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(2004) 03 AHC CK 0019

In the Allahabad High Court

Case No : C.M.W.P. No''s. 23552 of 1999 and 8829 of 1991

Sarva Hitkarni Sahkari Avas Samiti Ltd. — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:
Land Acquisition Act, 1894 — Section 16, 17, 4, 48, 5A

Citation : (2004) 5 AWC 4135

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Ravi Kant, Deo Raj, Amit Krishna, Govind Krishna, R.K. Srivastava, S. Hasnain, K.C. Srivastava, S.C. Dwivedi, for the Appellant; Sabhajeet Yadav, A.K. Misra and U.K. Uniyal, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—These two writ petitions are disposed of by a common judgment.

2. Heard learned Counsel for the parties.

3. In Writ Petition No. 8829 of 1991 the Petitioner has challenged the validity of notification u/s 4 of Land Acquisition Act dated 13.11.1990, Annexure-3 to the writ petition and the notification u/s 6 dated 8.2.1991 vide Annexure-4 to the writ petition.

4. Writ Petition No. 23552 of 1999 has been filed with a prayer to quash the impugned orders dated 8.2.1999, 1.2.1999 and 28.4.1999, Annexures-12, 13 and 13A to the writ petition.

5. Having heard learned Counsel for the parties we find no merits in these petition.

6. As regards Writ Petition No. 8829 of 1991 we have perused the notification u/s 4 of the Land Acquisition Act copy of which is Annexure-3 to the writ petition. In that notification u/s 4 read with Section 17 it has been stated that the land in

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question is urgently required for the establishment of a residential colony under the Planned Development Scheme in Jhunsi, district Allahabad and in view of the pressing urgency the provision of Section 5A is being dispensed with.

7. It has been held in a series of the decisions of the Supreme Court and of this Court that such a requirement is for a public purpose and there is urgency. Hence there is no merit in the challenge to the impugned notification under Sections 4 and 6 of the Land Acquisition Act. This petition is therefore dismissed.

8. As regards Writ Petition No. 23552 of 1999 we have perused the allegations in that petition as well as in the counter-affidavit. In this petition it is sated in paragraph 21 that Writ Petition No. 8829 of 1991 had been dismissed for default on 25.4.1997 and it was restored on 24.11.1997. It is alleged, in paragraph 23 that during the aforesaid interregnum the Respondent authority acted with a supersonic speed and although the award had not been given it started disbursing compensation to various tenure holders despite the Petitioner''s objection vide Annexure-6 to the petition. It is alleged in paragraph 25 of the writ petition that some enquiry was conducted by the Junior Engineer of the Allahabad Development Authority who gave a report dated 22.6.1998 copy of which is Annexure-7 to the writ petition in which it is stated that the land is subject matter of sale in favour of the Petitioner society which has spent more than Rs. 50 lacs in the development of the land and payment of sale consideration to various tenure holders. It is alleged in paragraph 27 of the writ petition that possession of the land has not yet been taken and hence it has not vested in the State Government u/s 16. It is alleged in paragraph 28 of the petition that the area of the land in dispute which was proposed to be transferred to Indian Oil Corporation, consisted 1/4th of the total acquired area. It is alleged that setting up of a bottling plant is not a residential purpose but for a commercial purpose. The Petitioner made representation/ objection on 13.1.1999 before the Secretary, A.D.A./Special Land Acquisition Officer, Allahabad vide Annexures-10 and 11 to the writ petition. These representations have been rejected by the impugned orders and hence this petition.

9. In paragraph 36 of the petition it is alleged that the A.D.A. has held that since the possession has already been taken over the same cannot be released from acquisition and Section 48 of the Act has no application.

10. A counter-affidavit has been filed in this writ petition and we have perused the same. In paragraph 4 of the same it is stated that the land in dispute was proposed to be acquired for which the Board of the A.D.A. gave approval on 20.10.1989. The notification u/s 4 read with Section 16 was issued on 13.11.1990 and 29.11.1990. Pursuant thereto notifications u/s 6 were issued on 8.2.1991 and 29.6.1991. Possession of the disputed plot was handed over to the A.D.A. on 25.6.1991. It is stated that the alleged agreements to sell on the face of it have all been allegedly executed after the notification.

11. In our opinion the law is well-settled that any subsequent sale/agreement to

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sell after the execution proceedings have begun does not bind the State and the acquiring body. There is no evidence to show that any registered sale deed was executed in favour of the Petitioner prior to the acquisition proceedings. Hence the Petitioners have no right, title or interest over the disputed land.

12. It is alleged in paragraph 4 of the counter-affidavit that the Petitioner is a complete stranger to the land acquisition proceedings and we agree with this contention. The name of the tenure holders continued to be recorded at the relevant time and the Petitioner''s name was not recorded over the plots in dispute at the time of issuance of the notification u/s 4 nor at the time of taking over possession. Hence no right accrued in favour of the Petitioner to claim compensation.

13. In paragraph 7 of the counter-affidavit it is stated that the Respondent authority has planned to set up Trivenipuram Avas Yojna over the acquired land and more than 900 plots have already been allotted to third party and their rights have intervened. The petition is not maintainable, as they had not been impleaded. We agree with this submission also.

14. In Mohan Singh and Others Vs. International Airport Authority of India and Others, , the Supreme Court has held that once possession of the land has been taken it stands vested in the State and hence even the State Government cannot release it u/s 48. So far as disbursement of compensation is concerned in our opinion the same is to be made by the Collector after satisfying himself regarding the title and ownership of the land. The right to acquire the land under the Act cannot be curtailed by any Government orders.

15. As stated in paragraph 15 of the counter-affidavit possession of the land has been taken over in the year 1971 itself for which memo of possession have been duly prepared. Any subsequent entry by the tenure holders on the land is really in favour of a trespasser and no benefit can be claimed by the Petitioner on that basis.

16. As regards non-delivery of the award in our opinion this will not invalidate the acquisition proceedings since Section 17 was invoked the authorities have already deposited the amount of compensation with the Collector and it should be paid to the persons entitled thereto.

17. In our opinion, there is no illegality in the impugned orders. Petitions are dismissed.

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