
(2004) 04 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8070 of 2002

Prem Chand Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 11, 23(1A), 23(2), 4, 6

Citation : (2004) 04 AHC CK 0005

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Katju, J.—Heard counsel for the parties.

2, It appears that the possession of the Petitioners' land being Khasra No. 288, 248, 223 and 292 situated in village Raghunathpur, Tehsil Phoolpur, district Allahabad was taken over by the Respondent in the year 1986 but as yet no compensation has been paid for the same. Also no notification under Sections 4 and 6 of the Land Acquisition Act has been issued in respect of the same. No notification under the provisions of the U.P. Rural Development (Requisition of Land) Act, 1948 has been placed before us.

Article 300A of the Constitution of India states:

No person shall be deprived of his property save by authority of law.

3. In our opinion the word "law" under Article 300-A means statutory law and not a mere Government order. Therefore, Article 300-A means that no body's property can be even touched except in accordance with some procedure of a statute. It appears to us that the Petitioners' land was forcibly occupied by the Respondent-authorities without following the procedure of the Land Acquisition or any other statute. All that has been stated in para 9 of the counter affidavit is that the possession of the Petitioner's land has been taken to build canal and

proceeding for determination of compensation is being done.

4. In case after case which is coming up before us it has come to our knowledge that the land or other property of the citizens has been taken over by the State without following the procedure prescribed under the Land Acquisition Act or any other Act. In our opinion this is wholly illegal being violative of Article 300-A of the Constitution. The State is expected to act in an exemplary manner and should set a standard of exemplary behavior for others, but in these cases which have come up before us, the State has behaved like an outlaw and, has illegally grabbed the property of citizens without following the procedure of the law. If this trend is permitted it will lead to collapse of the rule of law in our country. The time has come when these illegal activities of the State must be checked and it is the duty Of the Court to do this, otherwise the Court will be failing to discharge its duty under the Constitution. No doubt some times, some land may be" required for some public purpose, and the State has power to acquire or requisition under its power of eminent domain, but this must be done in accordance with a statute. In all these cases which have dome before us, we find that the land has not been taken over 18 years ago without following any statutory procedure or paying compensation. It may be mentioned here that the question of payment of compensation arises, when the land is acquired after issuing notification under Sections 4 and 6 etc. of the Land Acquisition and thereafter the award is passed u/s 11 and compensation is paid after determining the market value in accordance with the legal procedure e.g. considering some exemplars etc. and paynig solatium, interest, etc. as mentioned in |he aforesaid Act. There is no question of compensation when the land is taken without following procedure of law. When such illegality is committed, ordinarily the Court is under duty to restore the possession to the owner and grant exemplary costs against on the State for its illegal acts. In the present case, 18 years have expired and the Petitioners have been made to run hither and thither without receiving any compensation. The law has been totally violated and in fact no statutory provision has been followed before taking over possession of the Petitioners" land. No citizen can feel safe is such acts are allowed.

5. This writ petition is allowed. The Respondents are directed to restore the possession of the land of the Petitioners to them forthwith. If the Respondents do not restore the possession to the Petitioner then full compensation as per the Land Acquisition Act must be paid to the Petitioners within six months from today and this will be determined by the District Judge, Allahabad within four months from today. This compensation will include the full market value, additional solatium u/s 23(1A), Solatium u/s 23 (2), as well as interest at the rate of 15% from the date the possession was taken over till the date of its actual payment. The Respondents must also pay damages/cost to the Petitioners for depriving them of their land for 18 long years and they must also pay exemplary costs. In addition to above amounts, the Respondents must pay to the Petitioners Rs. 2 lacs as exemplary costs which shall be distributed to each of the Petitioners in

accordance with the area of their land, which was taken over by the Respondents.