

(2010) 01 AHC CK 0135

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30063 of 2009

Rohtash Singh Chauhan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4(1), 6

Citation : (2010) 01 AHC CK 0135

Hon'ble Judges : Sunil Ambwani, J and Virendra Singh, J

Final Decision : Dismissed

Judgement

Virendra Singh, J.

The petitioners have challenged the land acquisition proceedings acquiring 128.862 hectares of land at village Shahpur Goverdhanpur Khadar, Tehsil Sadar, Pargana Dadari District Gautam Budh Nagar by notification issued under Section 4 (1) of the Land Acquisition Act, 1894 (in short, "the Act), dated 27.12.2007, along with opinion of the State Government that the provisions of sub section (1) of Section 17 are applicable to the land and also applying the provisions of sub section (4) of Section 17 for "Planned Industrial Development" of Gautam Budh Nagar through New Okhla Industrial Development Authority, the notification under Sections 6/17 of the Act was published on 14.2.2008. The petitioners have also prayed for directions not to dispossess them from their abadi/araji of which they are owners, claiming to be in actual physical possession and not to demolish existing constructions over their land.

It is stated in paragraphs 5 to 7 of the writ petition, that out of area 1.088 hectare of plot No. 508, only 0.472 acre was sought to be acquired by the notification. The remaining area i.e. 0.616 hectare was left out of the acquisition proceedings. The petitioners 1 and 2 are owners and in possession of 0.1054 hectare forming part of plot No. 508 total area 1.088 hectare of Khata No. 105, which they have purchased from its bhumidhar Shri Vijay Singh son of late Shri Dhalchand by registered sale deed dated 29.8.2008. The petitioners no. 3 and 4

claim to be owners and in physical possession of 1.1054 hectare land forming part of plot No. 508 total area 1.088 hectare and plot No. 532 total area 1.9720 hectare, which they have purchased from Shri Kunwar Lal son of Shri Amar Singh by registered sale deed dated 30.8.2008, and their names have been mutated in their khatauni (record of title). In paragraph 6 it is stated that the sale deeds relate to those area of plot Nos. 508 and 532, which were left out and were not included in the notification. The petitioners' land is 0.616 hectare of plot No. 508 and 0.215 hectares of plot No. 532, which were left out from the acquisition.

It is stated that initially a proposal of acquisition of 132.59 hectare of land in village Shahpur Goverdhan was sent to the Government through letter dated 11.12.2006. The proposal was returned on which a Committee of three officers, namely Additional District Magistrate (Land Acquisition) Noida, Sub Divisional Officer/Additional District Magistrate, Tehsil Dadari and Additional Chief Executive Officer, Noida, made local inspections and submitted a report in which they proposed to release 2.365 hectare land including 0.616 hectares of Khasra No. 508 and 0.215 hectares of plot No.532, and that accordingly these areas of plot Nos. 508 and 532 as well as area of plot No. 505, 506 and 507 were left out from the acquisition. In last week of May, 2009, the officers of Jayprakash Associates and the officers of Noida and land acquisition office came with police force and started forcibly demolishing the constructions (houses) of the petitioners existing on the land purchased by them. The petitioners are running from pillar to post but that no one is prepared to hear them. They have also annexed photographs of demolition. It is alleged that the land purchased by the petitioners was not acquired. The petitioners have also challenged the notification on the ground that there was no urgency much less such unforeseen emergency to acquire the land. The acquisition was wholly uncalled for and in any case notice under Section 9 of the Act has not been served nor 80% compensation has been paid. The petitioners have explained the delay in filing the writ petition in submitting that since the land was not included in the notification and no notice under Section 9 was issued, they have filed the petition only after the respondents have taken steps made to demolish their constructions. Shri W.H. Khan appearing for the petitioners submits that this Court may issue a Commission to find out the extent of the constructions of the petitioners, and the demolitions carried out by authorities.

We have heard Shri W.H. Khan, Senior Advocate assisted by Shri J.H. Khan for the petitioners. Shri M.C. Chaturvedi, Chief Standing Counsel appears for the State respondents. Shri Ramendra Pratap Singh assisted by Shri G.P. Singh appears for New Okhla Industrial Development Authority.

In the counter affidavit of Shri S.K. Pandey, Special Secretary, Industrial Development, Government of U.P., Lucknow, it is stated that a proposal of acquisition of 134.662 hectares of land was submitted by Noida for planned development, to the Additional District Magistrate (Land Acquisition) District Gautam Budh Nagar on 4.9.2006. The Additional District Magistrate made a

demand of deposit of 20% of the estimated amount of compensation and the cost of acquisition. The Noida made available a sum of Rs. 13, 56, 23, 438/ vide letter No. 1332 dated 8.11.2006. As per joint spot survey the Noida submitted a modified proposal of 134.420 hectares of the land which did not include temple/ samadhi etc. The proposal was submitted to Director, Land Acquisition Directorate, Board of Revenue, U.P. Lucknow by the letter of the District Magistrate dated 7.12.2006. The Director sent back the proposal to the District Magistrate with certain objections. Some more objections were received in respect of land acquisition proceedings with regard to the land situate at village Shahpur Goverdhanpur, Khadar on which a Committee was constituted for carrying out survey and that necessary modifications were made. A modified proposal was submitted by the Noida to the Additional District Magistrate (Land Acquisition) Gautam Budh Nagar on 13.3.2007.

It is stated in paragraph 12 of the counter affidavit, that a high level committee was constituted at the level of Directorate of Land Acquisition. The Committee submitted a report after conducting a survey and that as per recommendations the Additional District Magistrate again submitted a request for acquisition of the land on 26.7.2007. The Noida in its letter dated 25.10.2007 incorporated the recommendations and submitted a modified proposal in respect of the acquisition of an area 128.862 hectares. The Director, Land Acquisition Directorate, Board of Revenue, U.P. Lucknow by his letter dated 21.11.2007 submitted the proposal for issuing notifications under Section 4 (1)/17 (4) of the Act. The notification under Section 4 (1) read with Section 17 (4) of the Act for acquisition of 128.862 hectares was made on 27.12.2007. The notification was also published in two daily newspapers "Rashtriya Sahara" and "Amar Ujala" on 29.12.2007 and a public notice was also published. The Noida on demand deposited Rs.53, 23, 12, 733/ towards 80% of the estimated compensation and made a request for acquisition of the land vide its letter No. 570 dated 30.1.2008. The notification under Section 6 (1) read with Section 17 (1) of the Act was published on 14.2.2008. It was also published in daily newspapers "Rashtriya Sahara" and "Dainik Jagaran" on 20.2.2008. A public notice/munadi was also carried out and thereafter the notice under Section 9 of the Act was issued to the tenure holders on 20.2.2008 fixing 7.3.2008 for disposal of objections. By a letter no. 110 dated 4.3.2008 of Officer on Special Duty, the possession was proposed to be taken on 10.3.2008, and that the officials took over possession of the land on 10.3.2008 and on the same day the acquired land was transferred to Noida. In paragraph 24 of the counter affidavit, it is stated that the payment of compensation amount was made to farmers as per the rates agreed by the farmers under the Agreement Rules 1997. In Village Sahapur, Govardhanpur Khadar, itself an estimated amount of Rs. 97.68 crore has been distributed to 515 land holders for 102 hectare of land. The petitioners have purchased the land after notifications under Section 4 (1) and 6 (1) of the Act, and after the possession was taken over on 10.3.2008 after issuing notice under Section 9 (1) and after depositing 80% of the estimated compensation.

Shri M.C. Chaturvedi as well as Shri Ramendra Pratap Singh have raised preliminary objections to the maintainability of the writ petition by the petitioners, as purchasers of the land after the notification under Section 4/17 dated 27.12.2007 and the notification under Section 6/17 dated 14.2.2008 and the transfer of possession to Noida on 10.3.2008. It is denied that the area purchased by the petitioners by sale deeds dated 29.8.2008 and 30.8.2008 was excluded from the acquisition and is specifically stated in paragraph 28 and that the land purchased by the petitioners is part of the area under acquisition. The Khatauni extract in respect of Khasra No. 508 for 1411F1416F shows that Shri Vijay Singh, the vendor had himself purchased the land from Shri Ravindra Nath Vardhan son of Shri Shiv Nath Vardhan resident of Bharhait vide sale deed dated 10.5.2004. Shri Vijay Singh sold his entire shares in Gata No. 508 area 0.1054 hectare. The land is shown in the sale deed as agricultural land and the stamp duty has been paid treating the land as agricultural land. Shri Vijay Singh subsequently executed a gift deed dated 25.3.2009 in respect of his share in Gata No. 504 to Shri Siddhpeeth Vaishno Mata Mandir. A writ petition No. 30647 of 2009 filed by Shri Siddhpeeth Vaishno Mata Mandir vs. State of UP and others was dismissed on 8.7.2009 on the ground that the subsequent purchaser has no right to challenge the notification.

Almost the same averments have been made in the counter affidavit of Shri Anil Kumar Singh, Tehsildar, Land Acquisition, Noida, District Gautam Budh Nagar and the counter affidavit of Shri Ram Nath, Tehsildar, New Okhla Industrial Development Authority, Gautam Budh Nagar.

In the rejoinder affidavit, it is not denied that the sale deeds were executed after the notification under Sections 4 (1) and 6 (1) of the Act were issued and published. It is however reiterated that the portions purchased by the sale deeds were not acquired. The "Yamuna Expressway Highway", to which the land has been transferred by the Noida, is at a distance of 3 Kms. The public munadi and the issuance of notices have also been denied.

Shri W.H. Khan has relied upon a judgment of Supreme Court in Gunwant Kaur AIR 1970 SC 802 in submitting that even subsequent purchaser of the land has a right to challenge the notifications acquiring the land. He has tried to distinguish Meera Sahni vs. Lieutenant Governor of Delhi and others 2008 (9) SCC 177 in which the land was transferred in violation of Delhi Lands (Restrictions on Transfer) Act, 1972 and submits that in that context the Supreme Court had stated that the subsequent purchaser, without seeking permission of the competent authority to purchase the land, has no right to challenge the acquisition of the land.

In the notifications under Section 4 (1) read with Section 17 dated 27.12.2007 and the notification under Section 6 (1) read with Section 17 of the Act dated 14.2.2008, as well as the authority letter of which the possession was handed over by the State Government to Noida the area of 0.472 hectare of plot No. 508M and 1.757 hectare of plot No. 532M were included in the entire area of

128.427 hectare. In the sale deed in favour of the petitioner nos. 1 and 2 Rohtash Singh Chauhan and Sohan Lal dated 29.8.2008, the land is described as the entire onethird share of Gata No.105 Khet No. 508 area 0.3164 hectare out of total area 1.088 hectare, which comes to 0.1054 hectare. In the sale deeds in favour of Smt. Kailashi and Smt. Munni Devi dated 30.8.2008 the area as described as 1/9 share of 0.340 hectare is 0.0518 hectare i.e. vacant residential plot 518.38 square meters of Gata No. 00105 Khet No. 508 and Khata No. 00048 Khet No. 532.

In *State of Orissa vs. Dhobei Sethi and another* 1995 (5) SCC 583; *Yadu Nandan Garg vs. State of Rajasthan and others* 1996 (1) SCC 334; *U.P. Jal Nigam Lucknow vs. Kalra Properties (P) Ltd* 1996 (3) SCC 124; *Sneh Prabha (Smt.) & others vs. State of UP and another* 1996 (7) SCC 426; *Star Wire (India) Ltd. vs. State of Haryana & others* 1996 (11) SCC 698, and *Meera Sahni vs. Lieutenant Governor of Delhi and others* 2008 (9) SCC 177 the Supreme Court held that it is by now well settled that under the Land Acquisition Act the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation. In para 17 in *Meera Sahni* (supra) it was observed as follows:

"17. When a piece of land is sought to be acquired, a notification under Section 4 of the Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification the encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. A number of decisions of this Court have recognised the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act."

In Delhi large areas were acquired by the State Government for planned development of the city. The unscrupulous property dealers however continued to transfer the properties at will and created complicated situation for innocent persons. The Central Government therefore conscious of the situation, imposed restrictions to curb large scale transactions and enacted special legislation called "Delhi Lands (Restrictions on Transfer) Act, 1972, to prohibit transfers by way of sale, mortgage, gift, lease or otherwise of any land which was subject matter of acquisition or in respect to which acquisition proceedings were initiated or proposed to be initiated. The Act was an initiative by the legislation to stop such transactions, which were otherwise valid for the purposes of claiming compensation. The judgment in *Meera Sahni* (supra) thus is not distinguishable on the ground that the Supreme Court in the judgment was concerned only with the operation of the Delhi Lands (Restrictions on Transactions) Rules 1972. The Supreme Court clearly and unequivocally held that the purchaser of the land

subsequent to the notification under Section 4 (1) of the Act, is not permitted to challenge land acquisition proceedings.

This Court has also followed the same principle of law in *Naseeb Ahmad and others vs. State of UP and others* 2005 (1) AWC 594 and *Sri Sidhas Pith Vaisno Mata Mandir Shivdham vs. State of UP and others* Civil Misc. Writ Petition no. 30647 of 2009.

In *Gunwant Kaur (supra)*, the purchasers of land in the years 1960 and 1961, were allowed to challenge notification dated June 26, 1959, under Section 4 of the Act, on the ground that the land not adequately described. The portion of the plot No. 2030, measuring 15 Bighha 5 Biswa, was acquired, whereas 11 persons including petitioner were shown as owners of different pieces of land acquired for constructions of Mall Road. The land was vaguely described in both the notifications under Sections 4 and 6 of the Act. In this case there is no such challenge to the notifications.

In this case on the dates of sale deeds executed in favour of the petitioners the land stood acquired by notifications under Sections 4/17 and 6/17 and the possession had also been taken. The petitioners allege to have purchased the land free from acquisition. It was necessary both for vendor and the petitioners to mention the fact in the sale deed. The areas of the land described in the sale deeds do not show that they are part of the plots, which were not acquired, or that there were any constructions existing on the demised land. The sale deeds do not mention of any such constructions. The land was transferred as agricultural land and the stamp duty was calculated and paid on the valuation made on the basis of agricultural land. The petitioners did not apply for permission nor any such permission could be given by Noida under the Industrial Area Development Act, 1976 to the petitioners for raising constructions. The photographs annexed to the writ petition also do not show that there were any houses or residential structures which were demolished by the authorities.

Shri W.H. Khan has not made out any case nor has placed before us any material to doubt whether the land purchased by the petitioners was free from acquisition and that there were any constructions standing on the land which have been partly demolished. We therefore do not find any good ground to issue a Commission for spot inspections.

No other point was pressed.

The writ petition is dismissed.