

(1957) 07 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Application No's. 118 and 119 of 1955 (O.J.)

S. Barrow

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 30-07-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115, 152, 9
Constitution (Fourth Amendment) Act, 1955 — Section 5
Constitution of India, 1950 — Article 226, 227, 31, 31A, 31B
Government of India Act, 1935 — Section 299
United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 — Section 11, 11(1), 2
Uttar Pradesh Land Acquisition (Rehabilitaion of Refugees) Rules — Rule 16

Citation : AIR 1958 All 154

Hon'ble Judges : Roy, J;M.L. Chaturvedi, J

Bench : Division Bench

Advocate : Naziruddin and Halimuddin, for the Appellant; K.L. Misra, General and B.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—The above two are applications under Article 226 of the Constitution. They raise common questions of law and may conveniently be disposed of together.

2. The petitioner in both the cases is the same. He owned certain lands in villages Bhilawan and barha in the District of Luck-now. The Collector of the District decided to requisition any then to acquire portions of his land in the two villages. The Collector of Lucknow accordingly issued notices u/s 3 of the U. P. Land Acquisition (Rehabilitation of Refugees) Act, 1948, U. P. Act No. 26 of 1948.

This Act will hereafter be referred to as the Act. Section 3 of the Act provides that if, in the opinion of the State Government or such other authority as the State Government may appoint in that behalf, it is necessary or expendient to requisition the land for purposes of erection of houses, shops or workshops for

the rehabilitation of the refugees, the State Government or the appointed authority, as the case may be, may by order requisition any land by serving on the owner and occupier thereof a notice stating that the State Government or the appointing authority has decided to requisition it in pursuance of this section.

The notices were duly issued and served on the petitioner, and it is not denied that the notices were issued by proper authority. Subsequently on the 5th March, 1953, notices were issued under Sub-section (1) of Section 9 of the Act stating that the Collector had decided to acquire the land in pursuance of the sub-section. The petitioner is not disputing the correctness of the requisition or the acquisition and the only point in dispute is the amount of compensation to which he was entitled u/s 11 of the Act.

This section provides that where any land is acquired u/s 9, there shall be paid compensation to the owner, the amount of which shall be determined by the Compensation Officer in accordance with the principles set out in clauses first, second and third of Sub-section (1) and of Sub-section (2) of Section 23 of the Land Acquisition Act, 1894. There are then two provisos added to the sub-section and the first of them is important and may be quoted in full. It says,

"Provided that the market value referred to in clause first of the said sub-section shall be deemed to be the market value of such land on the date of publication of the notice u/s 7 or 9, as the case may be, or on the first day of September, 1939, whichever is less:"

The second proviso refers to the case where the land was purchased by the owner after the first day of September, 1939 and before the first day of April, 1948, but that is not the case before us and the second proviso, therefore, need not be mentioned. As regards the above two provisos a Division Bench of this Court, of which one of us was a member, held in the case of H.P. Khandewal and Another Vs. State of Uttar Pradesh and Another, that the provisos contravened the provisions of Section 299 of the Government of India Act, as they did not provide for payment of proper compensation and had not been saved by the provisions of Article 31(5) of the Constitution.

3. Consequently, when the proceedings for the determination of compensation were taken, the Land Acquisition Officer (who was seized of the matter), calculated compensation according to the market value on the date of the acquisition u/s 23 of the Land Acquisition Act and ignored the two provisos of the Rehabilitation of Refugees Act. On the 19th May, 1955, he gave an award fixing a sum of Rs. 68,749-9-0 as compensation for the land acquired in village Bnillawan and Rs. 56,516-14-0 as compensation for the land acquired in village Barha.

the petitioner, it appears, was not satisfied with the awards and on the 27th June 1955, he filed two applications u/s 11(3) of the Act for reference of the matter to Court, that is the District Judge. On the 13th September 1955, the State Government made an application to the Land Acquisition Officer for review of his previous order on the ground that the Land Acquisition Officer had ignored the

Constitution (Fourth Amendment) Act, 1955, which had included the U. P. Land Acquisition (Rehabilitation of Refugees) Act in the 9th Schedule, the result of which was that the two provisos had been validated and compensation should have been determined according to the value of the land as it was on the 1st September 1939.

They followed up this application, on the 21st September 1955, by another u/s 11(3) of the Act, praying for the reference of the case to Court. The petitioner filed objections to the review application on the 24th September 1955, and the main ground taken was that the Land Acquisition Officer had no jurisdiction to review his previous order. The Land Acquisition Officer, after hearing the parties, passed the impugned order on the 18th October 1955, allowing the application for review and directing notice to be issued to the petitioner for adducing such evidence as he might be advised for purposes of assessing the market value of the land, as it existed on the first day of September 1939.

The present petitions were then moved in this Court on the 24th November 1955, praying for the issue of a writ of *cortiorari* summoning the record of the Compensation Officer and quashing his order dated the 18th October 1955. It was also prayed that the Land Acquisition Officer be directed to make a reference to the Court, as required by Sub-section (3) of Section 11 of the Act.

4. On the above facts, the learned counsel for the petitioner has urged that the impugned order dated the 18th October 1955, reviewing the previous order passed by the same officer, was without jurisdiction and, therefore, should be quashed. The learned Advocate-General of U. P. has controverted this contention and has urged that, in the circumstances of the case, the Land Acquisition Officer had inherent jurisdiction to set aside his previous order.

He also submitted that the result of quashing the impugned order would be to revive the previous order of the Land Acquisition Officer dated the 19th May 1955, which was clearly an illegal order and passed in contravention of the provisions of the Constitution (Fourth Amendment) Act of 1955, which had come into force on the 27th April 1955, that is, more, than three weeks before the date of the previous order. This Court should, therefore in the exercise of its discretion, refuse to set aside the impugned order, which is a correct order and in conformity with the Constitution of India.

5. We shall now proceed to consider the points urged by the learned counsel for the parties, coming to the point raised by the learned counsel for the petitioner that the Land Acquisition Officer had no jurisdiction to review his previous order, we think that the contention of the learned counsel is correct. The Act confers no power of review on the Collector or the Land Acquisition Officer, and the provisions of the CPC also do not apply to the proceedings before the said officer.

Rule 16 of the rules framed under the Act, says that the provisions of the Code of Civil Procedure, 1908, and of the Indian Evidence Act, 1872, shall apply to all proceedings before the District Court under this Act. The word "Court" has been

defined in Section 2(ii) of the Act as meaning the principal Civil Court of original jurisdiction including a Civil Judge having jurisdiction in the area. It does not include the Land Acquisition Officer within its ambit. There is thus no express power of review conferred on the Land Acquisition Officer by the Act or the Rules made thereunder.

Similar was the position under the Land Acquisition Act before its amendment by U. P. Act No. 22 of 1954, and a Bench of this Court held in the case of Kashi Parshad Vs. Notified Area , that the Collector had no power to review his own order.

6. As stated above, no express power of review has been conferred on the Collector and: the Land Acquisition Officer, and we further think that they have no inherent power of reviewing their orders passed after hearing the parties. This point again is covered by the decision of a Division Bench of this Court reported in the case of Debi Prasad and Others Vs. Khelawan and Others, . The rule of law laid down in this case is that no Court or Judge has inherent power to rehear, review, alter or vary any judgment or order after it has once been entered.

But this rule has been held subject to certain exceptions, which are enumerated in the Report at p. 16 (of All LJ) : (at p. 69 of AIR). Some of the exceptions are the correction of a clerical mistake or error arising from any accidental slip or omission, the making of a judgment or order without notice to a party when that party had a right to be heard, the signing of an order by inadvertence or failure of memory and the passing of a decree against a dead person. In the matter of modification or setting aside of interlocutory orders, it has been pointed out that the Court has much larger powers. Following the above decision, it must be field that the Courts have no inherent power for reviewing their previous orders.

7. The learned Advocate-General, however, urged that the mistake committed by the Land Acquisition Officer in his order dated the 19th May 1955 was a mistake arising out of an accidental slip or omission in omitting to consider the provisions of the Constitution (Fourth Amendment) Act of 1955, and he had an inherent right to correct a mistake like that. It was further urged that there was a total want of jurisdiction in the Land Acquisition Officer to determine the compensation ignoring the provisions of the Constitution (Fourth Amendment) Act, and in a case where a Court or officer has acted totally without jurisdiction, it or he has a right subsequently to say that its or his previous order was without jurisdiction.

8. As regards the first part of the argument, we are unable to hold that the omission to consider the effect of the Constitution (Fourth Amendment) Act can be said to be a "clerical mistake or error arising from any accidental slip or omission". Such a mistake cannot, be said to be a clerical one, neither can it be said to be due to any accidental slip or omission. As regards the second part of the argument also we find ourselves unable to agree with the learned Advocate-General. We do not think that it was a case of total want of jurisdiction in the Land Acquisition Officer. He had jurisdiction to determine compensation and was

proceeding to exercise that admitted jurisdiction.

While exercising it, he ignored the provisions of the Constitution (Fourth Amendment) Act probably because they were never brought to his notice. The omission to apply the provisions of an enactment or of the Constitution, while deciding the matter within the jurisdiction of the Court or officer, cannot be said to result in complete absence of jurisdiction to decide it. It is true that every Court or officer is bound to follow the law as it is, but if a decision is given in ignorance of a piece of legislation, the decision cannot be said to be completely without jurisdiction.

Assuming, therefore, that a Court or an officer has an inherent right to set aside its or his order passed without jurisdiction, the present case, we think, is not of that kind and the Land Acquisition Officer had no power to set aside his previous order of the 19th May 1955 as being an order passed without jurisdiction.

9. The learned Advocate-General then argued that the Land Acquisition Officer was not a "Court" and the powers of officers other than Courts in correcting their own mistakes are much wider. It is true that administrative officers have much wider powers of altering their previous orders, but we think that a Land Acquisition Officer, while determining compensation, as to act judicially and, while so acting, the principles which govern the powers of Courts in altering or setting aside their previous orders should also be applied to officers. other than Courts,

It is true that the Act or the Rules made thereunder do not provide clearly for the procedure to be followed by the Land Acquisition Officer or the Collector in assessing the amount of compensation. But the very act of assessing compensation is of a nature which requires it to be judicially performed. We are unable to subscribe to the rule that the Collector or the Land Acquisition Officer has wider power than Courts of law in setting aside or altering orders finally determining the amount of compensation.

10. For the above reasons, we come to the conclusion that the impugned order dated the 18th October 1955 is an order which the Land Acquisition Officer had no jurisdiction to pass.

11. This takes us to the second contention of the learned Advocate-General that the first order, dated the 19th May 1955 was an order passed in contravention of the provisions of the Constitution (Fourth Amendment) Act. This contention of his is clearly correct. The case of H.P. Khandewal (A), mentioned above, which held the two provisos to Section 11 of the Act to be invalid, was decided on the 4th February 1954. The Constitution (Fourth Amendment) Act of 1955 came into force on the 27th April 1955.

By Section 5 of the Constitution (Fourth Amendment) Act a number of Acts including the U. P. Land Acquisition (Rehabilitation of Refugees) Act of 1948, were included in the 9th Schedule to the Constitution. The result of this inclusion

was that Article 31B of the Constitution which along with Art. 31A and the 9th Schedule had been included in the Constitution by the First Amendment Act of 1951, became applicable to the U. P. Land Acquisition (Rehabilitation of Refugees) Act also. Article 31B lays down that none of the Acts and Regulations specified in the 9th Schedule

"nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part and notwithstanding any judgment, decree or order of any Court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

12. The U. P. Act, mentioned above, is now a part of the 9th Schedule and, therefore, no provision of it can be deemed to be void on the ground that it abridges any of the rights conferred by Part III of the Constitution. The Act and its provisions further are to continue in force in spite of any judgment, decree or order of any Court to the contrary. The language used in the Article means that the Acts included in the 9th Schedule must be deemed to be valid at least after coming into force of the Constitution. The point arose before their Lordships of the Supreme Court in the case of *Dhirubha Devisingh Gohil Vs. The State of Bombay*, , and their Lordships held that even a pre-Constitution Act, which was hit by Section 299 of the Government of India Act, 1935, would be validated by its inclusion in the 9th Schedule to the Constitution, because the right protected u/s 299 of the Government of India Act was the same which was subsequently protected by Article 31 of the Constitution. They observed.

"What is important to notice in the phraseology of Article 31B is that the protection is not merely against the contravention of certain provisions but an attack on the ground of un-constitutional abridgement of certain rights. It will be illogical to construe Article 31B as affording protection only so far as these rights are taken away by an Act in violation of the new "provisions" of the Constitution but not when they are taken away by an Act in violation of Section 299 of the Government of India Act which has been repealed."

13. This Court had held that the two provisos of Section 11(1) of the Act were invalid being in contravention of the provisions of Section 299 of the Government of India Act. But after the inclusion of the Act in the 9th Schedule to the Constitution and the above clear pronouncement of the Supreme Court, it must be held that every provision of the U. P. Act is valid and enforceable.

14. It was also argued by the learned counsel for the petitioner that the Constitution (Fourth Amendment) Act came into force after the acquisition and compensation should be awarded according to law, as it stood on the date of the acquisition. This contention also is baseless because Article 31B of the Constitution clearly says that the provisions of the Acts included in the 9th Schedule shall not be deemed to be void or ever to have become void. This gives

Article 31B retrospective operation, and the U. P. Act must be deemed to be valid at least from the date that the Constitution came into force.

15. It was then argued that Article 31B applies only to acquisition of "estates" because that is the word used in Article 31A, but we think that this argument has also no force, because Article 31B applies to this case by its own force irrespective of the provisions of Article 31A of the Constitution.

16. We consequently come to the conclusion that the order of the Land Acquisition Officer dated the 19th May 1955 was clearly erroneous and in contravention of the provisions of the Constitution, as it stood amended after the coming into force of the Constitution (Fourth Amendment) Act.

17. The question then arises what, if any, relief should be granted to the petitioner in the circumstances of this case. On the one hand, we find that the Land Acquisition Officer had no jurisdiction to review his previous order and the impugned order is one which was beyond the jurisdiction of the officer who passed it. There is also the fact that the State Government made a belated application u/s 11(3) of the Act for reference of the matter to the Court.

It is clear that nobody concerned was aware on the 19th May 1955, the date fixed of the first order, that the Constitution had been amended and all the provisions of the U. P. Land Acquisition (Rehabilitation of Refugees) Act had been validated and were in force since the 27th April 1955. The State Government probably made the application for review of the order as soon as they became aware of the Constitution (Fourth Amendment) Act and then followed it up by an application for reference of the matter to the Court. There was undoubted delay in making the two applications.

On the other hand, there is the fact that by merely setting aside the impugned order, we shall be restoring the previous order which was in contravention of the Constitution, as it stood amended after the Constitution (Fourth Amendment) Act. The Constitution is the suprema law of the land and the upholding of the Constitution is the duty of every public officer, including a Judge,

18. The learned Advocate-General asked us to refuse to set aside the impugned order, as it would revive an order which is in contravention of the Constitution itself. We, however, think that we should not allow an order, passed without jurisdiction, to stand, because all proceedings consequent to that order would also be without jurisdiction. The better course, in our opinion, would be to quash both the j orders with the result that the Land Acquisition Officer would now proceed to determine compensation unhampered by any one of them.

The petitioner has applied for summoning of the record of the case, but he wants only the impugned order to be quashed. The record being before us, we think it is open to us to quash the prior unconstitutional order, which we find on the record. Article 226 of the Constitution does not confine the powers of Courts to issuing prerogative writs in cases where a party makes an application for the

purpose and we think the words are wide enough to authorise the High Court to quash an order suo muto. In any case, we think we have power under Article 227 of the Constitution to set aside that order.

19. In the result, we allow these petitions and quash the two orders passed by the Land Acquisition Officer or Compensation Officer on the 19th May 1955 and the 18th October 1955. The Land Acquisition Officer shall now proceed to determine the compensation awardable to the petition in the two cases, according to law.

20. But we think these are cases in which the petitioner is entitled to his costs from the first respondent, namely, the State of Uttar Pradesh. We assess costs in the two cases at Rs. 200 each.

H.S. Chaturvedi, J.

21. Judgment delivered by me under Ch. VII, Rule 1(2) of the High Court Rules in the absence of the Hon''ble Judges from Lucknow.