

(2014) 09 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 43315 of 2014

Rashid and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 300-A

Land Acquisition Act, 1894 — Section 18, 23, 4, 55, 6

Citation : (2015) 1 UPLBEC 258

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : Ramanuj Yadav, Advocates for the Appellant

Judgement

Vivek Kumar Birla, J.—Heard Sri Ramanuj Yadav, 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 23.5.2014 (Annexure 8) passed by the respondent No. 2.

(ii) Issue, a writ, order or direction in the nature of mandamus commanding/ directing the Respondents to pay the due annuity/lump-sump to the petitioners in accordance to the provision of U.P. Land Acquisition of New Policy dated 2.6.2011 with an interest 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 petition in favour of petitioner.

2. The challenge raised is to the order dated 23.5.2014 whereby the representation of the petitioners, claiming annuity/lump-sump 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 the U.P. Land Acquisition of New Policy dated 2.6.2011. It may be noticed that it is only this claim, which has been rejected vide order dated 23.5.2014 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 alleged that the land of the petitioner was acquired for the Project of Arjun Sahayak Pariyojna in accordance with the Land Acquisition Policy dated 2.6.2011, contained in the G.O. Dated 2.6.2011 (Annexure 1 to the petition). It is stated that land was acquired under the provisions of the Land Acquisition Act 1894.

4. 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 23.5.2014.

5. A perusal of the record indicates that all the petitioners have sold the property to the respondents by way of private negotiation and the same was 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).

6. 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 23.5.2014 and have also gone through the G.O. dated 18.3.2013, which has been annexed as Annexure 9 to the petition.

7. The learned Counsel has also placed reliance on the minutes of the Meeting dated 11.4.2013 of the District Level Committee headed by the District Magistrate Mahoba, which is Annexure No. 2 to the petition. Earlier the petitioners approached this Court by filing Writ C No. 10029 of 2014 Mohd. Rasid and others v. State of U.P. and others, which was disposed of vide order dated 17.2.2014 with liberty to the petitioners to file a detailed representation before the respondent No. 2, giving all the relevant facts for claiming benefits under the aforesaid Land Acquisition Policy as narrated in the G.O. dated 2.6.2011. It was observed by this Court, while disposing of the petition, that no details like dates of notifications under Sections 4 and 6 of the Land Acquisition Act and dates of the award along with plot numbers etc. were mentioned.

8. 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 as per G.O. dated 18.3.2013 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 8.10.2012 is erroneous.

9. Learned Counsel for the petitioners has further submitted that a large number of similarly situated land owners having land in district Mahoba have been extended benefit of the G.O. dated 2.6.2011 and have been paid such annuity/ sump-sump amount and therefore, the petitioners have been discriminated, which is a violation of Article 14 of the Constitution of India and also of Article 300-A of the Constitution of India.

10. 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 23.5.2014. He has supported his contention with the help of the G.O. dated 18.3.2013 as well as the G.O. dated 17.8.2010; 30.9.2010 and the G.O. dated 8.10.2012, which have been referred to in various documents and Government Orders, including the G.O. dated 2.6.2011, but have not been placed on record by the petitioner.

11. 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 8.10.2012. It may be noticed that Mohd. Rasid, Navi Bux, Imanan have executed the sale-deed on 4.10.2012 and Imanan had executed one sale-deed on 1.10.2012 whereas Mohd. Safiq had executed a sale deed on 20.5.2011. All are sons of Noor Mohammad. 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.

12. Learned Counsel for the petitioners has placed much emphasis on the G.O. dated 2.6.2011, which provides for grant of annuity/lump-sump payment. He has also placed reliance on the minutes of the District Level Committee dated 11.4.2013 and asserted that village Fatehpur falls within the area of Tehsil Charkhari, and wherein the aforesaid award of grant of annuity/lump sump payment has been approved. He has also stated in para 10 of the petition that some of the affected farmers/tenure holders of the same village under the same project have received annuity and for this purpose a list of those persons to whom the payment of annuity has been made is annexed as Annexure 5 to the petition.

13. 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, as contained in Annexure 5 of the petition.

14. Coming to the applicability of the G.O. dated 2.6.2011, 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. The relevant extract of the G.O. dated 2.6.2011 is quoted herein below:-

15. We have therefore, noticed that G.O. dated 2.6.2011 clearly provides that while acquiring land for execution of any Project, High Way, Cannal etc. the proceedings shall be taken for acquisition of the land under the provisions of Land Acquisition Act 1989 and the rate of compensation will be fixed under the provisions of Agreement Rules 1997.

16. It was clearly mentioned that such acquisition will be undertaken under the Land Acquisition Act and after issuance of Section 4 Notification to protect the interest of the land owners, the amount of compensation shall be fixed under the Agreement Rules 1997 and the rehabilitation and all benefits under rehabilitation policy shall be extended to the land owners, which includes grant of annuity etc. The petitioners are claiming such benefits on the grounds above mentioned.

17. It is also pertinent to note that the reference of District Level Committee Proceeding dated 11.4.2013 takes into account various Government Orders with regard to the rehabilitation scheme etc. along with the G.O. dated 8.10.2012, and in the light of the aforesaid G.O. dated 8.10.2012, it was decided to purchase the land by way of private negotiation notifying several villages not only for the purpose of purchase the land by way of private negotiation but also for the purpose of extension of the benefit of annuity/lump-sum payment. We have also noticed that in the list of villages given in the aforesaid minutes dated 11.4.2013, the name of village Fatehpur finds place in Tehsil Charkhari but the name of village Imaliyadang existing in the same Tehsil, does not find place. A perusal of page 58 of the paper book, indicates that the sale-deed executed by Mohd. Safiq mentions that the property sold by him was situated in village Imaliyadang, Tehsil Charkhari. Some of the Khataunis annexed to the petition also relate to village Imaliyadang.

18. Be that as it may, since this decision of the committee is dated 11.4.2013, that is much after the execution of the sale deed by the petitioner in the year 2011 and 2012 itself and which is also prior to the issuance of G.O. dated 8.10.2012, therefore, the aforesaid decision of the Committee is of no help to the petitioners.

19. Since in the impugned order reference to various Government Orders has been made therefore, a reference to the same is necessary. In the G.O. dated 17.8.2010, it is provided that in the matter of land acquisition, various benefits are liable to be extended to the displaced land owners. Subsequently G.O. dated 3.9.2010 was issued wherein the G.O. dated 10.8.2004, 28.2.2006 and 17.8.2010, relating to rehabilitation etc. in land acquisition matters of various projects was prescribed and the provision for annuity was specifically provided.

In para 2 of the G.O. dated 3.9.2010 it was clearly provided that this order will apply only in relation to the those various Departments and various Institution/ Agencies for which the land has been acquired. From the aforesaid G.O. it is very much clear that the Government had extended the benefit of annuity/lump-sum payment only in case where the land is acquired under the provisions of Land Acquisition Act 1894. It is needless to highlight that acquisition, under the provisions of the Land Acquisition Act is compulsory acquisition and for this purpose solatium is granted. In other words the purchase of land by way of private negotiation cannot be termed as compulsory acquisition. Even the amount of compensation is fixed under the provision of Section 23 of the Land Acquisition Act, which provides for various factors to be taken into account while determining the compensation.

20. A judicial notice of the fact that can also be taken is that there are too many long drawn litigations under the provisions of the Land Acquisition Act, not only against the acquisition but also for the rate of compensation by way of filing a reference under Section 18 of the Land Acquisition Act and subsequently by filing appeals to the Higher Courts for the purposes of enhancement by the land owners or for reducing the amount of compensation granted in reference or in first appeal etc. To overcome this problem of rate/amount of compensation, the Agreement Rules 1997 were framed in exercise of powers under Sub-section 1 of the Section 55 of the Land Acquisition Act 1894. A bare reading of the Agreement Rules 1997 clearly discloses that the purpose of bringing such Rules was to curtail the litigation for amount of compensation which leads to increase in the liability of the acquiring body due to pendency of Reference or First Appeal or in further Civil Appeal for enhancement of amount of compensation. Thus, for this purpose it was provided in Rule 2 that the body or department for which the land is being acquired may, at any stage of proceeding settle down the terms and conditions and rates of the land under acquisition, with the land owners and this can be done whether possession has been taken or not before the award. In our opinion, therefore, by framing such Agreement Rule of 1997, the minimising of disputes regarding the amount of compensation was taken care of to curtail unnecessary litigation.

21. However, the long drawn litigation or dispute with regard to the acquisition which leads to delay in achieving the purpose of a Project, continues to disturb completion of Project etc. for which the land was being compulsorily acquired. Due to long drawn litigation against compulsory acquisition undertaken by issuing notifications under Section 4 and 6 of the Act, every purpose of acquiring land is frustrated no matter in whatever manner the payment is being made i.e. by agreement or by assessment under Section 23 of the Land Acquisition Act 1894 after such compulsory acquisition. It, therefore, appears that the G.O. dated 8.10.2012 was issued, which relates to various projects of the Irrigation Department which are undisputedly of very high public importance, to permit/ authorise purchase of land by way of private negotiation for such projects.

22. The G.O. dated 8.10.2012 that has been subject matter of debate by the learned Counsels is being quoted below:-

23. It is pertinent to note that the Agreement Rules of 1997 are applicable only in the case of compulsory acquisition under the provisions of Land Acquisition Act 1894. This G.O. dated 8.10.2012 also takes into account that the G.O. dated 14.9.2004, which clearly provides that in case land is purchased directly from the land owners/farmers without applying the provisions of the Land Acquisition Act, the department may take decision at its own level under the relevant Rules and Directions. Obviously, directions of the State Government are contained in Government Orders issued from time to time and it is the G.O. dated 2.6.2011, which provides that the general policy would be to purchase land by way of agreement from the land owners following the Rules and Orders issued in this regard. The same is also take into account in para 1 of the G.O. dated 2.6.2011, which has been quoted above.

24. Para 5 and 6 of this G.O. dated 8.10.2012 are applicable in the present case as they carve out an exception to the general policy as laid down in G.O. dated 2.6.2011, which was applicable to the cases where acquisition proceedings were initiated under the provisions of the Land Acquisition Act 1894. Para 5 specifically mentions that because it takes a very long time to acquire the land under the provisions of the Land Acquisition Act 1894 for the purpose of Projects of Irrigation Department and for this reason various project of national importance are still pending, therefore, it is necessary to provide that the land may be purchased by way of agreement/private negotiation so as to curtail the litigation which delays the execution of the Project and also increases the cost.

25. Para 6 of the G.O. clearly provides that purchase of land by way of agreement and fixation of the rate of compensation by the Committee as provided therein, there is no doubt that the various benefits under the rehabilitation policy 2010, as amended from time to time will also stand extended to such land owners whose land has been purchased under the agreement. It also provides that in case any negotiation fails regarding purchase of land from the land owners, the provisions of Land Acquisition Act will be pressed into service as provided under the G.O. dated 2.6.2011. This Government Order was made applicable with immediate effect. Therefore, it is absolutely clear that as against the general policy of acquisition as provided under the G.O. dated 2.6.2011 the same was clarified by the G.O. dated 8.10.2012, and it is only for the first time that an exception to compulsory nature of acquisition was created, and it was provided that the land may be purchased without invoking the provisions of the Land Acquisition Act. Therefore, the provisions, regarding the purchase of the land by way of private negotiation, was not available with the respondent Nos. 4 and 5 particularly prior to 8.10.2012.

26. It can, therefore, safely be inferred that by this Government Order dated 8.10.2012, the Government had taken care of both aspects of the acquisition

proceedings namely, one acquisition by agreement and secondly, fixing amount of compensation by agreement, to curtail delay in payments; litigation; increase in cost; and also to achieve completion of projects within time.

27. It is only to clarify the aforesaid position of the said G.O. dated 8.10.2012, that the G.O. dated 18.3.2013 which is Annexure No. 9 to the present petition, was issued. The said G.O. dated 18.3.2013 is quoted below:

28. The aforesaid Government Order clearly shows that any land purchased by way of an agreement prior to G.O. dated 8.10.2012 was without authority, as prior to that 8.10.2012, there was no order or direction to purchase the land by way of an agreement/private negotiation. An additional ground was also given that since mutation had already taken place in favour of the Irrigation Department, therefore, there is no justification to re open the said issue.

29. 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.

30. We, are therefore of the opinion that the present petition is devoid of merits for several reasons firstly, that undisputedly the land was not acquired under the provisions of the Land Acquisition Act, and hence, the G.O. dated 2.6.2011 has no application that was applicable only where the land was acquired under the Act of 1894. Secondly, the G.O. dated 8.10.2012, quoted above clearly shows that the same was made applicable with immediate effect i.e. the same has 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 by noticing the aforesaid fact, a correct conclusion has been drawn in the impugned order dated 23.5.2014 passed by the District Magistrate. Thirdly, undisputedly 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. Fourthly, since the G.O. dated 18.3.2013 clearly states that any purchase by way of agreement or by private negotiation, prior to the G.O. dated 8.10.2012, is without authority, therefore, no such benefit can be extended to the petitioners. The aforesaid purchase cannot be reopened, as the sale and purchase of the land has reached to its logical end. Therefore, the claim of the petitioners for additional benefit by way of annuity/lump sum payment was rightly rejected by the District Magistrate.

31. 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.