1999 SC 540, the Apex Court held that Section 4 notification gives a notice to the public that the land is needed for public purpose and it further points out "an impediment to any one to encumber the land acquired there under".

26. Similarly, in *U.P. Jal Nigam v. M/s. Kalra Properties Pvt. Ltd.* (supra), the Hon'ble Supreme Court held that purchase after publication of Section 4 notification is void against the State and at the most the purchaser may be a "person" interested in compensation since he steps into the shoes of the erstwhile owner and may merely claim compensation.

27. However, in subsequent judgment in *Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur*, (1996) 11 SCC 299, the Apex Court, though not decided the issue finally, expressed a doubt on the maintainability of reference under Section 18 by the subsequent purchaser.

28. In *Ajay Kishan Singhal v. Union of India*, AIR 1996 SC 2677 and *Galaxy Merchandises Ltd. v. State of Haryana*, (1997) 11 SCC 427, the Hon'ble Apex Court has categorically held that a person who purchase the land after publication of Section 4 notification, is not entitled to challenge the proceedings.

29. Thus, in view of the above, it can be held that the petitioners No. 1, 2 and 3

haveno right to maintain a writ as they cannot be put on a pedestrian higher than that of a gambler who had purchased nothing but litigation and if they claim that they had paid the entire consideration, the petitioner No. 4 has no interest in the property and the petition cannot be entertained at the behest of such persons.

30. So far as the allegations of antedated award is concerned, there is a presumption under Section 114, Illustration (e) of the Evidence Act, 1872 that all actions of the State have been performed in accordance with law prescribed therein.

31. A Constitution Bench of the Hon''ble Supreme Court in Gopal Narain v. State of U.P. and others, AIR 1964 SC 370, held that there is a presumption when a statutory authority makes an order, that it has followed the prescribed procedure and such a presumption can only be rebutted by adducing appropriate evidence. However, the party, which makes an allegation that the act has not regularly been performed, the onus to prove lies upon him that the proper procedure has not been followed or the act has not been performed as was required under the law.

32. In Maharaja Pratap Bahadur Singh v. Thakur Man Mohan Dey and others, AIR 1966 SC 1931, the Hon''ble Supreme Court considered the scope of illustrations (e) of Section 114 of the Evidence Act and the question was: whether the Deputy Commissioner, who performed the particular function, had even been authorised to act. The Court held that if an official act is proved to have been done, it will be presumed to have been regularly done and in such an eventuality and circumstances, the Court can reasonably presume that the Deputy Commissioner, under appropriate rules, was duly authorised to act on behalf of the Authority concerned

33. Another Constitution Bench of the Hon''ble Supreme Court, in Ajit Singh v. State of Punjab and others, AIR 1967 SC 856, considered the case where the issue had been raised that the Consolidation Officer had never been appointed to perform the function of the said office and the order of his appointment had never been produced. The Hon''ble Court held that such an objection can hardly be entertained in the fact of presumption under Section 114 of the Indian Evidence Act and, thus, it was observed that the officers should have acted under due authorization.

34. A Constitution Bench of the Hon''ble Supreme Court, in State of Punjab v. Satya Pal Dang and others, AIR 1969 SC 903, dealt with the prorogation issued by the Governor. The Court observed as under:

"We are bound to take judicial notice of the prorogation and presume the regularity of these actions which must be interpreted as far as possible so that the things done may be valid rather than invalid."

35. In Narayan Govind Gavate v. State of Maharashtra and others, AIR 1977 SC

183, the Hon"ble Supreme Court observed that presumption provided in illustrator (e) of Section 114 of then Evidence Act is based on wellknown maxim of law "omnia praesumuntur rite estate" (i.e. all acts are presumed to have been rightly and regularly done). The Court further held that this presumption is, however, one of the fact. It is an optional presumption and can be displaced by the circumstances, indicating that the power lodged in an authority or official has not been exercised in accordance with law.

36. Similar view has been reiterated in Jhaman Lal v. State of Rajasthan and others, AIR 1965 Raj. 86; Ganga Ram v. Smt. Phulwati, AIR 1970 All. 446; Saheed Ahmed v. Syed Qurar Alt and another, AIR 1973 All. 23; Somasudarshan Gaud v. The District Collector, Hyderabad and another, AIR 1978 AP 420; Sone Lal and others, v. State of U.P. and others, AIR 1978 SC 1142; Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd. and others, AIR 1999 SC 264; K. Bhaskaran v. Sankaran Vaidhyan Balan and another, (1999) 7 SCC 510; The State Government of NCT Delhi v. Sunil and another, (2001) 1 SCC 652; Kiran Gupta v. State of U.P. and others, (2000) 7 SCC 719; and Superintendent, Narcotics Control Bureau v. R. Paulsamy, (2000) 9 SCC 549.

37. Thus, it is clear that in law there is a presumption that official Acts have regularly been performed and such presumption can be rebutted only by adding evidence. A mere bald denial of such a performance is not sufficient to rebut the said presumption. In the instant case respondents have not produced any evidence on the basis of which such a presumption can be held to have stood rebutted.

38. In the instant case, petitioners could not make any attempt to rebut the presumption that the supplementary award had been made in a regular course and is an antedated document. Shri Jaiswal has halfheartedly made the suggestion that the supplementary" award is not only antedated but the signatures of the then Land Acquisition Officer has been forged by someone else. However, petition is pending for more than 11 years, no application had ever been filed by the petitioners to send the signatures for comparison to the handwriting expert, as was permissible for them by virtue of the provisions of Section 45 of the Evidence Act. We have ourselves compared the signatures of the award and supplementary award, but it docs not appear to be a forged signature of the Special Land Acquisition Officer. Such a disputed question of fact cannot be examined at such a belated stage on merely bald allegations as held by Hon"ble Supreme Court in Hah Singh (supra).

39. Thus, in view of the above, as the petitioners miserably failed to lead any evidence in rebuttal, we are not inclined to examine the issue further. It is quite possible that in the main Award the lands, possession of which could not be taken up. were not included, but after making of the same, it was considered desirable to make award in respect of those lands also. There is nothing on record to show that either of those persons whose lands were covered by the supplementary award, had ever challenged the proceedings.

40. To sum up, the land acquisition proceedings have been challenged after six years of the making of award. The petitioners are basically purchasers of the land through agreement to sell after the award, which is not permissible in law. The land involved has a very small area, i.e. negligible, considering the total area by the said proceedings and once the land had vested in the State free from in cumbrances, it cannot be divested.

41. Thus, in view of the above, petition lacks merit and failed. It is dismissed accordingly. No order as to costs. Original record of the case called for by this Court earlier be returned to Sri Ashok Mohiley, learned Counsel for the respondents.