
(2008) 12 AHC CK 0238
In the Allahabad High Court
Case No : Writ Petition No.2889 of 1992 (M/B)

Saroj Rani

APPELLANT

Vs

Lucknow Development Authority and Another

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0238

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Allowed

Judgement

Pradeep Kant, J.

1. Heard Sri Prashant Chandra, learned Senior Advocate appearing for the petitioner, Sri Shobhit Mohan Shukla, for Lucknow Development Authority, Sri T.J.S. Makkar, learned State counsel and perused the record.
2. The petitioner alleges that the possession for her land measuring 2 Bigha, 5 Biswa and 18 Biswansi has been taken by the respondent State without acquisition whereas rest of the land has been acquired under the provision of the Land Acquisition Act. The petitioner prays that either respondents be directed to hand over possession of the unacquired land or in the alternative, they may be directed to pay adequate compensation to her.
3. The pleadings are not very clear as to whether the petitioner's land has been acquired or not and it has been stated in the writ petition that during consolidation proceedings, the Consolidation Officer reduced some area and when this matter was pending adjudication, the entire land of the petitioner was acquired but thereafter in appeal, the Settlement Officer, Consolidation remanded the matter and allegedly the lost area was also declared as the land of the petitioner.
4. The argument appears to be that this land, which later on came to be recorded in the name of the petitioner, was not acquired and this is that land for

which the relief has been claimed.

5. Since no counter affidavit has been filed till date, despite petition being of the year 1992 and no prayer has been made for filing of the counter affidavit by the respondents, we dispose of the petition finally at this stage.

6. The petitioner's case that some of the area of land belonging to her has actually not been acquired, and, therefore, she is entitled for either redelivery of possession or payment of adequate compensation, was to be looked into by the State Government itself, but nothing has been done. It need not be restressed that in case the possession of land of any person, may be of the petitioner, is taken by the Lucknow Development Authority or any other instrumentality of the State or any other local authority, etc. without drawing appropriate proceedings for acquisition, or requisition or by transfer by obtaining consent in writing on negotiation such an act is without authority of law. The consequence of such action would be normally to restore the possession to the person concerned irrespective of the fact whether the shape and nature of the land has been changed or is being changed, or any construction has been raised or is being raised or any other activities are being undertaken over the said land.

7. In this case, an order was passed by a Division Bench of this Court on 28.7.1992 restraining the respondents from making any construction over the land in question and since then, the land is lying vacant.

8. Learned counsel for the petitioner Sri Prashant Chandra, Senior Advocate vehemently argued that it is a case where the petitioner's land has been taken, without following the procedure of law and, therefore, she is entitled for having the possession of said land restored to her, respondents having not made any construction therein and the shape or nature of the land having not been changed. It is the case of the petitioner that the land in question has not been used for any public purpose and is lying vacant and so, the possession of the land may be redelivered to her.

9. Sri Shobhit Mohan Shukla, learned counsel appearing for the Lucknow Development Authority says that the Board of the Lucknow Development Authority had taken a decision on 27.10.2007 that in case any land in small measure was left out of acquisition in earlier schemes, the same may be acquired by issuing a fresh notification under the Land Acquisition Act, but he also informs the Court that no such notification in respect of the land in question has yet been issued.

10. The aforesaid facts make it clear that the land in question was not the subjectmatter of acquisition in earlier schemes of the State and, therefore, the possession of the said land could not have been taken by the State Government or the Lucknow Development Authority. The possession so taken in the year 1992 was wholly without any authority and absolutely illegal. It also stands proved from the aforesaid pleas and facts brought on record that the land of the petitioner is lying vacant, may be because of the interim order passed by this

Court, but the fact remains that its shape or nature has not been changed, nor it is being used for any public purpose.

11. It need not be reiterated but is to be reminder that the Lucknow Development Authority or any other instrumentality of the State or any other local authority, has power to acquire the land for any public purpose, but it is not authorized to take possession of the land of any person without following the procedure established under law, i.e. without drawing proceedings under the Land Acquisition Act or the Requisitioning and Acquisition of Immovable Property Act, 1952 or by transfer by obtaining consent in writing or negotiation, and if possession of the land is taken otherwise, then the State Government or the Lucknow Development Authority or any other instrumentality of the State, may be the U.P. Avas Evam Vikas Parishad, would not be entitled to retain possession of the land.

12. Alternate relief of paying compensation in respect of such illegally occupied land to the owner thereof may be at times an appropriate remedy, but it cannot be taken to be a normal rule so as to give a go-by to the established principles of acquisition and to devise a method of illegal occupation of land without following the procedure prescribed under law. Taking possession of land without following due procedure prescribed under law cannot be made a rule, may be in exceptional cases or in some peculiar individual case such a contingency may occur.

13. The State or any other instrumentality of the State or the Lucknow Development Authority or Avas Evam Vikas Parishad, etc. are, therefore, required to take into consideration at all times when they intend to take possession of any land from its owner or occupier that they have drawn appropriate proceedings under the relevant provisions of the Act. Cases are coming frequently before this Court where the possession of the lands are being taken without following the established procedure under the law and this Court is burdened with these petitions. Absolutely unnecessary litigation is thus increasing, which causes great hardship to the persons, who are deprived of their property, otherwise than in accordance with law.

14. The possession of the land of the petitioner is being retained by the Lucknow Development Authority for the last about 16 years without any authority. If a person's land has been occupied or acquired by the State Government or any other instrumentality of the State or the Lucknow Development Authority or the U.P. Avas Evam Vikas Parishad, etc., apart from the relief of restoring possession of land to him, he would also be entitled for damages for being out of possession for such a long time if possession of the land has been taken without following the established procedure under the law, as is in the present case.

15. Had the possession of the land been with the petitioner, she would have been free to use it in the manner she wished and might have undertaken any such measures which would have benefited her in terms of money or in terms of

comfort.

16. We are, therefore, of the view that the petitioner deserves to be compensated by directing the Lucknow Development Authority to pay damages for unauthorized occupation and possession of petitioner's land which they had taken for such a long period.

17. We are of the view that deprivation of ownership right of the petitioner for such a long period without any authority renders the respondents liable for payment of damages to her. Since the land in terms of the measurement is about 70,000 sq. feet in a wholly developed area, for which the State Government is further interested to issue notification for acquisition of the land, the petitioner would be entitled for compensation, as may be determined at the prevalent market rate on the date the notification of acquisition, if issued, subject to any challenge being made by her.

18. We, therefore, find that a token amount of damages would be sufficient to establish the lawful right of the petitioner, for which we assess damages to the tune of Rs. Two lacs, which shall be paid by the Lucknow Development Authority to the petitioner within one month. We further direct that the possession of the land in question shall be forthwith redelivered to the petitioner.

19. With the aforesaid directions, the writ petition is allowed.

(Petition allowed)