
(2009) 11 AHC CK 0288
In the Allahabad High Court

Ram Nath and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2010) 2 AWC 1778

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—The petitioners were bhumidhars of 0.280 acre of plot No. 2286 out of total area of 0.766 acre of the plot situate in Village Pardaha, district Mau. They purchased the plot through registered sale deed dated 3.1.1987 from Ram Dhani and Shiv Dhani sons of Rajpati. It is alleged that they constructed one room shed, with roof on the plot and that there are five neem trees, one peepal tree and one sheesham tree on the land. The entire plot No. 2286 (area 0.310 hecets.), including the land purchased by petitioners was notified u/s 4 of the Land Acquisition Act, 1894 in the official Gazette dated 18.3.1989, for acquisition by the State Government for establishing District Offices and residential houses for officers and employees of district Mau. The notification under Sub-section (1) of Section 4 invoked Section 17(4) of the Act directing that the provisions of Section 5A will not be applicable to the acquisition of the land. The notification u/s 6 was published on 5/7.4.1989 and the notice u/s 9 was given on 9.8.1989. The award was made on 29.4.1989.

2. The petitioners have challenged both the notifications u/s 4 read with Section 17(1) and (4) of the Act, and Section 6 of the Act and have prayed for directions to the respondents not to dispossess them on the ground that the land was neither waste or arable, and that the petitioners' right to be heard u/s 5A before the acquisition of the land has been illegally taken away. There was no public purpose to acquire the land. The acquisition of the land has also been challenged

on the ground that the petitioners are bhumidhars of plot No. 2286 (area 280 links). There are constructions of houses and trees on the land and that in similar circumstances, plot No. 2287 was not acquired, causing hostile discrimination between the petitioners and the land owners of plot No. 2287.

3. We have heard Shri H.S.N. Tripathi, learned Counsel for the petitioner. Learned standing counsel appears for the State respondents.

4. During the course of argument Shri H.S.N. Tripathi has not pressed the submissions that the provisions of Section 17(1) and (4) are not applicable as the land is not waste and arable and there was no public purpose to acquire the land. He has only pressed the ground that in similar circumstances in which the plots with constructions of residential houses were exempted from acquisition, the State Government has discriminated the petitioners.

5. In its application to the State of Uttar Pradesh Section 17 was amended by adding Sub-section (1A) by U.P. Act No. 22 of 1954 providing that the power to take possession under Sub-section (1) may also be exercised in the case of land other than waste or arable, where the land is acquired for or in connection with sanitary improvement of any kind or planned development.

6. Sub-section (1) of Section 17 was amended by Act No. 68 of 1984 vide Section 13 w.e.f. 24.9.1984, deleting the words waste and arable from Sub-section (1). The ground of challenge to acquisition on the ground that land is not waste or arable or that it is not required for sanitary improvement or planned development therefore is thus not available to the petitioner. Further we find that the construction of buildings for Government offices and for residence for Government officers is no doubt a public purpose for which Sub-section (1) of Section 17 could be applied.

7. The land on which the buildings are constructed can also be acquired by the State Government for public purpose. There is no general policy in the Act that such lands have to be excluded from acquisition. In State of Haryana and another Vs. Jaipal Singh and others, the Supreme Court held that the existence of constructions on the land cannot be a ground to challenge the notifications. The land owners can claim compensation for depriving them of the constructions standing over the land. The State Government, however, cannot cause discrimination, if it has left the land falling within the same area from acquisition on the ground that there were constructions existing on the land. In Anand Buttons Ltd. Vs. State of Haryana and Others, the Supreme Court held that exemption from acquisition, because some constructions have been carried out on the land in question is a matter of policy and not of law. If the Government wrongly exempted some other units, the wrongful act will not entitle petitioner to claim similar relief. Two wrongs do not make one right, and a ground to claim discrimination.

8. Shri H.S.N. Tripathi submits that there is boundary wall and one room and trees standing on the land in question and thus the State Government has

caused discrimination in acquiring the petitioner's land with constructions. In the counter-affidavit filed by Shri Balkaran Chauhan, Ahalmad in the office of the Special Land Acquisition Officer (Irrigation) Mau filed on 3.9.1991, it is denied in paragraphs 4 and 5 that there are any constructions on the plot. It is stated in paras 4 and 5 that there are no constructions on the plot. There are three trees standing on the plot, and that the land is not situate in the industrial area.

9. Shri H.S.N. Tripathi has placed reliance upon the award of Shri K.C. Srivastava, District Land Acquisition Officer, Mau dated 9.8.1989 to establish that there are constructions over the plot. He has also relied upon khasra entries annexed as Annexure-1 to the rejoinder-affidavit.

10. We have perused the khasra (record of possession) entries and the award, and do not find that there are entries of any constructions on plot No. 2286. The plot is entered in the name of Ram Dhani and Shiv Dhani. Whereas the entries in the Column No. 8, against plot No. 2281 are "makan khaprail and the entry of "makan" over plot No. 2288 is legible, the entry in column 8 against plot No. 2286 is not legible, and in any case it cannot be read as "makan". Para 4, the award gives the details of land in village Sikathia pargana Ghosi. Shri Tripathi has referred to the award and the description of gata No. 2286 and has tried to demonstrate that the award refers to "makan int gara cement sheet" and that gata No. 2286 minjamla includes makan "kachcha may jhopari".

11. The reference to plot No. 2286 in the award does not support the contention of Shri Tripathi that plot No. 2287 was left out of acquisition and the fact there are constructions of a house in plot No. 2286. The notification under Sub-section (1) of Section 4 of the Act would show that plot No. 2287 area 0.073 hecets., and plot No. 2286 area 0.310 hecets. was acquired and the award was prepared for both these plots. The entire area of plot No. 2286 was not acquired. Thus no case for existence of construction of residential house or discrimination has been made out by the petitioner.

12. In para 14 of the counter-affidavit it is clearly stated that the land of the persons mentioned in paragraph under reply namely that land of Kalp Nath Rai, Smt. Dhanika wife of Umashanker, Smt. Sarita wife of Dinesh Bahadur and Smt. Vimala Devi wife of Lakhpatri as well as lands of Shri Suresh Bahadur were also acquired and that constructed portion has been exempted from the acquisition. The award establishes the assertion made in the counter-affidavit. It is clearly mentioned in para 6 of the award, that the acquired land is vacant.

The writ petition is dismissed. The interim order is discharged.