
(2014) 05 AHC CK 0213
In the Allahabad High Court
Case No : C.M.W.P. No. 29757 of 2013

Ravindra Pratap Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2014) 6 ALJ 109 : (2014) 105 ALR 164 : (2014) 5 AWC 4898 :
(2014) 124 RD 463

Hon'ble Judges : Vineet Saran, J;Naheed Ara Moonis, J

Bench : Division Bench

Advocate : Manu Khare, Advocate for the Appellant

Final Decision : Allowed

Judgement

Vineet Saran and Naheed Ara Moonis, JJ.—The case of the petitioner is that he, alongwith his brothers, is the owner of Khata No. 542 situated in village Koda, Jahanabad, Tehsil Bindki, District Fatehpur. It is not disputed that a road, maintained by the U.P. Public Works Department, passes through the plot of the petitioner which was constructed sometime in the year 1955. According to the petitioner, only 400 meters of land from plot No. 542, was utilized for construction of the said road which would be clear from the records of the revenue department and there is no grievance regarding the same. The grievance of the petitioner is that in the year 2003, when the project for widening of the said road was carried out under a scheme of the World Bank, a further area of 1989 sq. meters of land of plot No. 542 was utilized for such widening, without resorting to the procedure for acquisition under the Land Acquisition Act or following any procedure prescribed by law, or on payment of any compensation to the petitioner and his brothers. It is contended that ever since the taking over of the land of the petitioner, he has been running from pillar to post but no compensation has been paid. He has thus filed this writ petition with the prayer for a direction in the nature of mandamus commanding the

respondents to pay the compensation for the land of Khata No. 542 situated in village Koda, Jahanabad, District Fatehpur which has been taken by the respondents for widening of the road and also pay 18% interest thereon.

2. We have heard Sri. Manu Khare, learned Counsel for the petitioner as well as learned Standing Counsel appearing for the respondents and have perused the record. Pleadings between the parties have been exchanged and with consent of the learned Counsel for the parties, this writ petition is being disposed of at the admission stage itself.

3. On 24.5.2013 a Division Bench of this Court had passed the following order:

On hearing the parties, we adjourn this matter for six weeks. In the meantime, learned Counsel for the State shall seek instructions from the Secretary, Public Works Department representing respondent No. 1-State of U.P. and from respondent Nos. 8 and 9 Superintending Engineer and Executive Engineer concerned.

We direct respondent Nos. 8 and 9 to get the public road, which has been allegedly repaired or renovated, measured scientifically to find out whether the land of the petitioner has been utilised for the purpose of said road or not. If the petitioner's land in Gata No. 542 has been utilised, then the extent to which such land was utilised for the purpose of road should be measured and shown in a scientifically prepared map and value of such land should be calculated as per Government policy. In case, the land of the petitioner has not been utilised for the road, then respondent Nos. 8 and 9 shall mention this fact clearly in their report. Such report should be made available to learned Counsel for the State by the next date.

List the matter after six weeks in the cause list.

4. Respondents No. 8 and 9 in this writ petition are Superintending Engineer, World Bank Project P.W.D. Kanpur Nagar and Executive Engineer, Nirman Khand-IV Kanpur Nagar respectively. In compliance thereof, after nearly one year an affidavit has been filed today, which is sworn by Sri. Gopal Raj Swaroop, Assistant Engineer, World Bank Division, Public Works Department, Lucknow. The same shall be dealt with at the relevant stage.

5. Besides the fact that in the revenue records only 400 sq. meters land of plot No. 542 has been shown as having been utilized for construction of road, which fact is not disputed by the respondents, learned Counsel for the petitioner has placed reliance on the following communications/reports:

(1) Communication dated 26.7.2008 (Annexure-4 to the writ petition) of the Executive Engineer to the petitioner, stating that they have written to the Sub Divisional Magistrate, Bindki to submit his report with regard to the utilization of the land belonging to the petitioner for widening of road and construction of the culvert and that only after receipt of such report, the matter relating to payment of compensation to the petitioner would be considered.

(2) The report of the Revenue Inspector dated 31.10.2008 (Annexure-5 to the writ petition and Annexure-2 to the Rejoinder affidavit) wherein it has been categorically stated that beyond the area of 400 sq. meters of Khata No. 542 which has been shown in the records for the purpose of road, an additional area of 1989 sq. meters of the said plot has been utilized for widening of road, for which compensation is to be paid to the petitioner. In the said report it is also mentioned that the circle rate for residential plots of the area is Rs. 1500/- per sq. meter, according to which the compensation would come to Rs. 29,83,500/-; whereas the commercial rate is Rs. 1900/- per sq. meter according to which the compensation would come to Rs. 37,79,100/-. The said report has been duly forwarded by the Sub Divisional Magistrate to the Executive Engineer on 14.11.2008.

(3) Communication dated 2.5.2009 (Annexure-6 to the writ petition) by Sugam International Sansthan (which is the body responsible for supervising the work of widening/up-gradation of road being carried out under the scheme of the World Bank) which acknowledges the taking over of 1989 sq. meters of land of the petitioner for widening of the road, and mentions that it has been duly certified by the Sub Divisional Magistrate also, for which the compensation has yet not been paid to the petitioner.

(4) Communication dated 7.9.2012 (Annexure-13 to the writ petition) from the District Magistrate to the Additional District Magistrate requiring the latter to initiate proceedings for payment of compensation in accordance with the rules and the law. Acknowledgement of communication of Sugam International Sansthan and of the Executive Engineer, with regard to taking over 1989 sq. meters land of the petitioner has been done in this letter.

(5) Communication dated 8.9.2012 of the Additional District Magistrate, Kanpur to the Superintending Engineer, World Bank Scheme, respondent No. 8, for taking necessary action with regard to payment of compensation.

6. In the light of the above, it is submitted by the learned Counsel for the petitioner that the matter relating to payment of compensation, though acknowledged by the relevant authorities, is moving from one desk of the Government and semi-government organizations to another, without the petitioner getting any relief, despite more than a decade having passed. It is contended that from the record it is absolutely clear that additional 1989 sq. meters of the land of the petitioner has been taken away for widening of the road without any consent of the petitioner or without resorting to the procedure for acquiring the land, and as such the petitioner ought to be paid compensation for the land taken, alongwith interest and damages.

7. This Court had earlier directed the learned Standing Counsel to produce the original record relating to the case, which has been made available. From the record, learned Standing Counsel does not dispute the issuance of the communications which have been relied upon by the learned Counsel for the

petitioner, mention of which has been made hereinabove. It is also not disputed that revenue record shows only 400 sq. meters of plot No. 542 to have been utilized for construction of road. All that he states is that the length of the road passing through the plot of the petitioner is 159.1 meters and if only 400 sq. meters is the area utilised for the road, the width of the road would be only about 2.5 meter, which is not possible. He thus submits that since the road was wide enough for being a highway since 1955, it has wrongly been recorded in the revenue records that only 400 sq. meter is the area used for the road which passes through the plot of the petitioner. The affidavit of compliance which has been filed today is not in terms of the order dated 24.5.2013 passed by this Court. No scientifically carried out measurement of land which has been taken or utilized from the plot of the petitioner for the purpose of road construction has been given and all that has been stated is that no land from the plot of the petitioner has been utilized for the up-gradation of road, as the road was always as wide as it now is.

8. Learned Standing Counsel has, however, not been able to explain that if it is taken to be correct that there has been no widening of the road, then how and why the reports of various authorities with regard to utilization of additional 1989 sq. meters of land of the petitioner for the purposes of the widening of road have been submitted.

9. Land can be taken over by the State only in accordance with law. The same may be either by resorting to the process of the Land Acquisition Act or through a sale-deed executed by the land owner. Proper compensation ought to be paid to the land owner before he is deprived of or made to part with his land. The might of the State should not be used for grabbing land from land owners and thereby refuse to pay compensation, even when the record show that additional land has been taken from the land owner. All citizens, and more particularly the State authorities, are expected to follow the law. The law is clear that no person can be deprived of his property without following the due process of law.

10. In the present case, what appears to have been done is that for the purposes of widening of road the land of the petitioner has been utilized. Later on, even when the authorities realised that additional 1989 sq. meters of land of the petitioner had been taken for such purpose, regarding which reports of the officials exist on record, they tried to justify that the total land had already been taken from the petitioner initially when the road was constructed in the year 1955. Howsoever laudable or important the purpose of acquisition of land may be, the process of law cannot be given a go by. The respondents in this case clearly appear to have used their authority against a simple land owner to take his land and thereafter not even bother to compensate him.

11. From the record it is established that additional 1989 sq. meters land of the petitioner was utilized in the year 2003 for widening of the road. Learned Standing Counsel does not dispute the fact that the location of the land in question, falls in commercial area. In the counter-affidavit, nothing has been

stated with regard to the value of the land, which would be Rs. 37,79,100/- (as per the circle rate of Rs. 1900/- per sq. meter) as per the report dated 31.10.2008 of the Revenue Inspector, which has been duly forwarded by the Sub Divisional Magistrate.

12. In view of the aforesaid, when from the original record also, which is available with the learned Standing Counsel, nothing could be shown to the Court to prove that the width of the road, as it existed in 1955, remained the same even after upgradation and widening, and it is well established from the record that 1989 sq. meters of the land had been utilized in the year 2003 for widening of the road, we are of the opinion that the petitioner would be entitled for being paid compensation, at least at the rate at which the value of said land has been assessed by the report dated 31.10.2008.

13. The Apex Court in the case of Bhimandas Ambwani (D) thr. L.Rs. Vs. Delhi Power Company Limited, , has, while considering a case where the facts were such that the landowner was dispossessed without resorting to any law of Land Acquisition Act, held that such person would not be entitled to restoration of possession as full-fledged residential colony had been constructed on the land in question but directed the respondents to make an award under the provisions of the Land Acquisition Act treating section 4 notification to have been issued as on the date of the judgment of the Supreme Court which was 12.2.2013. In the present case, if the land is treated to have been acquired as on date for the purposes of valuation for payment of compensation, it would have to be assessed under the provisions of the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013. However, keeping in view that the valuation of 1989 sq. meters of land of the petitioner has been assessed at Rs. 37,79,100/- by the report dated 31.8.2008 prepared by the respondent-authorities and the petitioner does not object to such valuation, we would not be inclined to remit the matter for further valuation of the property as more than ten years have already lapsed since the petitioner has been deprived of his property without being paid any compensation and directing for further proceeding for valuation, in the aforesaid facts, would be further delaying the determination and payment of compensation.

14. Accordingly, we direct the respondents to pay compensation of Rs. 37,79,100/- to the petitioner alongwith 12% interest from 31.10.2008 till the date of payment, if the payment is made within three months from today, and if not, then the respondents shall be liable to pay interest at the rate of 18% per annum from 31.10.2008 till the date of actual payment. In the facts of this case, since the petitioner has been running from pillar to post for payment of compensation of his land which has been taken over and utilized by the respondents more than a decade ago, and that too without following any procedure of law, we are of the opinion that the petitioner would also be entitled for payment of cost, which this Court assesses at Rs. 50,000/-. The said amount shall also be paid to the petitioner within the aforesaid period of three months.

The writ petition stands allowed to the extent indicated above.