
(2008) 08 AHC CK 0253

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39512 of 2008

Rajiv Jain and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 17, 48

Citation : (2008) 08 AHC CK 0253

Hon'ble Judges : Janardan Sahai, J and Rakesh Sharma, J

Final Decision : Dismissed

Judgement

1. The State Government issued a notification dated 18.12.2001, under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") that the land of the petitioners in dispute in this petition was needed for a public purpose, namely, for planned industrial development. A copy of the notification has been annexed as Annexure1 to the writ petition, which indicates that the powers of Section 17(4) of the Act had been invoked. This notification was followed by a notification dated 31.1.2002, under Section 6 of the Act read with Section 17(1) of the Act. The possession of the land was taken on 14.3.2002 and this fact is not disputed by the petitioners. The award of compensation was made on 24.9.2005.

2. The petitioners have filed the present writ petition for a direction declaring the proceedings initiated in pursuance of the notification dated 18.12.2001, under Section 4 of the Act and the notification dated 31.1.2002, under Section 6 of the Act as having lapsed in view of the provisions of Section 11 A of the Act.

3. It is submitted by Sri V.B. Upadhyay, learned Senior Counsel, who appeared for the petitioners, that in this case the Explanation to Section 11 A is not applicable inasmuch as there was no order of the Court staying the proceedings and consequently the provisions of Section 11A of the Act will directly apply and under the said provision as the award was not made within the period of two years from the date of issuance of the notification under Section 6 of the Act, the

proceedings for acquisition of the land have lapsed.

4. In support of his contention, reliance has been placed by the learned counsel upon a decision of the Apex Court in the case of Yusuf bhai Noormohmed Nendoliya v. State of Gujarat and another, (1991)4 SCC 531.

5. That was a case in which the correctness of the views of the Kerala High Court interpreting the provisions of the Explanation to Section 11A of the Act was considered by the Apex Court. The Kerala High Court had taken a view that the Explanation contemplates only of a stay order in which the proceedings preceding the award for the payment of compensation are stayed. What the Explanation excludes, according to the Kerala High Court, is the "period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court". "Action or proceeding to be taken in pursuance of the said declaration" should be the action or proceeding under Sections 7, 8, 9 and 10 of the Act or under Section 17(1) of the Act. The Apex Court overruled the said decision of the Kerala High Court and held that the Explanation would be applicable also in cases where the stay order delays the making of the Award or taking possession of the land acquired. The Paragraphs upon which the petitioner's counsel relied are Paragraphs 7 and 8 of the said decision. Paragraph 8 of the said decision is quoted below:

"The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action of proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment."

6. This decision was followed in a subsequent decision of the Apex Court in Lok Sewa Shiksha Mandal v. A.R. Mundhada Charitable Trust and others, (2007) 9 SCC 779. On the strength of these two decision, it is submitted that in the present case as the period of two years have elapsed and award has been given

after that period, therefore, the acquisition proceedings had lapsed.

7. We have heard Sri Dhruv Agrawal, learned Senior Counsel, assisted by Shri Nikhil Agrawal, counsel for the respondent No. 4.

8. Learned counsel for the respondent No. 4 has submitted that the cases cited by the learned counsel for the petitioner are distinguishable on facts. In the aforesaid cases, the provisions of Section 17 of the Act had not been invoked and the observations from those cases relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case in which Section 17(1) of the Act has been invoked and the issue in the present case is squarely covered by the other decisions of the Apex Court. Those decisions are *Satendra Prasad Jain and others v. State of U.P. and others*, (1993) 4 SCC 369, which was followed in *Awadh Bihari Yadav v. State of Bihar*, (1995) 6 SCC 31.

9. The facts in *Satendra Prasad Jain's* case are similar to those of the present case. In that case also, the provisions of Section 17 had been invoked. The Apex Court has held that the effect of Section 17(1) of the Act is that once the possession is taken the property vests in the State free from all encumbrances. Possession under Section 17(1) of the Act is taken before the award had been made. Possession under Section 16 is taken after the award is given. In either case where possession is taken, the property vests in the State free from all encumbrances and once the land vests in the State under Section 17(1) of the Act, there is no provision under the Act where under the land may be divested and consequently Section 11A of the Act would not apply where possession has been taken. This decision has been relied upon by the Apex Court in (1996) 6 SCC 424, *Allahabad Development Authority v. Nasir Uzzaman and others*.

10. It was submitted by Sri V.B. Upadhyay, learned counsel for the petitioner that to make Section 11A of the Act inapplicable on account of possession having been taken is to read in the Section a ground to exclude its applicability which has not been contemplated in the Section. It is true that the taking of possession is not a ground mentioned in Section 11A of the Act excluding its applicability. Section 11A of the Act, however, has to be considered along with other provisions and scheme of the Act. If as the Apex Court has held in *Satendra Prasad Jain's* case once the land acquired, of which possession has been taken, has vested in the State, it cannot be divested, the applicability of Section 11A would have to be excluded by construction, in view of the scheme of the Act. Section 11A is intended to benefit the landholders whose land has been acquired against delay in payment of compensation by providing the acquisition proceedings to lapse. Section 16 of the Act provides that after the Award, possession of the acquired land may be taken by the Collector. In the ordinary course contemplated by the Act, the Award would precede the Collector's action of taking possession. Section 11A was thereafter intended to apply to a situation where acquisition is being made according to the ordinary scheme of the Act where the Award is to be given before possession is taken. Section 17, however, provides that in the case of urgency an emergency possession may be taken before the Award. It appears

that in such an exceptional situation Section 11A is not intended to apply. The purpose of Section 11A is to benefit the landholder from delay in the payment of compensation. In the first place that purpose is substantially achieved in cases where Section 17 is applied as subsection (3A) of Section 17 provides that before taking possession the Collector shall tender payment of 80 per cent of the estimated compensation to the persons entitled. Secondly, there is no provision under the Act for divesting the State of the title which has vested in it after possession is taken. In the third place, the State Government under Section 48 of the Act has power to exempt land, but the said provision becomes inapplicable when possession has been taken over by the Collector. The principle behind the provision appears to be that there is no provision under the Act to divest the land from the State once it has vested in the State. Sri Upadhyaya, however, submitted that reference to Section 48 of the Act is not apt inasmuch as that Section itself provides that it will not be applicable in a case where possession has been taken. True it is that Section 48 in its own terms excludes its applicability where possession has been taken but the provision throws light upon the scheme of the Act for interpretation of Section 11A.

11. In the circumstances, we are of the view that the observations made in the case of *Yusufbhai Noormohmed Nendoliya v. State of Gujarat* and another and in case of *Lok Shiksha Sewa Mandal (supra)* cited by the learned counsel for the petitioners are not applicable to the facts of the present case. We are, therefore, following the decisions of the Apex Court in *Satendra Prasad Jain* and *Awadh Bihari Yadav's* case.

12. For the discussions made above, we do not find any merit in the writ petition. It is, accordingly, dismissed.