
(2004) 03 AHC CK 0010

In the Allahabad High Court

Case No : C.M.W.P. No's. 13786, 14585, 15399, 22194, 22223 and 22225 of 2002

Ram Jeewan and Others

APPELLANT

Vs

Secretary, U.P. Awas and Vikas Parishad and Others

RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Urban Planning and Development Act, 1973 — Section 3

Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1965 — Section 11A, 18, 28, 32

Citation : (2004) 5 AWC 4173

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

Bench : Division Bench

Advocate : R.P. Dubey, for the Appellant; A.N. Singh, Pankaj Mithal and Vinay Khare, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M Katju, J.—This writ petition has been filed for a mandamus directing the Respondent to pay compensation to the Petitioners at the circle rate or to release their land from acquisition in pursuance to the direction given by the Awas Commissioner dated 16.7.2001.

2. Heard learned Counsel for the parties.

3. In paragraph 2 of the writ petition it is alleged that the Petitioners are the owners of the plots in dispute. The plots were acquired by the Executive Engineer, U.P. Awas and Vikas Parishad, Gorakhpur in 1972. True copy of the notification issued by the Executive Engineer in 1972 is Annexure-1 to the writ petition.

4. In paragraph 4 of the writ petition it is alleged that till 1999 nothing was done and no compensation was paid to the Petitioner and the Petitioners are in physical possession of the land in dispute. On 27.5.2000 the District Magistrate, Varanasi, wrote a letter to the Nagar Nigam, Varanasi vide Annexure-2 to the

writ petition. On 14.4.2000, a report was submitted by the Land Acquisition Officer, Varanasi, stating all the facts vide Annexure-3 and another report was submitted by the S.D.M., Sadar on 21.4.2001 vide Annexure-4 to the writ petition. On the basis of this report the District Magistrate wrote a letter to the Awas Commissioner, U.P., Lucknow on 26.4.2001 vide Annexure-5 to the writ petition and thereafter notices were issued to the concerned tenure holders on 8.8.2001 vide Annexure-6 to the writ petition.

5. It is alleged in paragraph 10 of the writ petition that on 13.8.2001 a meeting was held and a decision was taken that Rs. 25,000 per biswa compensation will be given to the concerned tenure holders along with interest. True copy of the compromise dated 13.8.2001 between Respondent No. 1 and concerned tenure holders is Annexure-7 to the writ petition. In this compromise it is stated that regarding those persons who have taken compensation their land will be demarcated on one side and those who have not taken compensation their land will be demarcated on the other side.

6. It is alleged in paragraph 11 of the writ petition that all of a sudden the Respondent No. 1 started to raise constructions over the land in dispute without considering the grievances of the Petitioners and without following the direction given by the Awas Commissioner, dated 16.7.2001. Hence, the Petitioner moved letters dated 19.3.2002 and 20.3.2002 Annexures-8 and 9 to the writ petition mentioning their grievances. It is alleged in paragraph 13 of the writ petition that the circle rate is Rs. 100 per sq. feet vide Annexure-10 to the writ petition. Accordingly the Petitioner should have been paid Rs. 1,36,000 per bigha but the Respondent have decided to give compensation of only Rs. 25,000 per bigha.

7. A counter-affidavit has been filed and we have perused the same. It is alleged in paragraph 4 of the counter-affidavit that the compensation was deposited by the Special Land Acquisition Officer, Varanasi in R. D. Account. The possession of the land is with the Respondent and the entries have been made in the revenue records. The procedure for acquisition was duly followed. The possession was taken on 30.5.1981 and award was given but later on the ex gratia compensation was raised to Rs. 10,000 per bigha in the year 1987. Photocopy of the possession letter dated 30.5.1981 is Annexure-C. A. 1 to the counter-affidavit. In paragraph 8 it is alleged that because of the pressure upon the Government for enhancement of compensation the Board of the Respondent took a decision on 23.9.1998 enhancing the compensation to Rs. 25,000 per bigha vide Annexure-2. In paragraph 13 it is stated that the answering Respondent has complied with the direction of the Housing Commissioner.

8. In our opinion there is no merit in this petition. The compensation has already been enhanced from Rs. 10,000 to Rs. 25,000. If the Petitioner has any grievance he should have made a reference application u/s 18 but he did not do so. Hence they are not entitled to enhancement of compensation in writ jurisdiction.

9. It has been held by the Supreme Court in *Krishi Utpadan Mandi Samiti v. Vipin Kumar and Anr.* JT 2004 (1) SC 344, that compensation as per circle rate is not tenable in law. Similar view has been taken by the Supreme Court in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, .

10. The prayer of the Petitioner for release of the land cannot be accepted because possession was taken over by the Parishad on 30.5.1981 and from that date the land has been vested in the Parishad. It is well-settled that once the land is vested it cannot be divested vide *Ram Gopal Varshney and Others Vs. State of U.P. and Others*, .

11. We are of the opinion that possession of the land in dispute was taken over by the Respondent as there is sufficient proof for the same as stated in the counter-affidavit. After execution of the possession memo the possession of any tenure holder or anybody else is that of unauthorised occupants vide *Awadh Bihari and Other Vs. State of Bihar and others*, ; *Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others*, .

12. It may be mentioned that the validity of the notification under Sections 28 and 32 of the U.P. Awas and Vikas Parishad Act has not been challenged. Hence the acquisition has become final. The award has admittedly been given by the Special Land Acquisition Officer on 23.8.1985 and possession has been taken over on 30.5.1981 as per possession memo. Hence this petition is not maintainable in view of the decision of the Supreme Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, ; and *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, .

13. In connected Writ Petition No. 14585 of 2002 the Petitioner has also challenged the validity of acquisition proceedings. In our opinion the validity of acquisition proceeding started in 1972 and which were completed with pronouncement of the award in 1985 cannot be challenged after such a long delay in the year 2002 vide *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, . The petition therefore deserves to be dismissed on the ground of laches.

14. As regards the plea that the acquisition proceedings have lapsed in view of Section 11A it has been held by a Division Bench of this Court in *Patharoo and Others Vs. U.P. Awas Evam Vikas Parishad and Others*, , that the proceeding will not lapse in such a situation. It has been consistently held by the Supreme Court that the limitation prescribed for doing anything in the Central Act cannot apply to the State Act vide *Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others*, ; *Munithimmaiah Vs. State of Karnataka and Others*, .

15. As regards the submission that the area has been notified as development area u/s 3 of the Urban Planning and Development Act, 1973, and therefore the scheme of the Parishad cannot be proceeded with unless it is approved by the

State Government, this point is covered by the decision of the Supreme Court in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, .

16. In view of the above there is no force in these petitions and they are dismissed.