
(1989) 12 AHC CK 0077
In the Allahabad High Court

Ram Avadh Singh (Deceased) and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 16-12-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 48a
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 357

Citation : (1990) RD 319

Hon'ble Judges : U.C. Srivastava, J;S.H.A. Raza, J

Bench : Division Bench

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—By means of this writ petition, the petitioner Ram Avadh Singh, now substituted by his legal heirs and representative has prayed for issue of certiorari, for quashing two awards, dated 30.9.1974, Annexure IV, dated 31.3.1977, Annexure IX and for a direction to be Special Land Acquisition Officer, U.P. Avas Evam Vikas Parishad, for making a fresh consolidated award in respect of the whole land of area 19 bigha, 12 biswa alongwith the trees and nursery, Nali and other improvements standing over that area at the time of taking possession and in case award, dated 30.9.1974 is not quashed, then issue a writ in the nature of mandamus directing the respondent No. 3 to prepare an award in respect of trees of the petitioner on the land of area 18 bigha, 7 biswa which had been taken possession of alongwith the land on the basis of the petitioners' claim pending before him and pay compensation therefore, within a period of two months and further prayed for, in case the award, dated 31.3.1977 in respect of 1 bigha, 5 biswa land of the petitioners' is not quashed then the respondent No. 3 may be directed to prepare the award within a specified period in respect of the aforesaid land and in respect of proportionate number of trees which stood on the said land as per petitioner's claim and to pay the same to the petitioners. A writ of mandamus directing the respondent No. 3 has also been prayed by the petitioners, to make a reference to the court relating to the objection filed by the petitioners about the award, dated 31.3.1977. The further prayer has been made

for a writ of mandamus directing the respondent Nos. 1 to 3 pay immediately the compensation awarded to the petitioners under the award, dated 31.3.1977.

2. This writ petition has been connected with First Appeal No. 21 of 1977, filed by the petitioner against the judgments and orders, dated 8.12.1976 and 16.12.1976, passed by the Presiding Officer, U.P. Avas Evam Vikas Parishad Tribunal, Lucknow, praying that the order passed by the Tribunal may be modified and the respondent may be directed to pay compensation at the rate of Rs. 2.00 per sq. ft. alongwith damages to which the appellant is found entitled u/s 48-a of the Land Acquisition Act with 18% interest since 6.10.1962 with costs. The Tribunal to which the reference was made modified the award passed by the Special Land Acquisition Officer and directed the compensation to be awarded at the rate of Re. 0.50 per sq. fit with 15% salarium and 6% interest as awarded by the Special Land Acquisition Officer.

3. On behalf of the petitioners, it has been contended that in case the writ petition is allowed, it will not be necessary to give any detailed judgment in the first appeal (No. 21 of 1977) and the writ petition will cover the field.

4. The land in which the present dispute situates in village Zafarpur alias Rukumuddinpur, Pargana and Tahsil Lucknow, now acquired under the ""Talkatora Road Street Scheme. It appears a notification u/s 357 of U.P. Nagar Mahapalika Adhiniyam, 1959 was published in the U.P. Gazette on 20.10.1962 and the State Government sanctioned this Scheme u/s 363 (1) of the aforesaid Act on 10.4.1967. The last notification u/s 363 of that Act was published in U.P. Gazette, dated 27.5.1967. Thus, the said Scheme came into force and was subsequently transferred u/s 47 of U.P. Avas Evam Vikas Adhiniyam, 1965 to U.P. Avas Evam Vikas Parishad (hereinafter referred to as Parishad). Thereafter a notification u/s 17 (1) of the Land Acquisition Act, dated 30.4.1971 was published empowering the Collector to proceed to take possession although no award has been made on 1.12.1971 the possession was taken. Thereafter the possession of the land in question was delivered by the Special Land Acquisition Officer to the Avas Evam Vikas Parishad on 1.12.1971 not only over the land but also over the trees plants and nursery, Tube-well and its pucca nailes etc., existing over the land measuring 18 bigha, 7 biswa of land which according to the petitioners wrongly shown as 16 bigha 4 biswa instead 18 bighas, 7 biswa, leaving behind 1 bigha, 1 biswa Abadi land of the petitioner and some land (1 bigha 5 biswa) adjoining the high tension electric wires The Dakhalanama, dated 1.12.1971 also mentions a list of trees and plants in the nursery. The petitioner filed objections relating to land, trees, plants in the garden and nursery. But the Land Acquisition Officer gave an award only in respect of the land measuring 18 bigha, 7 biswa, which was found to be correct area of the land coveted by the notification and no compensation was awarded in respect of trees, plants which stood on petitioner's holding. The petitioner asserts that he was told that the compensation was assessed in respect of trees and nursery and the reports of the Horticulture Department and, Forest Department were also obtained. On

receipt of these reports it appears that a tentative award was prepared but since the award exceeded the financial limit for which the Special Land Acquisition Officer could himself pass the award, the tentative award was sent to the Board of Revenue for concurrence. The petitioner made representations in respect of payment of compensation of trees and Nursery and a notice was received by him from the Board of Revenue on 6.8.1984 requiring him to produce all the documents and other evidence relating to the ownership of the trees. On the date fixed that is on 8.8.1984, petitioner appeared with the evidence. The Presiding Officer of U.P. Avas Evam Vikas Parishad Tribunal, Lucknow held that the petitioner is the sole owner of his holding consisting of Khasra plot Nos. 301 to 304 on which the trees and nursery was situated and on the next date fixed namely 24.8.1984, the petitioner was informed by the Board of Revenue that no further clarifications were required and the (sic) was forwarded to the Special Land Acquisition Officer, for disposal. The petitioner is aggrieved as his claim is pending since long and the same has not yet been finalised.

5. Thereafter petitioner moved an application u/s 18 of Land Acquisition Act on 30.9.1974. The Special Land Acquisition Officer made a reference to the U.P. Avas Evam Vikas Parishad Tribunal on 10.1.1975 and the Tribunal pronounced an award dated 8.10.1976 against which the petitioner filed an appeal as referred above.

6. So far as the area, 1 bigha, 5 biswa of the holding of the petitioner is concerned, the possession of the same was handed over on 2.7.1976. In the Dakshalnama a (sic) of trees was prepared. The Special Land Acquisition Officer pronounced his award in respect of this 1 bigha, 5 biswa of land on 31.3.1977, mentioning therein that the trees and other improvements would be given later on. An application in respect of this award for reference to the Tribunal was filed by the petitioner but the same could not be decided because there were various reports of declaration in the office, in respect of which the enquiry was started by C.B.I.D., U.P. and all the documents were taken into possession by the police. The petitioner alleges that the award has not been pronounced on the (sic) text that possession over trees have not been taken over by the Parishad. Subsequently the Parishad took possession over the cattle house, room and the tube-well of the petitioner, including 1 bigha, 1 biswa of Abadi and Temple land left with the petitioner. The petitioner thereupon filed a Regular Suit, numbered as 373 of 1981, for injunction. The learned Addl. Munsif (sic), Lucknow, on 24.10.1983 decreed the (sic), against which an appeal was filed by the respondent No. 2 which was compromised before the Addl. District Judge VII, Lucknow, (sic) which the cattle house, the room and Tube-well were deemed to have been taken into possession by the respondent No. 2 on 1.12.1971 and instead some other land (sic) g with 6 bighas more land for the temple was exempted from the acquisition. The petitioner was to be paid compensation by the Special Land Acquisition Officer (sic) the constructions and the Tube-well within a period of 15 days of the passing of the decree, in respect of which the compromise (sic) was arrived at. The request of the petitioner was rejected vide

order, dated 7.9.1988, passed by the Special Land Acquisition Officer, in relation to the said property, u/s 15-A of the Land Acquisition Act, 1984. But the petitioner's representation against the same was allowed on 27.1.1989 and the Special Land Acquisition Officer was directed to pay compensation referred to above. The Special Land Acquisition Officer, thereafter again referred the matter to the State Government for its opinion and according to the petitioner the State Government (sic)red it to the Legal Remembrancer,, where the matter is still lingering on and in view of the pendency of the instant writ petition, the State Government has not proceeded in the matter. On behalf of the petitioner it was contended there could be no successive awards in respect of the same person and in respect of one acquisition first in relation to land only without the improvements and the other in relation to improvement that is trees, garden, constructions Tube-well etc. But in the instant case according to the petitioner an award was given in respect of the land and the other in respect of the trees, garden, etc. Section 11 of the Land Acquisition Act, provides that the Land Acquisition Officer shall make an award. On behalf of the petitioner it was contended that use of the words Itself indicate that there cannot be more than one award, in case there is no prayer of supplementary award. By the learned counsel for the petitioner reference has been to the case of *Prag Narain v. The Collector of Agra* AIR 1982 PC 102 . In the above case the Privy Council had observed that the Act does not appear to contemplate that where more than one person is interested in a parcel of land there should be more than one relating thereto. This does not mean that the whole of the land at any one time to be acquired under the Act must necessarily be dealt with in one award; but only that any one piece of land (forming part of the whole) in which more than one person has an interest for which he can claim compensation, ought to be made the subject of more than one award. In that case the fact was that the officer has dealt, with the land by two documents but the Privy Council, however, held that the two documents (the later of which specifically refers to the earlier) must be read together as constituting one award in relation to that parcel of land by which the officer awarded the compensation to be allowed for the land. In *Secretary of State Vs. Karim Bux*, , it was observed that the Act does not contemplate a series of awards in respect of the same property. In the case of *R.C. Sen v. The Trustees of the Improvement of Calcutta* ILR 48 892 , it was observed that we must distinguish between two cases of what has been called piecemeal acquisition. A declaration may be issued for a quantity of a land consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land covered by a single declaration. There is no objection to separate proceedings being taken in respect of separate holdings. It is, however, different matter where there is one holding. In such a case it does not seem reasonable to hold that there can be a piecemeal acquisition, as the Act refers only to one notice, one proceedings and one award to be given taken, and made regarding one holding and one ownership. In the case of *Mohamadsarif Hakimji Chippa and Another Vs. State of Gujarat and Another*, , it was held that

in the particular facts of the case there could be one award spread over 2 documents. Thus, it is clear that normally only one award is to be given in case but in case under the circumstances of the case there are two awards they cannot be read as two different awards. In the instant case in respect of the land, award has been given but in respect of trees, constructions, tube-well and other improvement of the claim of the petitioner was dismissed. Special Land Acquisition Officer also dismissed the application of opposite party No. 2 and the claim put for-ward by the petitioner even though the state Government has set aside its previous order yet the Special Land Acquisition Officer instead of passing an order has again referred the matter to the State Government. As has been noticed, the Special Land Acquisition Officer did not award compensation in respect of improvement, regarding trees, Tube-wells, etc., which also had been taken by the opposite party No. 2, which is against the record, inasmuch as. the Dakhalnama, which is Annexure 2 to the writ petition, indicates that on 2.7.1976 further possession of an area of 1 bigha, 5 biswa of the petitioner's land was taken which also included the trees, Tube-well etc. standing thereon, but in respect of Shiv temple though the possession of the same was also taken but in the bottom it has been mentioned that it was left with the petitioner. But for construction over the open land possession has been taken over from the landlord and has been handed over to Avas Vikas, Parishad. This construction would be Abadi and Shiv Mandir. The order of the Special Land Acquisition Officer, dated 4.8.1972 itself indicates that the question of compensation regarding trees and plants as per their timber fruit and ornamental value was left for determination to be taken into account at the time of the award. So far the trees standing thereon are concerned the possession of the same were taken over on 2.7.1976 but the compensation is yet to be awarded as is mentioned in the award, dated 31.3.1977 In respect of Cattle House, Tube-well etc. the Special Land Acquisition Officer has stated that there was no evidence but now there being a compromise, the State is bound by it. Under the compromise the land was found to have been taken over on 1.12.1971., instead of some other land alongwith (sic) has more land for the Temple was exempted from the acquisition. Thus the petitioner had now 1 bigha, 7 biswa land left with him. Now under the compromise the petitioner would be paid compensation by the Special Land Acquisition Officer for the construction of the Tube-well. The Special Land Acquisition Officer has again referred the matter to the Government seeking its opinion and law and provision under which Special Land Acquisition Officer could (sic) second award or pay compensation by making a second award. The State Government in its turn has referred the matter to the legal remembrancer. In any case the compensation has not been awarded to the petitioner for improvement like trees, garden, nursery(sic) cattle house, room Tube-well etc. So far compensation of land is concerned it (sic) to be given in accordance with law. u/s 3 (a) of the Land Acquisition Act "Land" includes things attached to the (sic) or permanently fastened to anything attached(sic) to the earth. Thus the trees, cattle house room Tube-well are all covered by the (sic) "Land". u/s 23 clause "first" the market value of the land has to be calculated, which term includes

things permanently attached to the earth that (sic) trees, garden, cattle house, room, Tube- well etc. The compensation for all the aforementioned improvements has to be asserted alongwith land as they are (sic) and parcels of the land, and cannot be (sic) separately. Under clause "secondly" (sic) damage sustained by persons by reas(sic) of treea etc. having been taken at the (sic) when the Collector took possession the (sic) has also to be calculated. In the (sic) case only land was valued by the (sic) Land Acquisition Officer at 25 paise (sic) Sq. ft. enhanced to 50 paise per Sq. fit. the Tribunal by its judgment, dated 8.12. against which connected Appeal No. (sic) of 1977 is also pending. Now suffice (sic) say that the award of the Land Acquisition Officer is not in conformity with law the Special Land Acquisition Officer not considered the rate of compensate fixed by court in respect of other land (sic) veered by the same notification. "A Division Bench of this Court in respect of the (sic) (sic) this very locality and subject-matter of this very acquisition in the case of Amar Jit Sing v. State of U.P. 1987 AWC 1195 on 17.12.86 has held that Land Acquisition Officer is bound to consider the rate of compensation fixed by court in respect other land covered by the same notification. We are in agreement with the said judgment and obviously the petitioner is also entitled for compensation at the rate of 1.20 per Sq. fit fixed in other cases of adjacent and neighbouring and owners.

7. In the view, of what has been stated above, the writ petition deserves to be lowed and the Special Land Acquisition Officer is directed to award compensation or land including trees, cattle house, and other improvements which were standing thereon in accordance with the compromise (sic)ived at between the parties."

8. In view of the above, the first appeal also deserved to be allowed and award under appeal is quashed and the matter is sent back to the Special Land Acquisition Officer to adjudicate the same again in the light of the observations made above, taking into consideration the provisions of the Land Acquisition Act as they stand amended and in accordance with law.

9. In view of the above, the Writ petition (sic) allowed and the awards, dated 30.9.74 and 31.3.77, contained in Annexures IV arid IX are quashed and the Special Land Acquisition Officer is directed to dispose of the claim of the petitioner in respect of the land By one award taking into consideration the rate of compensation fixed by court in respect of other land covered by the same notification that is 1.20 per Sq. ft. As the matter is very aid, the Special Land Acquisition Officer a directed " to dispose of the case within three months. Costs easay.