
(2014) 03 AHC CK 0172

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 15015, 15018, 15019 and 15021 of 2014

Ramanand Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 18, 23(1A), 23(2)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1), 24(2)

Citation : (2014) 4 ADJ 152 : (2014) 104 ALR 32 : (2014) 4 AWC 3978 : (2014) 125 RD 305 : (2014) 2 UPLBEC 1211

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : S.S. Shukla, Advocate for the Appellant; Shri Kant, Advocate for the Respondent

Judgement

1. Heard Shri S.S. Shukla, learned counsel for the petitioner Shri Kant, learned counsel appearing for respondent No. 2 and learned Standing Counsel appearing for respondent No. 4 and 5. All the above writ petitions raise similar questions of facts and questions of laws, which have been heard together and are being decided by a common judgment. In writ petition No. 15015 of 2014 the following prayers have been made by the petitioner:

(i) Issue a writ, order or direction in the nature of certiorari quashing the notification dated 17.7.1997 and 23.12.2004 u/s 28 and 32 respectively of the Act No. 1 of 1966 in respect of Araji Khasra No. 681 measuring area of 4050 hectare, Araji Khasra No. 683M area 0.3520 hectare, Araji Khasra No. 683M area 0.3520 hectare, Araji Khasra No. 685M measuring area 0.0890 hectare situated at village Brahmpur, alias Bhopura Pargana Loni, Tehsil and District Ghaziabad.

(ii) Issue a writ, order or direction in the nature of quashing the award dated 30.12.2013 issued by respondent No. 4.

(iii) Issue a writ order or direction in the nature of mandamus commanding the

respondents to exempt the aforesaid land of the petitioners from acquisition proceeding.

(iv) Issue any other writ order of direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(v) Award the costs of the writ petition to the petitioners.

2. Brief facts giving rise to the petitions are; that Notification u/s 28 of U.P. Awam Vikas Adhiniyam 1965 was issued on 17.7.1997 and Notification u/s 32 of U.P. Awam Vikas Adhiniyam 1965 was issued on 23.12.2004 by which the petitioners land was acquired. There were large number of acquisitions. Certain petitioners had challenged the acquisition. This Court had granted interim order staying dispossession of various other petitioners for which interim order continued till 10.4.13. The award has been declared on 30.12.13. After declaration of the award, the petitioners have come-up in the writ petitions praying for quashing of the Notifications u/s 28 and 32. The petitioner has also prayed for quashing of the award.

3. Shri S.S. Shukla, learned counsel for the petitioner challenging the Notifications u/s 28 and 32 has submitted that the notifications have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 2013 Act). He further submitted that the award has not been made within two years and as such, the same has also lapsed. He has relied upon Section 11A of the Land Acquisition Act, 1894.

4. Shri Sri Kant, learned counsel for the respondent submitted that the petitioner cannot be allowed to challenge the Notification u/s 32 after lapse of more than 9 years. He submits that so far as prayer for quashing the award dated 30.12.2013 is concerned, if the petitioner is aggrieved by the award he may make a reference u/s 18 of the Land Acquisition Act. He submits that Section 11A is not applicable in the Acquisition under the Awam Vikas Adhiniyam. Learned counsel for the petitioners have placed reliance on the judgment of the Hon''ble Apex Court in the case of Girnar Traders Vs. State of Maharashtra and Others, , whereas Shri Sri Kant placed reliance on the judgment of the Hon''ble Apex Court dated 28.4.2011 Suraj Pal and others v. U.P. Awam Vikas Parishad and others.

5. Section 24 of Act 2013 provides:

24(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894.

(a) Where no award u/s 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act,

as if the said Act has not been repealed.

6. In the present case, award has been made on 30.12.13, hence as per sub-section 24(1) there is no question of lapsing of the acquisition. Reliance has been placed on Section 24 sub-section (2) as well as judgment of the Hon''ble Apex Court in Civil Appeal No. 877 of 2014 Pune Municipal Corporation and others v. Harak Chand Misirimal Solanki and others, decided on 24.1.14. Section 24 sub-section (2) is applicable when the award u/s 11 of the Land Acquisition Act have been made 5 years or more prior to the commencement of the new Act.

7. In the present case, the award has been made on 30.12.13, hence the condition as provided u/s 24 sub-section (2) is not applicable. Reliance has been placed by learned counsel for the petitioner on paragraph 20 of the judgment of Pune Municipal Corporation and others v. Harak Chand Misirimal Solanki and others, which is to the following effect:

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the Court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed u/s 24(2) of the 2013 Act.

8. The above observations were made by the Hon''ble Apex Court in contest of the case, where award was made more than 5 years prior to the commencing of 2013 Act and hence the said observations does not help the petitioners in the present case. In so far as the submission of the petitioner that u/s 11A of the Act, 1894 Acquisition has lapsed, the decision of Hon''ble Apex Court in Suraj Pal and others (supra) has clearly laid down that Section 11A does not apply to the Acquisition under the U.P. Avas & Vikas Adhiniyam 1965. The judgment of the Hon''ble Apex Court in Girnar Traders (Supra) relied by the petitioners also does not support the contention of the petitioner. The Hon''ble Apex Court in the above case has examined the applicability of Section 11A of Act 1894 in the acquisition made under Maharashtra Regional and Town Planning Act, 1966. Following was laid down in paragraph 144, 145 and 146.

144. If the provisions of Section 11A of the Land Acquisition Act are read and enforced *stricto sensu* in the MRTP Act, inevitable consequences would be that various development schemes under the MRTP Act would come to a halt and the larger public interest would suffer. On the other hand, some inconvenience may be caused to the owners/interested persons of the land by non-induction of provisions of Section 11A of the Central Act. Thus, private interest would suffer which, in comparison to larger public interest, can hardly be a consideration for accepting the contention raised on behalf of the Appellant.

145. It has been held by various judgments of this Court and rightly so that the provisions of Sections 23(1A), 23(2) and 28 of the Land Acquisition Act which relate to payment of interest and solatium with regard to the amount of compensation determined under the award made by the Collector u/s 11 of that Act, is an adequate compensation to the Appellants for the delay which may be caused by the Government due to avoidable and/or unavoidable circumstances. On the contrary, if acquisition and all proceedings thereafter are permitted to lapse in terms of Section 11A of the Land Acquisition Act, the development plans which may have already commenced or even progressed may come to a standstill causing huge damage to the public interest as well as to the State Revenue which, ultimately, is nothing but public funds. This is more so for the reason that the lands come under a reservation, designation as land required for plans including township even when the draft plans are prepared and approved by the State.

146. From whatever point of view this is examined, it is not possible to read the provisions of Section 11A of the Land Acquisition Act into the MRTP Act without adversely affecting the very object of the MRTP Act and causing impediments, legal or otherwise, in the implementation of the development plans. These Acts operate in different fields and such incorporation by reference would be incompatible with the cause of the MRTP Act, particularly, when the reference to the provisions of the Land Acquisition Act are, primarily, for achieving the purpose of the MRTP Act.

9. In so far as prayer of the petitioner to quash the award dated 30.12.13 is concerned, it has been contended by learned counsel for the respondent that remedy of the petitioner is to make a reference u/s 18 of 1894 Act if he is aggrieved by the amount of compensation. The prayer of the petitioners for quashing of the notifications u/s 28 and 32 dated 17.7.97 and 23.12.2004 cannot be entertained after lapse of more than 9 years.

10. In view of the following discussions, none of the reliefs claimed in the writ petitions can be granted. All the writ petitions are dismissed.