
(2010) 08 AHC CK 0399
In the Allahabad High Court

Sadha Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 17, 30, 30(1)(2)
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 420, 452
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 11, 154, 166, 167, 189

Citation : (2010) 08 AHC CK 0399

Hon'ble Judges : Ram Autar Singh, J;Prakash Chandra Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.A. Singh, J.—By means of this writ petition the petitioner has sought reliefs with prayer to issue a writ of certiorari quashing the order dated 23.3.2009 (Annexure No. 8 to the writ petition) passed by respondent No. 4 and the order dated 6.4.2010 (Annexure No. 9 to the writ petition) passed by respondent No. 3 as well as the orders dated 22.2.2010 and 24.4.2010 (Annexures C.A. 1 and C.A. 2 to the counter affidavit) passed by respondent No. 4 and has further prayed to issue a writ of mandamus directing the respondents to act in accordance with law and restraining them from interfering with the petitioner's right to withdraw the amount of compensation, which is lying in his account in the Bank of India, Branch Surajpur, Greater Noida, Gautam Budh Nagar.

2. We have heard Shri M.D. Singh Shekhar, learned Counsel for petitioner and learned Standing Counsel for State on rival contentions of parties in this writ petition and perused the record. Counter and rejoinder affidavits have been exchanged between the parties and thus this writ petition is being disposed of finally.

3. The brief facts arising out of this writ petition are that plot No. 597 (old plot No. 377) area 16-1-13 pacca bighas (hereinafter referred to as the disputed

land) situated in Village Tugalpur, Pargana Dankaur, Tehsil and District Gautam Budh Nagar was purchased by Smt. Harnam Kaur wife of Suchcha Singh resident of Village Tugalpur, Pargana Dankaur, Tehsil and District Gautam Budh Nagar through registered sale deed dated 30.5.1978 after making payment of adequate consideration from Lakhmi Chand and others and thereafter her name was mutated in the revenue record. During her life time she executed a registered Will on 28.2.1987 in favour of the petitioner Sadha Singh. Smt. Harnam Kaur died on 1.3.1999 and the name of the petitioner was mutated by the Tehsildar on the basis of Will in the revenue record vide his order dated 5.5.1999 in Case No. 595 of 1999. The notification u/s 4 read with Section 17 of the Land Acquisition Act was issued on 9.9.1997 and the notification u/s 6 of the Act was issued on 9.9.1998 for acquisition of disputed land. Instead of making payment of the compensation for the disputed land, a notice was issued in the name of Smt. Harnam Kaur and other tenure holders under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act and in pursuance thereof through Case No. 30 Additional District Magistrate (Finance and Revenue), Bulandshahr, where the land was situated earlier, by order dated 15.12.1999 directed the disputed land to be vested in the State on the ground that the land for some time was pooled by Harnam Kaur in Adarsh Khalsa Sanyukt Sahkari Kheti Samiti, hence pooling would be treated to be a transfer. The order dated 15.12.1999 was challenged by the Khalsa Samiti as well as the interested persons before Commissioner and the Additional Commissioner (Prashasan), Meerut Division, Meerut allowed the appeal vide order dated 8.5.2002 quashing the order dated 15.12.1999 passed by Additional District Magistrate (Finance and Revenue), Bulandshahr under Sections 154, 166 and 167 of the U.P.Z.A. & L.R. Act and thus the order dated 8.5.2002 passed by Commissioner in appeal became final as the same was never challenged by the State Government or any one else.

4. The petitioner has further mentioned in the petition that inspite of the entitlement of the petitioner for compensation of the disputed land, it was not paid to him, hence he filed Civil Misc. Writ Petition No. 31312 of 2007 (Sadha Singh v. State of U.P. and Ors.), which was decided by this Court on 16.7.2007 and Additional District Magistrate (Land Acquisition) was directed to pay compensation within a period of four weeks. The petitioner then moved representation on 28.2.2009, which was decided by respondent No. 3, who directed for payment of compensation to the petitioner and voucher for the entire compensation was handed over to him on 5.3.2009 and the amount of compensation was transferred in his account.

5. It has also been mentioned in the petition that without disclosing any reason the respondent No. 4 passed an order directing the Branch Manager, Bank of India, Surajpur to withhold the amount of compensation in the account of the petitioner. Thereafter the respondent No. 3 passed the order dated 6.4.2010 directing the petitioner to return the amount of compensation within a period of 15 days. Out of the total amount of Rs. 77,83,930/- deposited as compensation in the account of the petitioner during the period from 5.3.2009 to 22.3.2009 the

petitioner had withdrawn only Rs. 14,00,000/- from his account, while the rest of the amount was kept lying therein.

6. In the petition it has further been alleged that the respondent No. 3 referred a letter to Sub Divisional Magistrate regarding some case under Sections 154, 166, 167 of U.P.Z.A. & L.R. Act, which had started in the year 1999 and the Additional Commissioner, Meerut had already closed the said case. The petitioner made a representation on 21.4.2010 before the respondent No. 3 for withdrawal of the notice dated 6.4.2010 by stating therein that the proceedings initiated against the petitioner and nine others under above Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act pooling their land in favour of co-operative farming society were already quashed by Additional Commissioner, Meerut on 8.5.2002, thus no proceeding was pending against the petitioner nor it could be initiated again, because the said order became final. The impugned order dated 6.4.2010 (Annexure No. 9 to the writ petition) for recovery of compensation amount was passed with reference to the proceedings under Sections 154, 166 and 167 of the Act, while no such proceeding was pending against the petitioner or Smt. Harnam Kaur which started in the year 1999 and became final in view of the order passed by the Commissioner.

7. The petitioner has again alleged in the petition that once the land was acquired from the tenure holders, whose names were recorded at the time of payment of the compensation, the proceedings could not be initiated with regard to vesting of the land in favour of the State Government, thus the order dated 6.4.2010 passed by respondent No. 3 and the order dated 23.3.2009 passed by respondent No. 4 were without jurisdiction as the amount of compensation was transferred in the account of the petitioner on 5.3.2009 but the respondent No. 4 ceased the operation of the account of the petitioner. The petitioner did not commit any fraud or misrepresentation and he was paid compensation of his own land and once a proceeding under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act was finally decided, it was not open for the respondents to pass the impugned orders. The respondent No. 4 again passed the orders dated 22.2.2010 and 24.4.2010 (Annexure C.A. No. 1 and C.A. No. 2 to the counter affidavit) which were ex-parte and violative of principles of natural justice.

8. A counter affidavit has been filed on behalf of respondents No. 2, 3 and 4, in which several facts mentioned in the writ petition have been admitted that plot No. 597 (old plot No. 377) area 16-1-13, which was recorded in the name of Lakhmi Chand and Shyam Prakash, was purchased by Smt. Harnam Kaur through a registered sale deed dated 30.5.1978 and her name was mutated in the revenue record. Smt. Harnam Kaur had executed a registered Will on 28.2.1987 in favour of the petitioner and his name was also mutated in the revenue record by the Tehsildar vide order dated 5.5.1999.

9. The respondents have further admitted that the Additional District Magistrate (Finance & Revenue), Bulandshahar vide order dated 15.12.1999 directed the disputed land to be vested in the State Government under Sections 154, 166 and

167 of U.P.Z.A. & L.R. Act on the ground that the land for some time was pooled by Harnam Kaur in Adarsh Khalsa Sanyukt Sahkari Kheti Samiti, hence pooling would be treated to be a transfer. The petitioner filed a revision through Samiti against the aforesaid order before the Commissioner, Meerut, which was decided by him vide order dated 8.5.2002 quashing the order dated 15.12.1999 of the Additional District Magistrate (Finance & Revenue).

10. It has also been admitted in the counter affidavit that the respondents then came to the conclusion that the petitioner was recorded as tenure holder of the said land and there was no dispute as to the title of the land and thus the order for payment of compensation was passed in favour of the petitioner on 28.2.2009 and in compliance of the said order, the petitioner was paid Rs. 77,83,930/- through voucher No. 93324 dated 5.3.2009. The respondents thereafter came to know that certain facts were not brought on record before the order of payment of compensation, as a result of which a letter dated 23.3.2009 was sent to the Bank requesting to stop the operation of the account of the petitioner in Bank of India.

11. The respondents have again mentioned that meanwhile the Additional Collector, Gautam Budh Nagar vide letter dated 26.3.2009 informed about pendency of the case under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act in respect of land in dispute as there was dispute of title, and interest of the State was also involved in the said case. Therefore, the Land Acquisition Officer had no jurisdiction to make payment of compensation and the matter should have been referred to the District Magistrate, Gautam Budh Nagar, u/s 30 of the Land Acquisition Act and the amount of compensation so settled u/s 11 of the award should also be sent to the District Judge u/s 31(2) of the Land Acquisition Act, thus the order dated 22.2.2010 was passed quashing the order dated 28.2.2009 for payment of compensation in favour of the petitioner and direction was issued for withdrawal of the compensation amount from the Bank. A notice was also issued to the petitioner on 6.4.2010 to return the amount of compensation within 15 days, hence the money was required to be withdrawn from the Bank and the balance amount was to be recovered from the petitioner as he had withdrawn Rs. 14,00 lacs from the Bank.

12. In the last the respondents have alleged that in view of above facts and circumstances, the order dated 22.2.2010 was passed to withdraw the amount from the Bank and notice dated 6.4.2010 was issued to the petitioner to return the amount of compensation, which he had withdrawn from the Bank. It was brought to the notice of the respondents that the interest of State was involved or there was some dispute with regard to title of the land in dispute.

13. The respondent No. 5 Bank of India, Branch Manager, Surajpur Branch, Greater Noida, Gautam Budh Nagar, in its counter affidavit alleged that the respondent No. 3 passed an order dated 22.2.2010 directing recovery of money paid to the petitioner and further directed to get money back from the Bank. The Bank remitted Rs. 59,28,632/- to the respondent No. 3 vide letter dated

28.4.2010. The respondent No. 3 sent a communication dated 28.4.2010 to the Bank to remit Rs.60,000/- from the account of the petitioner and the Bank remitted this amount to the respondent No. 3 from the account of the petitioner vide communication letter dated 1.5.2010. The Bank remitted the entire amount to the respondent No. 3 as the Bank was bound to comply with the instructions of respondents No. 1 to 4 and thus the Bank acted bonafidely.

14. On behalf of the petitioner, a rejoinder affidavit to above counter affidavit of respondents No. 2, 3 and 4 has been filed reiterating that the land in dispute was acquired by respondent No. 1 under Sections 4, 6 and 17 of Land Acquisition Act vide notifications dated 9.9.1997 and 9.9.1998 and notice u/s 9 of the Land Acquisition Act was issued in the name of Smt. Harnam Kaur on 26.2.1999 and the amount of compensation was transferred in the account of the petitioner on 5.3.1999 but before transferring the said amount of compensation, the petitioner was compelled to sign Karar Prapatra. Lakhmi Chand and others were bhumidhars of the land in dispute with transferable rights and they executed sale deed in favour of Smt. Harnam Kaur on 30.5.1978 and in pursuance thereof the name of Smt. Harnam Kaur was mutated in the revenue record. The account of the petitioner was ceased vide order dated 23.3.2009 without affording any opportunity of hearing to the petitioner and the reason was not disclosed therein, while there was no occasion to pass such order. The opinion of D.G.C. (Civil) could not be treated to be conclusive and the impugned order could not be passed without affording an opportunity of hearing to the petitioner.

15. It has further been alleged that the impugned order was based on the opinion of D.G.C. (Civil) while Section 189(b) of U.P.Z.A. & L.R. Act was not applicable to the present case as Harnam Kaur had purchased disputed land through registered sale deed dated 30.5.1978 from Lakhmi Chand and others, who were bhumidhars with transferable rights and the name of Smt. Harnam Kaur was already mutated as bhumidhar in the revenue record and thus there was no dispute about the same.

16. In order to facilitate the decision in the present writ petition, it would be better to frame the questions for determination in the light of pleadings of the parties. The facts as alleged in the writ petition have been admitted by respondents No. 2, 3 and 4 in their counter affidavit. It has been admitted on behalf of respondents No. 2, 3 and 4 that the State Government issued notification under Sections 4 and 6 read with Section 17 of the Land Acquisition Act for acquisition of land in dispute on 9.9.1997 and 9.9.1998 respectively. The notices u/s 9 were issued to the affected tenure holders and possession of the acquired land was taken over and handed over to the acquiring body on 28.5.1999. The disputed land was also acquired through above mentioned notifications. The affected tenure holders were offered compensation under which the tenure holders were required to execute a Karar Prapatra with the Greater New Okhla Industrial Development Authority and produce the agreement along with other requisite documents before the Collector. The Collector being satisfied

with the same was required to pay the amount of compensation in terms of the agreement. If the tenure holders failed to arrive at an agreement with the authority, they would be paid compensation in terms of an award u/s 11(1) of the Land Acquisition Act, 1894.

17. In the present case, the parties have admitted in their affidavits, counter and rejoinder affidavits that the petitioner submitted an application in the office of the respondents on 20.10.2008 alongwith Karar Prapatra and other requisite documents for payment of compensation of the acquired land claiming himself to be the real title holder of the land in question. The disputed land was recorded in the name of the Lakhmi Chand, Ram Prakash and Shyam Prakash resident of Dadri. Late Smt. Harnam Kaur had purchased the aforesaid land from Lakhmi Chand and others through registered sale deed on 30.5.1978 and her name was mutated in the revenue record. Smt. Harnam Kaur had executed a registered Will dated 28.2.1987 in favour of the petitioner and after her death the name of the petitioner was mutated in the revenue record by the Tehsildar vide order dated 5.5.1999. The Additional District Magistrate (Finance & Revenue), Bulandshahar directed the disputed land to be vested in the State under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act vide order dated 15.12.1999 on the ground that the land for some time was pooled by Harnam Kaur in Adarsh Khalsa Sanyukt Sahkari Kheti Samiti. The respondents pleaded in their counter affidavits that pooling of the land in dispute would be treated to be a transfer. The petitioner filed a revision through Samiti against above order before the Commissioner, Meerut and after perusal of the facts and circumstances of the case, the Additional Commissioner, Meerut quashed the order dated 15.12.1999 passed by the Additional District Magistrate (Finance & Revenue) on 8.5.2002.

18. It is further submitted on behalf of the petitioner that the petitioner was recorded tenure holder of the disputed land and there was no dispute as to the title of the land, the order for payment of compensation in favour of the petitioner was passed on 28.2.2009 and in compliance of the said order an amount of Rs. 77,83,930/- was paid to the petitioner on 5.3.2009.

19. The learned Counsel for the respondents has contended that it was brought to the notice of the respondents that certain facts were not brought on record before the order of payment of compensation, as a result of which the payment of the said amount was stopped directing the Bank of India, Greater Noida, accordingly. Meanwhile the Additional Collector, Gautam Budh Nagar vide letter No. 232/Reader/A.D.M./09 dated 26.3.2009 intimated the respondents regarding pendency of the case under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act in respect of the land being plot No. 597 area 16-1-13 and on the basis of advice of D.G.C. (Civil) the respondents arrived at the conclusion that the matter should be referred to the District Magistrate, Gautam Budh Nagar u/s 30(1)(2) of the Act. Consequently the respondents passed an order dated 22.2.2010 quashing the order dated 28.2.2009 for payment of compensation in favour of the petitioner and directing for withdrawal of compensation amount from the Bank as

the reference was to be sent u/s 30 of the Land Acquisition Act to the District Magistrate, Gautam Budh Nagar.

20. The following questions for determination are arising out of the pleadings of the parties.

1. Whether any case under Sections 154, 166, 167 of U.P.Z.A. & L.R. Act in respect of the land of plot No. 597 area 16-1-13 was still pending between the petitioner and any other persons; if so its effect?

2. Whether certain facts were not brought by the petitioner on record before the order of payment of compensation and there was any dispute as to the title of the disputed land between the petitioner and other persons; if so its effect?

3. Whether the reference u/s 30 of the Land Acquisition Act was liable to be made to District Magistrate, Gautam Budh Nagar with regard to payment of compensation?

Question No. 1:

21. Now we would discuss the question No. 1 in the light of pleadings of the parties. The petitioner in para 2 of the writ petition has specifically alleged that plot No. 597 (old plot No. 377) area 16-1-13 was purchased by Smt. Harnam Kaur through registered sale deed dated 30.5.1978 for consideration and her name was mutated in the revenue record and she also executed a registered Will on 28.2.1987 in favour of the petitioner and after her death the name of the petitioner was mutated by the Tehsildar vide order dated 5.5.1999 in Case No. 595 of 1999, while disputed land was acquired under Sections 4 and 6 read with Section 17 of the Land Acquisition Act through notifications dated 9.9.1997 and 9.9.1998, but instead of making payment of compensation of the disputed land, the notice was issued in the name of Smt. Harnam Kaur and others tenure holders under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act and in pursuance thereof the Additional District Magistrate (Finance & Revenue), Bulandshahar vide order dated 15.12.1999 passed in Case No. 30 directed the disputed land to be vested in the State on the ground that the disputed land for some time was pooled by Smt. Harnam Kaur and others in Adarsh Khalsa Sanyukt Sahkari Kheti Samiti and thus the pooling would be treated to be a transfer.

22. Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act are being reproduced below:

154. Restriction on transfer by a bhumidhar.

(1) Save as provided in Sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea garden to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh.

(Explanation- For the removal of doubt it is hereby declared that in this sub-section the expression "person" shall include and be deemed to have included on

June 15, 1976 a "Co- operative Society:"

Provided that where the transferee is a Co-operative Society, the land held by it having been pooled by its members under Clause (a) of Sub-section (1) of Section 77 of the Uttar Pradesh Co-operative Societies Act, 1965 shall not be taken into account in computing the 5.0586 hectares (12.50 acres) land held by it.)

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in Sub-section (1) if it is of the opinion that such transfer is in favour of a registered co-operative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

(Explanation- For the purposes of this section, the expression "family" shall mean the transferee, his or her wife or husband (as the case may be) and minor children and where the transferee is a minor also his or her parents.

(3). For every transfer of land in excess of the limit prescribed under Sub-section (1) prior approval of the State Government shall be necessary: Provided that where the prior approval of the State Government is not obtained under this sub-section, the State Government may on an application give its approval afterward in such manner and on payment in such manner of an amount, as fine, equal to twenty five per cent of the cost of the land as may be prescribed. The cost of the land shall be such as determined by the Collector for stamp duty.

Provided further that where the State Government is satisfied that any transfer has been made in public interest, it may exempt any such transferee from the payment of fine under this sub-section.

Section 166. Every transfer made in contravention of the provisions of this Act, shall be void.

Section 167. (1) The following consequences shall ensue in respect of every transfer which is void by virtue of Section 166, namely

(a) the subject-matter of transfer shall with effect from the date of transfer, be deemed to have vested in the State Government free from all encumbrances;

(b) the trees, crops and wells existing on the land on the date of transfer shall, with effect from the said date, be deemed to have vested in the State Government free from all encumbrances; and

(c) the transferee may remove other movable property or the materials of any immovable property existing on such land on the date of transfer within such time as may be prescribed.

(2) Where any land or other property has vested in the State Government under Sub-section (1), it shall be lawful for the Collector to take over possession over

such land or other property and to direct that any person occupying such land or property be evicted therefrom. From the purposes of taking over such possession or evicting such unauthorised occupants, the Collector may use or cause to be used such force as may be necessary.

23. In view of above provisions of Section 154 Smt. Harnam Kaur and after her death the petitioner did not inherit the disputed land in contravention of Section 154, because there was no evidence on record to suggest that the petitioner was having any agricultural land, at the time of inheritance of the disputed land by way of Will or the land held by him, exceeded ceiling limit of 5.0586 hectares (12.50 acres) in U.P. Nothing could be shown on behalf of the respondents that the transfer of disputed land was made in contravention of any provisions of this Act.

24. So far as this question is concerned that the disputed land for some time was pooled by Harnam Kaur in Adarsh Khalsa Sanyukt Sahkari Kheti Samiti and in consequence of the same pooling would be treated to be a transfer, the order dated 15.12.1999 passed by the Additional District Magistrate (Finance & Revenue) was challenged by the Samiti as well as the interested persons through revision before the Commissioner, Meerut and the Additional Commissioner, Meerut decided the revision vide order dated 8.5.2002 quashing the order dated 15.12.1999 passed by the Additional District Magistrate.

25. The Additional Commissioner, Meerut held that in view of Rule 294 of the Rules framed under U.P. Cooperative Societies (Amendment) Act, 1966, the Registrar was empowered to direct the Collector to initiate the action and in view of Rule 293 Possession, Control and Management of the Societies were mentioned and not ownership and thus it was clear from Section 79 of the Act and Rules 293 and 294 of the Rules framed under the Act pooling of the land by the members would not be treated to be transfer of their land in favour of the society. The Additional Commissioner, Meerut found that the notices under Sections 166 and 167 of U.P.Z.A. & L.R. Act were issued to the Secretary and President of Adarsh Khalsa Sanyukt Sahkari Kheti Samiti and Manager of U.P. Cooperative Society and the proceedings were initiated against the principle of natural justice and legal provisions.

26. The Additional Commissioner, Meerut further held that in pursuance of the letter dated 3.8.1993 issued by the Deputy Registrar, mutation was made in the revenue record but Lekhpal made an entry at the bottom of Khatauni "Ka" causing misconception. He also found from the revenue record received from the Collector, Gautam Budh Nagar that the mistake committed in respect of pooling of the land by the entries of society in revenue record was tried to be corrected. The court below did not take evidence of Section 90 of the Co-operative Societies Act and other provisions of law and passed illegal order and thus the disputed land pooled by the members could not be vested in State as the same was passed in violation of Rules, Regulations and provisions of law.

27. Thus no case under Sections 154, 166 & 167 of U.P. Z.A. & L.R. Act was found pending in respect of the land in dispute. Consequently the learned Commissioner held that mere pooling of land by tenure holders to Adarsh Khalsa Sanyukt Sahkari Kheti Samiti could not be treated to be a transfer, on the basis of which the Samiti could not be treated as owner of the land on the basis of alleged pooling nor the Samiti would be entitled to get compensation of the land acquired. The question No. 1 is answered in negative.

Question No. 2:

28. The learned Additional Commissioner held that there was a dispute between the petitioner Sadha Singh, who claimed himself to be the owner of the land of Smt. Harnam Kaur on the basis of Will and Ujjagar Singh and Jeet Singh, who claimed themselves to be sons of Smt. Harnam Kaur and thus the court below vested her land in State Government vide order dated 15.12.1999 and the question of title should be decided by a competent court as to who was the heirs of late Smt. Harnam Kaur.

29. A perusal of extract of khatauni of the year 1406 F to 1411 F goes to show that Smt. Harnam Kaur was recorded as the bhumidhar with transferable rights with regard to plot No. 597 area 16-1-13 and after her death the name of the petitioner was mutated in the revenue record on the basis of the Will on 11.5.1999 in compliance of order passed by the Tehsildar on 5.5.1999 in Case No. 595 of 1999 and an entry was made by Lekhpal in Khatauni accordingly and thereafter the said land was acquired by the State Government for Greater Noida, as a result of which the name of Greater Noida was mutated. In column of remark made in khatauni it has been mentioned that the Deputy Registrar Society, Meerut in his letter No. 2911-13 dated 3.8.1993 alleged that this land was pooled to Adarsh Khalsa Sanyukt Sahkari Kheti Samiti as mentioned by Lekhpal on 6.3.1995. It also appears from the record that the Tehsildar set aside the order dated 5.5.1999 passed u/s 34 of the Land Revenue Act in favour of the petitioner, on 10.5.1999, in respect of which an entry was made by Lekhpal in Khatauni on 31.12.1999.

30. The learned Counsel for the petitioner further contended that Section 189 of U.P.Z.A. & L.R. Act could not be made applicable to the present case, because Smt. Harnam Kaur had purchased the disputed land through registered sale deed dated 30.5.1978 from Lakhmi Chand and others, who were bhumidhars with transferable rights and in pursuance of the registered sale deed, the name of Smt. Harnam Kaur was mutated in the revenue record and thus there was no dispute about the same.

31. The petitioner has filed copy of the judgment and decree passed by the Additional Civil Judge (Senior Division), Nabha, District Patila in Suit No. 36/7.2.2002 (Jit Singh and Jagir Kaur v. Sadha Singh) (Annexure R.A.-2A to rejoinder affidavit), in which the plaintiffs, namely, Jit Singh and Jagir Kaur filed above suit for declaration that they were the owners and in possession of the

house as detailed in the heading of the plaint situated in Village Mandaur, Tehsil Nabha as well as owners and in possession of the suit property situated in Village Tugalpur, Tehsil and District Gautam Budh Nagar. The plaintiffs also sought relief of declaration that registered Will dated 28.2.1987 executed in favour of the petitioner was illegal, null and void, forged and fabricated and liable to be cancelled. The learned Civil Judge (Senior Division), Nabha held that the plaintiffs failed to prove that they were owners and in possession of the suit property as detailed in heading of the plaint and they also failed to prove that late Smt. Harnam Kaur wife of Sucha Singh was their mother. The learned Civil Judge (Senior Division), Nabha also held that identity of executant of Will dated 28.2.1987 was not established with mother of plaintiffs" and thus they had no right to challenge the Will dated 28.2.1987, which was not executed by their mother, but by some other lady by the name of Harnam Kaur wife of Sucha Singh son of Gurdev Singh and thus they were not owners and in possession of suit property and accordingly the suit was dismissed.

32. It has been found from the record that the plaintiffs preferred Civil Appeal No. 113 of 2002 in the court of District Judge, Patiala against the said judgment and decree, which was dismissed as withdrawn (Annexure R.A.-2B to rejoinder affidavit). Thus, in view of above documentary evidence it was established that in the court of Civil Judge (Senior Division), Nabha, Jit Singh, Ujjagar Singh and Jagir Kaur falsely claimed themselves to be sons and daughter of late Smt. Harnam Kaur, who executed the Will in favour of the petitioner and thus their claims were rejected by the competent court, which were never set aside thereafter. Consequently, there was no dispute as to the title of the disputed land between the petitioner and Jit Singh, Ujjagar Singh and Jagir Kaur.

33. The petitioner also lodged an F.I.R. against Jit Singh and Jagir Kaur at P.S. Sadar, Patiala on 15.5.2000 at 11.00 A.M., under Sections 420, 465, 466, 467, 468, 471, 452, 506, 148, 149, 120-B I.P.C., (Annexure R.A.-03 to the rejoinder affidavit) with this allegation that he used to look after Smt. Harnam Kaur and in lieu of the services rendered by him, she executed a registered Will dated 28.2.1987 in his favour, by which she bequeathed her entire movable and immovable properties including the disputed land in his favour and after her death, the petitioner succeeded her and inherited the property in question and he became the owner and in possession of the disputed land. The proceedings for acquisition of land in question was initiated during the life time of Smt. Harnam Kaur but in the meantime she died and thus the objections were filed by the petitioner being owner of the land in question. The notice u/s 9 of the Land Acquisition Act was also issued to the petitioner by Additional District Magistrate (Land Acquisition) and the Tehsildar, Gautam Budh Nagar also issued no objection-cum-non-encumbrance certificate in respect of the disputed land in favour of the petitioner.

34. The learned Counsel for petitioner has vehemently contented that some Land Mafias in District Gautam Budh Nagar tried to grab the amount of compensation

of petitioner by illegal means and the said Mafias put a lady purporting to be Harnam Kaur wife of Sucha Singh claiming herself to be owner of the disputed land, moved the application on 25.5.1999 before the Additional District Magistrate (Land Acquisition), which was contested by the petitioner and an enquiry was held into the matter, but the said lady and her party men came to know that the truth would come out on the record and they would be prosecuted for the same so later on she did not turn up to face the enquiry and her counsel had withdrawn the claim of that lady.

35. It has further been contended that one Latoor Singh and Karan Singh joined hands with the Land Mafias and moved an application claiming themselves to be owners of the disputed land and thereafter they had also withdrawn their application and when Land Mafias could not succeed then they joined hands with some persons belonging to Punjab, namely, Jeet Singh, Ujjagar Singh and Jagir Kaur and they claimed themselves to be sons and daughter of Smt. Harnam Kaur widow of Sucha Singh resident of Village Mandaur.

36. On behalf of petitioner it has been further submitted that Dharam Singh, Omvir and Inderjit Singh, who were in the habit of grabbing property of innocent persons and with this motive they joined hands with Jeet Singh, Ujjagar Singh and Jagir Kaur, who had nothing to do with Harnam Kaur wife of Sucha Singh son of Gurdev Singh resident of Village Tugalpur, Gurdwara Farm, Tehsil Sikandrabad and they were not related in any manner to late Smt. Harnam Kaur.

37. From above submissions made on behalf of parties, it has been established that Harnam Kaur was not the mother of Jeet Singh, Ujjagir Singh and Jagir Kaur and she might be some other lady with the name of Smt. Harnam Kaur wife of Sucha Singh son of Harnam Singh, who had no concern with the real Smt. Harnam Kaur wife of Sucha Singh son of Gurdev Singh, who was the owner and in possession of the land in question, but these persons were trying to take undue advantage of similarity in the names of two ladies as it was a big gang comprising Dharam Singh, Omvir, and Indrajit Singh as members operating in District Gautam Budh Nagar and their motive was to grab the amount of compensation of the disputed land.

38. It has been established from the record that an enquiry was conducted by the police into allegations made by the petitioner in his F.I.R. and all allegations were found to be correct and charge sheet was submitted by the police against Ujjagar Singh, Jit Singh, Jasvir Singh, Jangir Kaur, Inderjit Singh, Dharam Singh and Gurcharan Singh in the court.

39. In view of all these circumstances of the case and documentary evidence produced before us, we have found that there was no real dispute between the petitioner and above persons as to the title of the disputed land. The proceedings on false facts were initiated by the Land Mafias with intention to grab the land or compensation amount of the petitioner, in respect of which an F.I.R. was lodged by the petitioner at P.S. concerned and the police on completion of investigation

submitted chargesheet against the concerned persons. Thus it appears that the respondents in collusion with Land Mafias tried to deprive the petitioner of compensation relating to the land in dispute while in fact there was no dispute between the petitioner and above persons as to the title of the land in dispute.

40. We have found from the record that the learned Additional Commissioner categorically decided the revision with regard to the land acquired by the respondents holding that the land acquired by the State Government was some time pooled to said society but it would not be deemed to be a transfer and the society would not be termed as owner of the land pooled in its favour, while the owners of the land being members of society would continue their ownership in their land pooled in favour of society and they would be entitled to get compensation with regard to their land acquired by the State Government. Consequently, there was no case under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act pending in respect of land of plot No. 597 area 16-1-13 between the petitioner and any other person, hence the same would not have any impact on the right of the petitioner in view of above facts and circumstances of the matter. The question No. 2 is answered in negative.

Question No. 3:

41. The respondents could not bring any fact which was concealed by the petitioner before the order of payment of compensation was passed and there was no dispute pending between the petitioner and any other persons with regard to the title of the disputed land in view of above documentary evidence. Consequently no reference was liable to be referred to the District Judge, Gautam Budh Nagar with regard to apportionment of compensation u/s 30 of the Land Acquisition Act.

42. Once the Additional District Magistrate (Land Acquisition) after hearing the parties passed the order dated 28.2.2009 and in pursuance thereof the amount of compensation was remitted to the account of the petitioner on 5.3.2009, there was no justification to pass any order dated 22.2.2010. The reference u/s 30 of the Land Acquisition Act could only be made in the cases where there was dispute about apportionment. In the present case, there was no dispute regarding apportionment of the compensation and there was no occasion to make the reference u/s 30 of the Land Acquisition Act.

43. Section 30 of the Land Acquisition Act is being reproduced below:

30. Dispute as to apportionment.-When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

Thus question No. 3 is answered in negative.

44. From above discussions and material on record, we have found that the Additional District Magistrate (Finance & Revenue) by the order dated

15.12.2009 vested the disputed land in State on the ground that the land was pooled to the cooperative farming society and as such the pooling would be treated to be a transfer, however, the order dated 15.12.2009 was challenged before the Commissioner of the Division, who set aside the order dated 15.12.2009 vide its order dated 8.5.2002 by holding that the proceedings initiated against Harnam Kaur and others under Sections 154, 166 and 167 of U.P.Z.A. & L.R. Act were vitiated as those were found contrary to the provisions of the Act. The order dated 13.12.2006 was passed at the instance of some persons, who were claiming themselves to be successors of Smt. Harnam Kaur but they lost the case in civil courts finally and now they were not fighting any case and the order dated 13.12.2006 passed against them i.e. Jeet Singh and others became final and after the death of Smt. Harnam Kaur, Jeet Singh, Ujjagir Singh and Jagir Kaur started claiming themselves to be her successors and a civil suit No. 36 of 2002 was filed by Jeet Singh, Ujjagir Singh and Jagir Kaur against the petitioner in the court of Additional Civil Judge (Senior Division), Nabha, District Patiala, which was dismissed on merits on 5.10.2002, against which Jeet Kaur and others filed Civil Appeal No. 113 of 2002 in the court of District Judge, Patiala and ultimately the said appeal was also dismissed as withdrawn vide order dated 29.12.2002. An order dated 1.8.2006 was also passed by Chief Judicial Magistrate, Gautam Budh Nagar in Case No. 23 of 2003 (Ujjagir Singh . Sadha Singh and Ors.).

45. In view of material on record we have also found that Jeet Singh and others had been manipulating the litigation in order to grab the disputed property or compensation amount and in pursuance of the same they filed civil and criminal cases, which were ultimately decided in favour of the petitioner holding that they were claiming through imposter and the fraud was committed by them, in respect of which the petitioner lodged an F.I.R. against Jeet Singh and others under Sections 420, 465, 466, 467, 468, 471, 452, 506, 148, 149 and 120-B I.P.C., P.S. Sadar, Patiala, in which chargesheet was submitted by the police against Jeet Singh and others on 25.7.2007 for forging the documents and introducing the imposter as Smt. Harnam Kaur after her death. Thus no litigation as to the title of disputed land was pending between the petitioner and any other persons, who could claim their right over the disputed land. The petitioner was found having sole and absolute right of the ownership over the disputed property.

46. In view of above discussions the stand taken by the respondents for reference u/s 30 of the Land Acquisition Act was misconceived and contrary to the facts of the case and further the harassment of the petitioner was caused by the respondents by taking implication of Sections 154, 166 and 167 of the U.P.Z.A. & L.R. Act as it was found on the basis of material that Smt. Harnam Kaur had purchased the property through registered sale deed and the transferors of Smt. Harnam Kaur were bhumidhars of the disputed land. The petitioner was being harassed by the respondents on one pretext or the other. The stand taken by the respondents that the land had been vested in the State had no legs to stand as the proceedings were quashed by the Commissioner in

the year 2002 and now the State Government could not reagitate the same plea in the present case. In case the land would have been vested in the State, there was no occasion to issue Form No. 9 in the name of Smt. Harnam Kaur.

47. We have found that the amount of compensation with regard to disputed land which was inherited by the petitioner on the basis of registered Will, was settled u/s 11 of the Land Acquisition Act and there was no dispute as to apportionment of the same or any part thereof between the petitioner and above persons, and the petitioner also initiated criminal case against the persons responsible for creating problem by fabricating false evidence and the police on completion of investigation submitted chargesheet against them in the court. Thus the Collector was not required to refer such dispute for decision in view of Section 30 of Land Acquisition Act, because there was no dispute with regard to entitlement of the compensation as some Land Mafias, against whom chargesheet was submitted by the police, tried to grab amount of compensation on the basis of forged claims and the dispute was decided by the learned Civil Judge (Senior Division), Nabha holding that the said persons were neither the sons and daughter of late Smt. Harnam Kaur nor they had any concern with her property and they in collusion with Land Mafias operating in Greater Noida tried to grab the amount of compensation. Under these circumstances reference u/s 30 of the Land Acquisition Act was not required to be sent to the District Magistrate, Gautam Budh Nagar with regard to payment of compensation.

48. In view of foregoing discussions and conclusions the respondent No. 4 wrongly passed the order dated 23.3.2009 (Annexure No. 8 to the writ petition) and the respondent No. 3 passed order dated 6.4.2010 (Annexure No. 9 to the writ petition) as well as the respondent No. 4 passed orders dated 22.2.2010 and 24.4.2010 (Annexure C.A. 1 and C.A. 2 to counter affidavit) against law and material on record. Under these circumstances all impugned orders are liable to be quashed.

49. Consequently, this writ petition is allowed and the order dated 23.3.2009 passed by the respondent No. 4 (Annexure No. 8 to the writ petition), order dated 6.4.2010 passed by the respondent No. 3 (Annexure No. 9 to the writ petition) as well as orders dated 22.2.2010 and 24.4.2010 passed by the respondent No. 4 (Annexure CA. 1 and CA. 2 to the counter affidavit) are quashed. Thus the petitioner is entitled to receive the amount of compensation of the disputed land and the respondents are directed to make payment of amount of compensation due, to the petitioner within a period of one month from the date of production of certified copy of this order.