

(1983) 04 AHC CK 0014
In the Allahabad High Court
Case No : Writ Petition No. 5494 of 1982

Rajaram and Others

APPELLANT

Vs

U.P. State and Others

RESPONDENT

Date of Decision : 05-04-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 5(A), 6
Transfer of Property Act, 1882 — Section 52

Citation : (1983) 04 AHC CK 0014

Hon'ble Judges : R.C. Deo Sharma, J;K.N. Goyal, J

Bench : Division Bench

Advocate : Mustaq Ahmad Siddiqui, for the Appellant;

Judgement

1. We have heard the learned Counsel for the Petitioner at some length. The brief facts of the case are as follows:

The land in question was originally sought to be requisitioned under the U.P. Rural Development (Requisitioning of Land) Act, 1948. This was done in April, 1979. The Petitioner along with some other persons challenged the notification in a civil suit. The suit was originally dismissed by the trial Court but was decreed on appeal on 27-11-1981 vide Annexure-5 to the petition, on the ground that the requisitioning had not been done by the competent authority. Even during the pendency of the suit notification Under Sections 4 and 6 of the Land Acquisition Act read with Section 17 of that Act were issued by the State. Those notifications were challenged in a writ petition No. 882 of 1981. The Petitioners other than Petitioner No. 3 were also parties in that writ petition originally but they withdrew from the writ petition before that writ petition was disposed of. Ultimately that writ petition was dismissed by another Bench of this Court on 5-4-1982 on the ground that there was no merit. Only Petitioner No. 3 was not a party even originally in that writ petition. According to the Petitioners the officials of the opposite parties went on the spot to take possession only on 20-10-1982. Aggrieved thereby this writ petition has been filed in November, 1982.

2. The learned Counsel for the Petitioners has urged with great force that the notifications Under Sections 4 and 6 of the Land Acquisition Act read with Section 17 that were bad because the delay in publication of Gazette Notifications itself showed that the Government was not treating the matter to be urgent and as such there was no justification for denying the land owners opportunity to file objections u/s 5A of the Land Acquisition Act. Another point urged is that the same purpose could have been achieved by having the land reserved for public purposes under the U.P. Consolidation of Holdings Act. That alternative, it is urged would have been more beneficial to the villagers.

3. We do not consider it necessary to go into merits of these contentions. What is more important is that the Petitioners were well aware of these notifications and had originally joined in the challenge to the notifications in writ petition No. 882 of 1981. It cannot, therefore, be said that they were not aware of the notifications earlier and they knew about the same only when the officials of the opposite parties took actual possession on 20-10-1982. Thus the writ petition is barred by laches.

4. Another point urged was that Section 52 of the Transfer of Property Act vitiated the impugned notifications because these notifications were issued during the pendency of the civil suit. We are unable to agree with this submission. Section 52 of the Transfer of Property Act applies only to voluntary transfers. This section does not apply to acquisition by the State in exercise of its statutory powers.

5. Lastly it has been urged by the learned Counsel for the Petitioners that so far as Petitioner No. 3 is concerned he was Bhumidhar of plot No. 368 which was not included in the notifications. It is obvious that if any land is not included in the notification for the purposes of acquisition then the authorities have no right to physically acquire the same land. Thus the authorities will not take possession over the plot of Petitioner No. 3 i.e. plot No. 368.

6. Accordingly the writ petition is dismissed. It is, however, made clear that the opposite parties shall not dispossess Petitioner No. 3 from plot No. 368 which was not included in the impugned notifications.