(1996) 01 AHC CK 0123

In the Allahabad High Court

Case No : C.M.W.P. No. 30168 of 1995

Prayag Up Niveshan Awas Evam Nirman Sahkari Samiti — APPELLANT

Vs

Special Land Acquisition Officer and Others — RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 13A, 13A(1), 18, 18(1), 18(3)
Revenue Recovery Act, 1890 — Section 2(3), 3

Citation : (1996) 01 AHC CK 0123

Hon'ble Judges : T.P. Garg, J;R. Dayal, J

Bench : Division Bench

Advocate : Janardan Sahai and Brijesh Shukla, for the Appellant; S.C. and A. Kumar, for the Respondent

Final Decision : Allowed

Judgement

R. Dayal and T.P. Garg, JJ.—Plot No. 790 Pura Surdas, Jhunsi, Allahabad, belongs to Mangall Prasad Malviya, Smt. Shall Kumarl Malviya and Rabi Narain Malviya, who have been impleaded as Respondents No. 3 to 5. This plot of land was acquired by the State Government and a sum of Rs. 3,74,205.51 P. was awarded as compensation, vide award dated 17.1.1991. However, the Petitioner, which is a Co-operative Society, had agreed to purchase the said land by a registered agreement dated 18.4.1988. In pursuance of that agreement a sale deed dated 16.10.1990 was executed by Respondents No. 3 to 5, but the same was not registered and was Impounded by the Collector. Though the award has been made In favour of Respondents No. 3 to 5, the payment was made to the Petitioner on some consent letter allegedly executed by Respondents No. 3 to 5, vide cheque dated 2.6.1992 which was encased by the Petitioner on 3.6.1992. On 10.6.92 Respondent No. 3 made an application before the Special Land Acquisition Officer, who has been impleaded as Respondent No. 1, alleging that the Petitioner had received the payment on the basis of forged consent letter. The Special Land Acquisition Officer in his order dated 23.8.1994 (Annexure VI to the petition) observed that the Petitioner had received the amount of compensation without disclosing full facts on the basis of consent letter which was of doubtful character and, therefore, it was necessary to take steps for the recovery of the amount which had been paid to the Petitioner or to lodge F.I.R. against the Petitioner. This letter was followed by letter dated 27.4.1995 (Annexure ''VII'' to the petition) from the Collector, Allahabad to S.D.M., Chail wherein it has been stated that the amount was recoverable under the provisions of the Revenue Recovery Act, 1890 as if it was an arrear of land revenue and he was directed to recover the said amount. This was followed by a citation order Issued by the Tehsildar dated 1.8.1995 (Annexure ''VIII'' to the petition).

2. We have heard Sri Janardan Sahai, learned Counsel for the Petitioner, Sri A. Kumar, learned Counsel for Respondents No. 3 to 5 and the learned Standing Counsel on behalf of Respondents No. 1 and 2.

3. The learned Counsel for the Petitioner submits that since Respondents No. 3 to 5 had executed a registered agreement of sale which was subsequently followed by a sale deed, the Petitioner was interested in the award of compensation and once the amount was given to the Petitioner, the Special Land Acquisition Officer had no Jurisdiction to recover the amount. He has further submitted that the earlier order by which the Petitioner had been given the amount was based on a genuine consent letter given by Respondents No. 3 to 5 and if those Respondents wanted to challenge the veracity of that letter, they should have approached the civil court or the Special Land Acquisition Officer should have come to a definite finding in that matter before making the order of refund from the society. He has further submitted that the amount could not be taken back from the Petitioner as arrears of land revenue and the proceedings of recovery as arrears of land revenue are without jurisdiction.

4. On the other hand, it is submitted on behalf of the Respondents that the amount is recoverable under the Revenue Recovery Act, 1890 as arrears of land revenue in view of Section 13A of the Land Acquisition Act, 1894.

5. Section 3 of the Revenue Recovery Act, 1890 stipulates recovery of the amount under the Act where an arrear of land revenue or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter. ''Defaulter'' is defined u/s 2(3) as meaning a person from whom an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum. It is apparent that for the applicability of the Revenue Recovery Act, it is essential that the person from whom the amount is due either as arrear of land revenue or a sum recoverable as arrear of land revenue. Learned Counsel for the Respondents has submitted that the amount is recoverable as an arrear of land revenue u/s 13A of the Land Acquisition Act. Sub-section (1) of Section 13A provides that the Collector may, at any time but not later than six months from the date of the award, or where he has been required u/s 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own

motion or on the application of any person interested or a local authority. Sub-section (3) of that section provides that where any excess amount is proved to have been paid to any person as a result of the correction made under Sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue. It is thus clear that only such amount is recoverable as arrear of land revenue as is found to be an excess amount as a result of the correction of any clerical or arithmetical mistake in the award. The amount which is sought to be recovered in the instant case cannot be said to be as being the amount which has become recoverable as excess amount due to correction of the award on account of any clerical or arithmetical error. As such, we are of the view that the amount in question is not recoverable as arrears of land revenue under the provisions of the Revenue Recovery Act, 1890. In view of this finding, we do not consider it necessary to discuss the other points raised on behalf of the Petitioner.

6. In the result, the writ petition is allowed and the Impugned notifications (Annexures ''VII'' and ''VIII'' to the petition) are quashed. It is, however, made clear that this decision will not, in any manner, prejudice the right of Respondents No. 1 and 2 to recover the amount in question in accordance with law. There is no order as to costs.