
(2004) 03 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 9400 of 1997

Ravi Narain Malviya and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 11

Citation : (2004) 2 AWC 1633

Hon'ble Judges : V.C. Misra, J;A.K. Yog, J

Bench : Division Bench

Advocate : A.K. Goyal and A. Kumar, for the Appellant; Anil Tiwari and Vishnu Pratap and A.K. Mishra, S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and V.C. Misra, JJ.—Heard learned counsel for the parties. Perused the record of the case.

2. Facts of the case, required for the adjudication of the issues raised in this petition are not in dispute and briefly stated as follows :

3. The petitioners are admittedly recorded tenure holders/owners of Khasra Plot No. 790 situate in Mauza Puresurdas. Pargana Jhunsi, district Allahabad measuring 7752 sq. yards (2 bighas 17 biswas). Petitioners entered into an agreement to sell the land in question on May 18, 1983 with Prayag Upniveshan Avas Evam Nirman Sahkari Samiti Limited, Balrampur House, Allahabad, for short called "the Society". It is also not in dispute that sale-deed, on the basis of said agreement was not executed, and the said deed was impounded under Indian Stamp Act, the Society failed to get the sale deed executed and the petitioners finally gave notice dated March 4, 1991, revoked the agreement to sell in favour of the Society.

4. In para 6 of the writ petition it is stated that petitioners continued to be recorded as owners of the land in question and this averment has not been

disputed vide para 5 of the counter-affidavit (sworn by Gyan Prakash Srivastava filed on behalf of the contesting respondents).

5. State Government issued notification under Sections 4 and 6 of the Land Acquisition Act which was published in daily newspaper dated 8.6.1990 and 26.6.1990 respectively. Petitioners, vide para 10 of the writ petition contends that office bearer of the Society had obtained a Vakalatnama from them before cancellation of the agreement, i.e., 4.3.1991 on the pretext that they shall pursue the "Land Acquisition" proceedings before concerned authorities and on the basis of that Vakalatnama, the Society filed Writ Petition No. 2225 of 1991 in this Court challenging the aforesaid notifications under Land Acquisition Act.

6. It is not necessary for us to go into the details of the said writ petition since parties to the present proceedings are not challenging the "Land-Acquisition" proceedings which ultimately culminated into "compensation award" in favour of the petitioners who are recorded as tenure holders.

7. Vide para 14 of the writ petition it is pleaded that petitioners submitted representation dated 27.12.1991 to the respondent No. 3/Special Land Acquisition Officer bringing to the notice of the parties that no sale deed was executed in favour of the Society and that no person except the petitioners, were entitled for compensation in respect of the land in question. It was also prayed that compensation be not paid to any one without petitioners' consent and verification. A true copy of the said representation dated 27.12.1991 has been filed as Annexure-1 to the writ petition.

8. In para 16 of the writ petition it is stated that, without giving opportunity of hearing or notice to the petitioners or obtaining consent of the petitioners an order dated 2.6.1992 was passed and a cheque was also prepared for payment of compensation to the Society. It has also come on record that cheque was prepared on 2.6.1992 itself and on the following day, i.e., 3.6.1992 encashed it from the bank. It appears that petitioners again on 10.6.1992 made a representation objecting payment of compensation to any other person ; copy of the said representation is Annexure-2 to the writ petition.

9. It will suffice to mention that petitioners continued to approach concerned authorities asking for "no payment" under compensation award to any one including the Society and also finally made complaint to the concerned authorities.

10. It is also contended that the petitioner, as an abundant caution, submitted a representation dated 11.6.1992 to the Commissioner, Allahabad Division, Allahabad protesting against payment in favour of the Society. The Commissioner in turn vide order dated 11.6.1992 directed the District Magistrate, Allahabad to hold an enquiry and to stop payment. The Special Land Acquisition Officer also passed an order dated 10.6.1992 stopping payment of the cheque. True copy of the order dated 10.6.1992 and 11.6.1992, referred to above have been filed as Annexures-3 and 4 to the writ petition respectively.

11. The Special Land Acquisition Officer in compliance with the Commissioner's Order dated 11.6.1992, after giving an opportunity of hearing to the Society, vide order dated August 23, 1994/Annexure-7 to the writ petition held that payment in favour of the Society is illegal, that the Society played fraud by concealing relevant material facts, it succeeded in receiving and encashing the cheque. In this order it was also directed that F.I.R. should be filed against the person responsible for such fraudulent act.

12. In pursuance to the aforesaid order dated August 23, 1994, Collector issued another order dated April 27, 1995 requiring S.D.M..Chail, Allahabad to recover the amount fraudulently received by the Society, by taking steps under Revenue Recovery Act. In pursuance thereof Tahsildar issued a recovery citation dated 1.8.1995 against the Society.

13. The Society, being aggrieved filed Writ Petition No. 30168 of 1995, Prayag Upniveshan Avas Evam Nirman Sahkari Samiti, Balrampur v. Special Land Acquisition Officer, Allahabad and Ors., (including present petitioners) and prayed for quashing of the aforesaid order dated 23.8.1994/Annexure-7 to the writ petition as well as the consequential order of recovery dated 27.4.1995/Annexure-8 to the writ petition and recovery citation dated 1,8.1995.

14. Operative portion of the judgment and order dated January 8, 1996/Annexure-9 to the writ petition, passed in the aforesaid writ petition reads :

".....

"In the result, the writ petition is allowed and the impugned notification Annexures-VII and VIII to the petition are quashed. It is, however, made clear that this decision will not in any manner prejudice the right of respondent Nos. 1 and 2 to recover the amount in question in accordance with law. There is no order as to costs."

15. Above quoted order/judgment shows that Court rejected the prayer of the petitioner, and specifically observed that the said judgment, was not to prejudice in any manner rights of the authorities to recover the amount in question in accordance with law. The respondent authorities, who have filed counter-affidavit do not plead that any appeal was filed against the said judgment.

16. The petitioners have filed copy of the letter dated 28.6.1996 written by Special Land Acquisition Officer, to the petitioners/Annexure-10 to the writ petition informing of the High Court judgment and order dated 8.1.1996, cancelling recovery certificate in pursuance of the aforesaid High Court judgment, a review application has been filed against aforesaid judgment in High Court and compensation amount shall be paid to the petitioners in accordance with the orders of the High Court and as and when this amount is recovered from the Society.

17. We are conscious that the Society has not been impleaded in this petition and that we are not sitting in review or appeal over the judgment and order of

the High Court dated 8.1.1996 but we are constrained to note from perusal of the said judgment and order dated 8.1.1996, that it was not argued that" the High Court should not have interfered and granted relief to the said petitioner (Society), in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, once it was proved that Society had resorted to fraud and misrepresentation in misappropriating compensation amount.

18. The facts of the instant case are glaring.

19. The then Secretary of the Society, apparently colluded with the Government Officials (the then Special Land Acquisition Officer) and ensured that payment is made to the person acting as the Secretary of the Society, and succeeded in depriving the persons in whose favour compensation award stood (namely the petitioners). It is evident that there was a pre-conceived plan to play fraud which is evident from the fact that cheque was prepared on 2.6.1992 and it was encashed on the following day, i.e., 3.6.1992 ignoring the representation of the petitioners requesting the then Special Land Acquisition Officer not to make payment to any other person.

20. A supplementary counter-affidavit (sworn by present Special Land Acquisition Officer Nagendra Sharma) has been filed enclosing therewith documents to show that an F.I.R. dated 24.2.2004 has been lodged against one Jai Prakash Ojha (the then Secretary of the Society), Tulsi Ram Gangwar (the then concerned Special Land Acquisition Officer), and Dev Nath Singh (the then Chief Revenue Officer), copy of the said F.I.R. dated 24.2.2004 is Annexure-2 to the supplementary counter-affidavit.

21. Why there is inordinate delay in filing the F.I.R.? Annexure-1 to the supplementary counter-affidavit is the notice dated 21.2.2004 to Jai Prakash Ojha, Secretary of the Society. Why notice was not sent earlier immediately after delivery of the High Court judgment and order dated 8.1.1996/Annexure-9 to the writ petition. These are the matters to be probed and require necessary action against delinquent officers. This shows complete apathy on the part of the officers to initiate enquiry in the matter.

22. In the above state of affairs, we deem it appropriate to direct the District Magistrate, Allahabad and Chief Secretary, Government of U. P., Lucknow to take requisite steps and initiate departmental enquiry forthwith against concerned erring officers and, if necessary, suspend the delinquent officer/s whose integrity is doubtful. An officer who indulges in and colludes with others to misappropriate money by playing fraud, does not deserve to be in the office even for a moment. The District Magistrate shall also ensure adequate "action" under Societies Registration Act in accordance with law, apart from criminal proceedings on the basis of the F.I.R, lodged against the officers of the Society who are responsible in playing fraud. In order to ensure recovery of the embezzled amount, the District Magistrate, Allahabad and the S.S.P., Allahabad shall take all steps including arrest, etc., and other coercive measures against Jai Prakash Ojha, the

then Secretary to the Society forthwith.

23. We find that in para 20 of the counter-affidavit sworn by Ghyan Prakash Srivastava, filed on behalf of the respondents, in reply to the para 36 of the writ petition it is stated that only recorded tenure holders are entitled to receive compensation, as such, there is a statutory obligation of the respondents to pay compensation amount to the petitioners.

24. Learned standing counsel had no answer as to why compensation amount be not paid to the petitioners when compensation award stands in favour of the petitioners. It has already been found during enquiry, vide order dated 23.8.1994, passed by Special Land Acquisition Officer/Annexure-7 to the writ petition that the then Secretary of the Society had succeeded in withdrawing compensation amount by fraud and having committed forgery and misrepresentation, and also in view of the judgment and order dated 8.1.1996/Annexure-9 to the writ petition passed by this Court in Writ Petition No. 30168 of 1995.

25. In the result, there appears to be no logic or reason for depriving the petitioners from receiving compensation amount. In case, respondent authorities had made payment of the compensation amount to third person who was not entitled to receive the same, it is the respondent authorities to ensure recovery but that cannot be an excuse/pretext to deprive of the "compensation amount" to the rightful persons. We hold that the petitioners are entitled to the relief claimed in the writ petition.

26. Accordingly, we issue a writ of mandamus commanding the respondent Nos. 1, 2 and 3, their officers, employees, agents, etc. to ensure payment of compensation of the amount of Rs. 3,74,205.51 p. in lieu of compulsory acquisition of the land in plot No. 790, in Mauza Puresurdas, Pargana Jhunsli, district Allahabad along with interest @ 10% per annum simple interest within two months from today.

27. Writ petition stands allowed with costs which we quantify at Rs. 10,000 and to be paid to the petitioners within two months from today.

28. Copy of this judgment shall be sent to the District Magistrate, Allahabad and the S.S.P., Allahabad and the Chief Secretary, U. P. Government Lucknow within four weeks from today.