

(2017) 01 AHC CK 0333
In the Allahabad High Court
Case No : 6 of 1993

SACHIDANAND AND ORS

APPELLANT

Vs

LAND ACQUISITION OFFICER AND ORS

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6, Section 17, Section 48, Section 31(2), Section 31(1) - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose - Special powers In cases of urgency - Completion of acquisition not compulsory, but compensation to be awarded when not completed - Payment of compensation or deposit of same In Court - Payment of compensation or deposit of same In Court Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2)

Citation : (2017) 01 AHC CK 0333

Hon'ble Judges : Amreshwar Pratap Sahi, Sanjay Harkauli

Bench : Division Bench

Advocate : S K Mehrotra

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners and learned standing counsel for the respondents. The dispute in this petition relates to the acquisition, utilization, possession and payment of compensation of plot Nos. 1703 to 1717, area 3.66 acres of village Dhusah Balrampur Pargana, Tehsil Balrampur, District Gonda. These plot numbers are the old plot numbers which after consolidation have been merged into plot No. 713 M.

This writ petition was filed in the year 1993 contending that even though the notification was made under Section 4 of the Land Acquisition Act, 1894 on 16.2.1966 and the provisions of Section 17 of the 1894 Act were invoked on 13-8-1966, yet no possession was taken nor was the land utilized for the

purpose of constructing an Industrial Training Institute which was the original purpose of acquisition.

2. It is apt to mention that the total area that was sought to be acquired was 22.12 acres including the aforesaid land in question.

3. From Annexure 3 to the writ petition it appears that the entire chunk of land that had been acquired, became subject of reconsideration at the level of the State Government and then the Collector passed an order dated 27.4.1986 abandoning the acquisition in respect of a large area of the acquired land including 62 decimals out of 3.66 acres of the petitioners' land. The aforesaid fact is clearly mentioned in paragraph 4 of the said order of the Collector dated 27.4.1986. The land came to be transferred for utilization by other departments including the Irrigation Department as well as the other departments of the State Government and then at that stage when the chunk of this land, which is presently in dispute, was sought to be occupied by proceeding to measure the same, the present writ petition was filed in the year 1993 when the following interim order was passed on 16.4.1993: "The contention of the petitioners is that though notification under Section 4 was issued in 1966, no Award has been given so far. It is so averred in paragraph 6 of the writ petition and reiterated categorically in paragraph 20 of the writ petition that is to say, that no Award has been given so far. Until further orders, the opposite parties shall not disturb the possession of the petitioners over the land in question.

List in the first week of May, 1993. The learned Standing Counsel may file a counter-affidavit in the meantime."

4. The aforesaid interim order continued to be in force throughout. It may be mentioned that the writ petition was dismissed in default on 23.4.2014, but was again restored on 4-7-2014 and the interim order continued as is evident from the order sheet.

5. There are certain developments during the pendency of this writ petition that deserve to be mentioned. A short counter-affidavit was filed by the State on a query raised by this Court vide order dated 17.2.2014 that is extracted herein under. "Learned counsel for the petitioners has pressed the provision of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to canvass his case and submits that in this case acquisition proceedings initiated earlier have lapsed.

As prayed by learned Standing Counsel, he is granted three days' time to file counter-affidavit stating therein the position regarding possession of the land in question. The affidavit shall also contain the current position of the land in question. A week's time thereafter shall be available to the learned counsel for the petitioners to file rejoinder-affidavit to the said counter-affidavit, if filed by the State.

List this case in the week commencing 24th February, 2014."

6. The aforesaid short counter-affidavit narrated that the entire area had been taken possession of and certain photographs were filed alongwith the said affidavit to demonstrate that the area was encircled by a boundary wall and a tin shed had also been constructed by the Irrigation Department. The petitioners also filed a reply to the short counter-affidavit clearly denying the fact of having taken over the possession and it was further explained that it was only a part of the land that was subject-matter of acquisition that had been taken possession of but, so far as 3.66 acres presently involved is concerned, it continued to remain in the possession of the petitioners where they had sown wheat and pulse crops that was standing thereon. It was also clearly alleged that they were in cultivatory possession of the said land and their possession was admitted inasmuch as Annexure 7 to the writ petition, which is a letter dated 19.5.2014 sent by the Executive Engineer of the Irrigation Department to the Sub-Divisional Magistrate, Balrampur clearly admits of the aforesaid fact.

7. In this background of the claim of possession by the petitioners, there is yet another development which has to be taken notice of, namely, the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 w.e.f. 1.1.2014 and the impact of Section 24(2) thereof. The writ petition was amended by the petitioners seeking relief to the effect that the proceedings should be treated to have lapsed in relation to the area of 3.66 acres. This amendment has also been contested by the respondents by filing an affidavit to which a reply has also been given by the petitioners.

8. There is a third aspect of the matter which also deserves to be noticed at this stage, namely, a total amount of Rs. 6,598/- of compensation that has been deposited for the total acquired area of 22.12 acres. It is the admitted case of the respondents that the said amount was deposited in the Treasury vide Challan No. 152 dated 30.10.1969. An Award in the case was made admittedly after the notification under Section 6 of the Act. The petitioners claimed that they were never paid any compensation and these facts have been categorically averred in the writ petition. The stand of the respondents taken in their counter-affidavit as well as other affidavits is to the effect that since the amount of compensation has been deposited in the Treasury, the petitioners cannot be allowed any benefit of non-deposit of the amount in the Court as alleged by them.

9. The matter has been contested in the aforesaid background of facts where the petitioners have now come forward contending that in view of the law laid down by the Apex Court in the case of Delhi Development Authority v. Sukhbir Singh and others, 2016 AIR(SC) 4275, coupled with the law as explained by the Apex Court in Pune Municipal Corporation v. H.M. Solanki, 2014 3 SCC 183, the petitioners are entitled to the benefit of the 2013 Act and the writ petition deserves to be allowed additionally on this ground as well apart from the grounds already taken in the writ petition.

10. Shri S.K. Mehrotra, learned counsel for the petitioners has advanced his

submissions accordingly and has also urged that so far as the issue of deposit and receipt of compensation by the petitioners is concerned, the petitioners have categorically averred that they were never paid their compensation and even otherwise, the case of the respondents is that if they have deposited the amount in the Treasury, then such deposit will not come to the aid of the respondents keeping in view the latest pronouncement of the Apex Court in the case of Delhi Development Authority which has now been also accepted by a Division Bench of this Court while deciding Review Petition No. 30345 of 2016 as well as connected matters in the case of State of U.P. and others v. Bhusai dated 26.9.2016.

11. Shri Mehrotra urges that, it is evident from the facts narrated above that the respondents themselves had not put to use the land for the purpose for which it had originally been acquired and had rather abandoned a major part of the land and excluded it from acquisition as is evident from the orders of 1986 of the Collector. He further submits that the petitioners' possession cannot be disputed by the respondents and the short counter-affidavit filed by the respondents on 24.2.2014 states a misleading fact about compensation which stands contradicted by their own documents as noted herein above. He further submits that neither possession has been taken nor the compensation has been paid to the petitioners nor it has been deposited in terms of the pronouncement of the Apex Court as referred to herein above and therefore, on all accounts the proceedings deserve to be treated to have been lapsed and the possession deserved to be restored as existing with the petitioners. He has then submitted that the stand of respondents that the revenue records have been accordingly corrected and the mutation has been entered in favour of the respondents is of no consequence, inasmuch as all this was subject to the outcome of any contest being put forth and is only consequential. The recording of names is only an indication of the status of the claim of title and is not conclusive evidence of title over the land. He has relied on certain decisions that have been mentioned in the affidavit filed on behalf of the petitioners.

12. Learned Standing Counsel on the other hand, has invited the attention of the Court to the averments made in the short counter-affidavit about possession being taken and has alleged that since the land has been encircled by a boundary wall, this possession will be presumed to have been taken and which was admittedly taken in the year 2004.

13. He further submits that so far as acquisition is concerned, the entire land will be deemed to have been vested in the State and the absence of any process of divesting that could have been undertaken was through a denotification under Section 48 of the 1894 Act. There is no occasion for the petitioners to claim that the proceedings had lapsed as the land still continues to be vested in the State. This vesting therefore having become complete, by the invoking of Section 48 of the 1894 Act the petitioners cannot now claim any reversion of land in their favour.

14. He further submits that in this background, there is no occasion to consider

the impact of Section 24(2) of the 2013 Act and such an acquisition which has already become complete cannot now be reopened or now be treated by a fiction of law to have lapsed. Consequently, the argument of the petitioners cannot be accepted so far as the lapse of the proceedings is concerned. He further submits, that on the issue of possession, the revenue records as well as the affidavits filed on behalf of the respondents clearly indicates the possession of the respondent-State and any claim of possession by the petitioners is not based on any record or fact that may remotely indicate the retention of the possession or cultivation by the petitioners over an area of 3.66 acres as alleged by them.

15. He further submits that in view of the provisions of Section 31(1) of the Land Acquisition Act, 1894, the deposit had been made in terms of the Financial Hand Book as well as Rules that were prevalent and therefore any such deposit made in the Treasury will be presumed to be a valid deposit and even otherwise the petitioners having failed to withdraw their compensation would not be entitled to claim any such benefit under Section 24(2) of the 2013 Act. To substantiate his submissions, learned Standing Counsel submits that the interim order passed by this Court on 16.4.1993 also prevented the taking over of possession and therefore, this also should be treated to be an impediment for deposit of the amount in Court as urged on behalf of the petitioners. In such circumstances, if the amount had not been deposited in the Court as held in the case of Delhi Development Authority , then the answering respondents cannot be saddled with any such liability inasmuch as they had validly made the deposit in the Treasury which could have been further executed by transmitting it to the Court, had there been no interim order passed by this Court.

16. He has then submitted that if the Award had been made and the provisions of Section 17 had been invoked, then, in such circumstances, to treat the acquisition to have lapsed or even otherwise to treat the same to have become irrelevant would not be possible in the circumstances of the present case, where both possession has been taken and the amount was deposited. He further submits that neither the writ petition as originally framed could have sought any relief nor even after the amendment and the enforcement of 2013 Act any benefit can be availed of by the petitioners.

17. We have considered the submissions raised. The first issue is with regard to the status of possession of the land with the petitioners as claimed by them.

18. The aforesaid contest of possession and filing of affidavits indicates that the petitioners are claiming cultivatory possession even now. There is no dispute that the interim order dated 16.4.1993 was continuing till April, 2014. In such circumstances, there was no occasion for the respondents to have taken possession of the land in the year 2004 or in between this period. Thus, the respondents have failed to establish taking over of the possession, atleast till the date when the writ petition was dismissed in default in April, 2014. This fact stands substantiated by the own document of the respondents which has been brought on record as Annexure 7 to the writ petition. This letter of the Executive

Engineer dated 19.5.2014 categorically takes notice of the interim order dated 16.4.1993 and also that the status of the possession remained intact on account of the passing of the said interim order, but since now the interim order has been vacated on 23.4.2014 with the dismissal of the writ petition in default, appropriate steps should be taken to remove any encroachment and unlawful possession. The aforesaid letter therefore, clinches the issue that the petitioners were in possession till 19.5.2014 according to the case of the respondents themselves. The writ petition was admittedly restored in July, 2014 and the interim order has been continuing thereafter. It was categorically stated by the petitioners that wheat crops and annual pulse crops were standing on the spot. In such a situation, the contention of the respondents in their affidavit that they had encircled the land with a boundary much prior to that is absolutely incorrect and would be limited only to the area apart from the area of 3.66 acres of the said plot No. 713 M. Thus, the possession over the land continued to be with the petitioners with the aid of the interim order dated 16.4.1993.

19. The next question is with regard to the deposit of the compensation amount as already admitted in the counter-affidavits of the respondents. It goes without saying that even if the deposit had been made in the Treasury, the same does not amount to a deposit in the Court. The argument on the strength of Section 31(1) of the 1894 Act advanced by the learned counsel for the State now cannot be accepted in view of the decision of the Apex Court in the case of Delhi Development Authority v. Sukhbir Singh and as interpreted by the Division Bench and negatived vide judgment dated 26.9.2016 as noted herein above. Thus, there was no valid deposit in the Court as held by the Apex Court and consequently, neither possession was taken nor the amount Award as compensation was paid over to the petitioners or deposited as indicated herein above.

20. The learned Standing Counsel has also invited the attention of the Court to another judgment of the Apex Court in Delhi Development Authority v. Kusham Jain and another [Civil Appeal No. 8477 of 2016] decided on 31.8.2016 prior to the Delhi Development Authority case. The learned Standing Counsel submits that the provisions of Section 31(2) of the Land Acquisition Act were considered therein and in paragraph 5, the question of deposit in the Treasury was concerned. In the present case also, it is undisputed that the deposit has been made in the Treasury and as such the said judgment should be read in favour of the respondent-State. We are unable to subscribe to the aforesaid argument of the learned Standing Counsel, inasmuch as in paragraph 7 of the said judgment. The Apex Court relying on the decision in the case of Pune Municipal Corporation has categorically held that if the payment or deposit had not been done in terms of the 1894 Act and the amount had not been deposited in Court, then the proceedings will lapse. To our mind, the said judgment read with the judgment of the Delhi Development Authority comes to the aid of the petitioners and not the respondents.

21. Thus, in our opinion, the petitioners would be entitled to the benefit of the provisions of Sub-Section 2 of Section 24 of the 2013 Act, once the Act had come into force w.e.f. 1.1.2014.

22. The argument of the learned Standing Counsel is that the land stood vested in the State and now cannot be divested except by way of a notification which is an argument in futility, inasmuch as the fact remains that the provisions of the 1894 Act stand repealed and consequently whatever has to be done as on date, has to be done in accordance with the 2013 Act. The effect of Section 24(2) therefore has to be applied with full force on the facts of the present case as indicated above. The writ petition therefore deserves to be allowed.

The proceedings in relation to the area of 3.66 acres of the existing plot No. 713 M will therefore be deemed to have lapsed and the petitioners would be entitled to retain possession of the said land.

The revenue records shall stand correct accordingly. The District Magistrate is hereby directed to give effect to this judgment and issue necessary instructions for correcting the revenue records accordingly.

The writ petition is accordingly allowed.