

(2010) 07 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 196 of 2010 (M/S)

Ram Singh and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Land Acquisition Act, 1984 — Section 3A, 44A, 6

Citation : (2010) 2 UC 1114

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Advocate : Shashi Kant Shandilya, for the Appellant; N.P. Shah, learned Standing Counsel for the State/respondent Nos. 1, 2 and 5., Mr. V.K. Kohli, learned assisted by, Mr. I.P. Kohli, Learned Counsel for the Respondent No. 3. and Mr. Vipul Sharma, Learned Counsel for the Respondent No. 4., for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble V.K. Bist, J.—Present petition has been filed by the Petitioners for quashing the impugned G.O./notification dated 08.02.1962 (Annexure No. 1 to the writ petition) and for a direction to the Respondents to return the land of Gram Sabha Rawali Mehdood, Pargana-Jawalapur, Tehsil & District Haridwar.

2. Brief facts of the case, as narrated in the writ petition, are that the Petitioners are residents of village Rawali Mehdood, Pargana Jawalapur, District Haridwar. The Petitioners are challenging the Notification dated 08.02.1962 whereby huge area of the land of Gram Sabha was acquired by the Respondents. The Petitioners are affected by the acquisition of the land by the Respondents because the executives of the State deliberately abused the power granted to them under the land acquisition Act, 1894 in acquiring the lands and played a fraud on the Petitioners/villagers. A notification u/s 6 of the Land Acquisition Act, 1984 (hereinafter referred to the Act) was published in U.P gazette dated 08.02.1962, thereby notifying various plots of land, including the land of Gram

Sabha of the Rawali Mehdood, Mouja Jawalapur, District Haridwar, where the Respondent/B.H.E.L. wanted to set up its factories and dwelling houses for its workmen.

3. I have heard Mr. Shashi Kant Shandilya, Learned Counsel for the Petitioners, Mr. N.P. Shah, learned Standing Counsel for the State/respondent Nos. 1, 2 & 5, Mr. V.K. Kohli, learned Senior Advocate assisted by Mr. I.P. Kohli, Learned Counsel for the Respondent No. 3, Mr. Vipul Sharma, Learned Counsel for the Respondent No. 4 and perused the record.

4. Learned Counsel for the Petitioners submitted that the Respondent/State did not apply its mind in assessing the area of land actually required by the Respondent No. 3 to set up the factories and dwelling houses for its workmen and bye-passed one of the most important requirement of the Act, which was needed to be complied before making preliminary survey of the land required for acquisition as provided in Section 3-A of the Act. The Respondent/State relied on the version of Respondent/ B.H.E.L. and setout boundaries of huge area of the land for acquisition of the Petitioners village. He further submitted that u/s 44-A of the Act, no company is entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanctions of the Government but in the present case the land was transferred to so many other agencies. It is argued that about 1000 dwelling houses are lying vacant, few of which are allotted to outsiders including district administration, police, taxation, banking, medical and even private shopkeepers and also over 600 quarters are occupied by the retired employees. It is argued that the Respondents, out of the huge area of land already acquired, gave away about 186 acres of land to U.P. Avas Vikas Nigam and also given 400.00 acres of land to Bengal Engineering Groups of Roorkee, about 2534 acres to outsiders for agricultural farming. This area of 2934 acres (400+2534) should be given to the original landowners. It is further submitted that the State Government in the year 1970 has taken a decision that out of the total land acquired, about 135 acres of vacant land have to be returned to its original owners. It is further contended that out of the acquired land an area of 10.0650 hectares is declared as Darad (non agricultural land), an areas of 40.4560 hectares is declared as Banjar, an areas of 1.5760 hectares is declared as Johad, an area of 0.123 hectares is declared as Khali and an area of 49.110 hectares is declared as Rau Nadi, which belongs to gram Sabha. Various Khasra numbers were transferred to the Respondent/B.H.E.L on 28.08.2009 against the provisions of law under the reference of G.O. No. 506 IEP/XVII B293 H61 dated 08.02.1962 and order for the mutation in the name of BHEL was made on 28.08.2009, and some parts of the land against various other khasra numbers were transferred to the Respondent SIDCUL on 14.09.2009. It is further contended that aforesaid acquisition was never made for the Respondent/ SIDCUL, but the Respondent/Collector, Haridwar has ordered to transfer part of the land as mentioned above to the Respondent/ SIDCUL on their application and the Respondent/SIDCUL is recorded in mutation. The name of Respondent/BHEL was not entered in the revenue records prior to 28.08.2009 and the aforesaid

land was under the possession of Gram Sabha. He further submitted that the Petitioners are resident of the said village and are challenging the acquisition proceedings pertaining to the land of Gram Sabha acquired vide notification dated 08.02.1962 by which huge area of Gram Sabha land was acquired by the Respondent. The action of Respondents is wholly illegal, arbitrary and in violation of law.

5. Refuting the averments made by the Petitioners in the petition, Mr. V.K. Kohli, the learned Senior Advocate for Respondent No. 3 submitted that vide Notification issued in the year 1962 the Govt. acquired said land, including the land of Petitioners' village for establishing a Public Sector Undertaking i.e. Bharat Heavy Electricals Limited, its factories and dwelling houses for its workmen. Learned Counsel for BHEL further submitted that the land acquired was handed over to BHEL. He submitted that the Petitioners nowhere in the petition have pleaded that they have not been paid any compensation in lieu of the land acquired for the purpose. He further submitted that compensation has already been paid to the Petitioner at the time of said acquisition. He argued that the petition is cannot raise dispute after a lapse of 48 years asking for returning the remaining unutilized land. In this regard the learned Senior Counsel placed reliance in the judgment rendered by Hon''ble the Apex Court in C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, and contended that after the compensation has been paid and possession has been taken over by the Government, the land of Petitioners cannot be returned back to them.

6. Having heard the Learned Counsel for the parties and after going through the record, I find that land acquired 48 years ago, was handed over to BHEL. Compensation has also been paid to tenure holders. In view of the principle of law laid down in C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, , wherein it is held that after the compensation has been paid and possession has been taken over by the Government, the land of the claimant cannot be returned back to him. The writ petition lacks merit and is liable to be dismissed.

7. Accordingly, the writ petition is dismissed.

8. Stay application (CLMA No. 740/ 2010) stands rejected.