

(2015) 05 AHC CK 0041

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12480 of 2014

Ram Bharose and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2015) 4 ADJ 693 : (2015) 111 ALR 699 : (2015) 129 RD 195 :
(2015) 2 UPLBEC 1665

Hon'ble Judges : Krishna Murari, J; Pramod Kumar Srivastava, J

Bench : Division Bench

Advocate : Prashant Pandey, for the Appellant

Final Decision : Dismissed

Judgement

Pramod Kumar Srivastava, J.

1. Heard Sri Prashant Pandey, learned counsel for the petitioner and learned Standing Counsel appearing for all the respondents. Present petition has been filed with the following prayers:

"(i) issue, a writ, order or direction in the nature of Certiorari quashing the impugned order dated 13.12.2013 passed by the District Magistrate, Mahoba (Annexure 8 to this writ petition).

(ii) issue, a writ, order or direction in the nature of Mandamus commanding the respondents to pay the annuity/lump-sum to the petitioners as resettlement/rehabilitation grant/compensation in accordance to the provision of Government policies/Government order dated 17.8.2010, 3.10.2010 (as modified) and 2.6.2011 with an interest at the rate as may be fixed by this Hon''ble Court from the date of entitlement to the date actual payment.

(iii) issue any other writ, order or direction, which this Hon''ble Court may deem fit proper under the facts and circumstances of the case.

(iv) award the cost of the petition in favour of the petitioners."

2. The challenge raised is to the order dated 13.12.2013 whereby the representation of the petitioners, claiming annuity/lump-sum payment has been rejected. The second prayer is for a writ of mandamus directing the respondents to pay annuity/lump-sum payment in accordance with the provision of Government policies/Government order dated 17.8.2010, 3.10.2010 (as modified) and 2.6.2011 with an interest. It may be noticed that it is only this claim, which has been rejected vide order dated 13.12.2013 holding that the aforesaid policy is not applicable in the case of the petitioner whose land was admittedly purchased prior to the issuance of the G.O. Dated 8.10.2012 by way of private negotiation.

3. It is argued that the land of the petitioner was acquired for the project of Kabrai Bandh Arjun Sahayak Pariyojna in accordance with the Land Acquisition Policy dated 2nd June 2011, contained in the G.O. Dated 2.6.2011 (Annexure 4 to the petition). It is stated that land was acquired under the provisions of the Land Acquisition Act 1894. On the strength of the aforesaid Government Orders, the petitioners are claiming annuity/lump-sum payment, which has not been paid till date and alleged that it is contrary to the aforesaid policy. It is urged that the claim of the petitioners has been illegally rejected vide order dated 13.12.2013.

4. A perusal of the record indicates that all the petitioners have sold the property to the respondents by way of private negotiation during period between February 2011 to June 2011 and then name of respondents were mutated over the lands (paragraph 19 of the writ petition); and the same were not acquired under the provisions of the Land Acquisition Act 1894, either by processing the claim of the petitioners under the various provisions of the aforesaid Act or even by fixing the rate of compensation under the U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules 1997 (herein after referred to as the Agreement Rules 1997).

5. We have heard the learned counsel for the petitioners at length, who has taken us through the G.O. Dated 2.6.2011. We have also carefully perused the impugned order dated 13.12.2013. Learned counsel for the petitioner asserts that the rejection of the claim of the petitioners under the impugned order is wholly illegal and contrary to the G.O. dated 2.6.2011 that provides for payment of annuity/lump-sum payment to the farmers whose land was acquired. Therefore, the conclusion arrived at by the District Magistrate, Mahoba in rejecting the claim of the petitioner on the ground that there was no authority with the respondent authorities to purchase the land by way of private negotiation prior to the issuance of the G.O. dated 8th Oct. 2012 is erroneous. Learned counsel for the petitioners has placed much emphasis on the G.O. dated 2nd June 2011, which provides for grant of annuity/lump-sum payment.

6. Learned Standing Counsel has supported the impugned order and has drawn

our attention to the conclusions drawn by the District Magistrate, Mahoba in the order dated 13.12.2013.

7. Before proceeding further, it is essential to record that the undisputed fact is that all the petitioners have executed sale-deeds in favour of the Irrigation Department, Uttar Pradesh, through Executive Engineer, Maudaha Dam, Construction Division, Hamirpur prior to the issuance of the G.O. dated 8th October, 2012. The name of the Irrigation Department has also been mutated in the revenue records. From the record it is also clear that no land acquisition proceedings under the provisions of Land Acquisition Act, 1894 were initiated before purchase of the land from the petitioners by way of private negotiation. Even notifications under Section 4 or Section 6 of Land Acquisition Act, 1894 were never published.

8. We find that the entire petition nowhere discloses the details of the method of purchase, including issuance of notifications under the provisions of Land Acquisition Act in the case of alleged farmers/tenure-holders. Coming to the applicability of the G.O. dated 2nd June 2011, we have noticed that while laying down the Land Acquisition Policy it was observed that for all purposes the general policy to be adopted is to purchase land by way of agreement with the land owners.

9. The relevant extract of the G.O. dated 2nd June 2011 is quoted herein below:

10. The G.O. dated 8th October 2012 that has been subject-matter of debate by the learned counsels is being quoted below:

11. The said G.O. dated 18th March 2013 is quoted below:--

12. The aforesaid Government Order clearly shows that any land purchased by way of an agreement prior to G.O. dated 8th October 2012 was without authority, because prior to 8.10.2012, there was no order or direction to purchase the land by way of an agreement/private negotiation. An additional ground is that since mutation had already taken place in favour of the Irrigation Department, therefore, there is no justification to reopen the said issue. The reason for explaining all the above noted Government Orders is to highlight that the Government was aware of every aspect of the entire process of acquisition and also to what extent any benefit is to be extended to land owner/tenure-holders.

13. After the meticulous study of different Government orders referred and relied by the petitioners we reach to the conclusions as under:

"(1) G.O. dated 2.6.2011 is applicable only where the land was acquired under the Act of 1894. Since the land was not acquired under the provisions of the Land Acquisition Act, and hence, the G.O. dated 2nd June 2011 has no application.

(2) The G.O. dated 8th October 2012, quoted above clearly shows that the same

was made applicable with immediate effect. It has the prospective application and therefore the land purchased from the petitioner prior to 8.10.2012 was not covered by the aforesaid G.O.; and therefore correct conclusion has been reached in the impugned order dated 13.12.2013 passed by the District Magistrate.

(3) The grant of annuity/lump-sum payment, under the rehabilitation policy 2010, is a policy matter, which can only be decided by the State Government and no such benefit can even be extended by the District Magistrate at his level.

(4) Since the G.O. dated 18th March 2013 clearly states that any purchase by way of agreement or by private negotiation, prior to the G.O. dated 8th October 2012, is without authority, therefore, no such benefit can be extended to the petitioners. After the sale revenue Courts have finally decided the matter relating to rights of petitioners over said land. The aforesaid purchase cannot be reopened, as the sale and purchase of the land has reached to its logical end."

14. The lands in question in the present writ petition are situated in district Mahoba. Admittedly, these lands were purchased for Kabrai Bandh Arjun Sahayak Pariyojna. For assessment of valuation of these lands District Level Committee headed by District Magistrate, Mahoba had completed its hearing and submitted his report dated 13.12.2013 which has been challenged by present writ petition. Some other lands were also purchased by the respondents for the same Kabrai Bandh Arjun Sahayak Pariyojna, the sellers of those lands had represented before District Magistrate, Mahoba on similar grounds as the petitioners of the present writ petition. The representations of those sellers were disposed of and rejected by order dated 23.5.2014 by District Magistrate, Mahoba. The said order dated 23.5.2014 was passed on identical grounds as impugned order dated 13.12.2013 in the present matter had been passed. Then those sellers had challenged the order dated 23.5.2014 of District Magistrate, Mahoba through Civil Misc. Writ Petition No. 43315 of 2014. Mohd. Rasid and others v. State of UP and others, on almost identical grounds as in the present writ petition. The issue was considered by the Division Bench of this Court in the said writ petition No. 43315 of 2014 and was decided by judgment and order dated 5.9.2014 which is reported as Mohd. Shahid and others v. State of U.P. and others, 2014 (8) ADJ 482 (DB). The said judgment covers all the points which are involved in the present writ petition including applicability of UP Governments Orders dated 17.8.2010, 3.9.2010 and 2.6.2011. In the said judgment it has been held that grant of annuity/lump sum payment and other benefits under GO dated 8.10.2012 cannot be given for those lands which were not acquired under the Land Acquisition Act, 1894 and which have been purchased before 8.10.2012. We are in agreement with the finding of the said judgment. Therefore, the claim of the petitioners for additional benefit by way of annuity/lump sum payment was rightly rejected by the District Magistrate. For the reasons and findings recorded above, we are of the opinion that the petitioners are not entitled for any relief. The petition is accordingly dismissed.