
(2008) 04 AHC CK 0234
In the Allahabad High Court

Rupam Kumari Arya and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 4, 6

Citation : (2009) 106 RD 741 : (2008) 3 UPLBEC 2197

Hon'ble Judges : Pradeep Kant, J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and Narayan Shukla, JJ.—This writ petition by three individual members of Yug Nirman Sahkari Awas Samiti Ltd., has been filed challenging the acquisition of their land under the provisions of the Land Acquisition Act. The impugned notification issued u/s 4 of the Act is dated 5.3.92 and the declaration u/s 6 is dated 2.4.93. The petitioners also pray for quashing the possession certificates dated 23.12.94 and 24.12.94.

2. Shorn of unnecessary details, the Society itself filed a writ petition bearing number 5219 (MB) of 1993, challenging the said notifications. This writ petition was dismissed in default on 20.4.95. The same was restored on 26.4.95 but again on 13.8.03, the same has been dismissed in default and the interim order has been vacated.

3. The petitioners allege that they could not know about the order of dismissal of the writ petition in default on 13.8.03 and it was only on 29.11.07 i.e. after more than four years that the Lucknow Development Authority itself allegedly allotted some plots selectively to other members and, therefore, the petitioners also pray that they should also be given residential plots, as other members have been allotted in Gomti Nagar, though without disclosing as to who are those members, who have been allotted the plots.

4. The petitioners have also moved some representation to the State Government for alternative allotment of plots.

5. Sri Sudhir Pandey for the Lucknow Development Authority, Sri Shailendra Singh Chauhan for the Nagar Nigam and Sri Navneet Agarwal for the State raised a common preliminary objection that writ petition by the members of the Society, who had already filed a writ petition, cannot file individual writ petitions, after the said writ petition stands dismissed, either on merits or in default. Further objection is that the notifications of the year 1992 and 1993 cannot be allowed to be challenged after such a long period and the petition deserves to be dismissed on this ground alone.

6. It is also on record that possession was actually taken by the Lucknow Development Authority in the year 1994 itself, as the petitioners have also made a request for setting aside the possession certificates issued in that very year.

7. Reliance is being placed upon a judgement of the apex court in the case of *Swaika Properties Pvt. Ltd. and Anr. v. State of U.P. and Ors.* AIR 2008 SCW 1574, wherein the apex court has considered the question of delay in challenging the notifications and has held that the writ petition filed after a long delay i.e. after taking over the possession and award having become final, is liable to be dismissed on the ground of laches.

8. Para 13 of the aforesaid judgement, which deals with the aforesaid issue, is being quoted below:

13. We do not find any substance in the submissions of the counsel for the appellants. No doubt the appellants had filed a writ petition before the Calcutta High Court challenging the acquisition proceedings but the said writ petition was dismissed by this Court on 08th April, 1985 holding that the Calcutta High Court did not have the territorial jurisdiction to entertain the writ petition. Thereafter, till 1987 the appellants did not challenge the acquisition proceedings and the writ petition was filed by it before the Rajasthan High Court which had the territorial jurisdiction in the matter and the same was withdrawn which was again filed within the next four months thereof, meaning thereby, during the interregnum the appellants slept over the matter. However, the appellants have not been able to give any explanation for the same. In so far as the contention regarding the possession having not been taken is concerned, the respondents submit that the possession of the land in dispute has already been taken. Be that as it may, the award in respect of the land having become final, the State Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petition. Moreover, the appellants sought enactment of compensation by filing reference application u/s 18 of the Land Acquisition Act, 1984. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award. This Court has repeated held that a writ petition challenging the notification for acquisition

of land, if filed after the possession having been taken, is not maintainable. In the case of *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, where K. Ramaswamy, J speaking for a Bench consisting of His Lordship and S.B. Majumdar, J. held:

It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6 but it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

9. In another case of *Hari Singh and Others Vs. State of U.P. and Others*, , the apex court found that there was a delay of 21/2 years in challenging the notifications and it was such a delay which allowed the petition to be dismissed on the ground of laches.

10. The present petitioners admit that they are members of the Society. They also admit that their interest was being watched when the Society filed the writ petition and they did not file any independent writ petition. Once the Society, of which the petitioners are the members, has filed the writ petition, they do not have any locus standi to challenge the same notifications or the same action of the State Government or the Lucknow Development Authority by filing an independent writ petition. Their fate would abide the decision of the writ petition filed by the Society.

11. Apart from this, independent petition could also not be entertained, because the petitioners have approached the Court after more than 14 years from the date of publication of the notification.

12. The tendency of filing writ petitions by members of the Society after they feel dissatisfied with the action of the Society or otherwise, finding that the Society has not been able to get the desired result, or to take chance by approaching the Court individually, can neither be appreciated nor can be allowed in law.

13. The acquisition was effected as far back as in the year 1992; the possession was taken in the year 1994 and the petitioners very well knew since beginning about the said facts. They had chosen to become the members of the Society and authorised it to file the petition and pursue their cause and, therefore, it is not open for them to raise the same pleas and same grievance now.

14. There is also no explanation worth being accepted, explaining the delay or

laches on the part of the petitioners. Every litigation has to be given finality at some stage. Allowing individual members to file petition after the dismissal of the writ petition filed by their Society or during the pendency thereof, will increase uncalled for and unnecessary litigation, which shall also be against the public policy.

15. The land acquisition proceedings must attain finality at the earliest as in the absence of such finality, the purpose for which the land is acquired, namely, public purpose and planned development, would be frustrated. It is also to be taken note of, that because of never ending litigation, even the most urgent schemes of planned development, which are in larger public interest, may stand defeated.

16. We, therefore, dismiss the writ petition on the ground of laches and also on the ground that the petitioners do not have any individual locus standi to file the present petition.