

(2007) 09 AHC CK 0211
In the Allahabad High Court
Case No : C.M.W.P. No. 43341 of 2007

Satyavir Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition (Amendment) Act, 1984 — Section 11A, 30, 31
Land Acquisition Act, 1894 — Section 17, 17(2), 17(4), 18, 18(2)

Citation : (2008) 1 AWC 9

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Shashi Nandan, Vivek Kumar Singh and Ajay Kumar Singh, for the Appellant; Anurag Khanna and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Shashi Nandan, senior advocate for the Petitioners, Sri Anurag Khanna, appearing for Respondent No. 3 and learned standing counsel.

2. By this writ petition, the Petitioners have prayed for quashing the order dated 23rd August, 2007 passed by 4th Additional District Judge, Meerut in Land Acquisition Reference No. 684 of 1997, Murtaza Hasan v. State of U. P. and Ors. Reference No. 684 of 1997, rejecting the applications 24C and 26C.

3. Brief facts necessary for deciding the writ petition are ; a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued by the State Government on 6th February, 1990 for acquiring the land for Meerut Development Authority. The declaration u/s 6 of the Act was also made on 22nd March, 1990. The Respondent No. 4, Murtaza Hasan, was original tenure holder of plots of Khasra Nos. 636, 690, 691 and 693. Notice u/s 9 of the Act was issued on 5th August, 1991. The Special Land Acquisition Officer gave an award on 17th March, 1992. The Respondent No. 4, tenure holder, made an application,

which was received by the Special Land Acquisition Officer on 21st April, 1992 for making a reference u/s 18 of the Act, on the basis of the said application Land Acquisition Reference No. 684 of 1997 was registered. The Petitioner No. 1 vide registered sale-deed dated 20th September, 1996 purchased Plots No. 690 area 0-15-10, 691 area 0-15-10 and 693 area 2-2-0 from the original tenure holder, Murtaza Hasan, Petitioner No. 2 purchased Plot No. 636 area 7-0-18 vide sale-deed dated 29th February, 2000. Petitioners No. 1 moved an application on 3rd December, 2003, u/s 18 of the Act before the Special Land Acquisition Officer praying that application may be referred to the District Judge in Land Acquisition Reference No. 684 of 1997 for making impleadment of the applicant Satyavir Singh as claimant in place of Murtaza Hasan. Similarly Petitioner No. 2 moved an application on the same date u/s 18 making the same prayer. A letter dated 10th December, 2003 was written by the Special Land Acquisition Officer to the District Judge, Meerut forwarding the applications of both the Petitioners dated 3rd December, 2003 for necessary action. The Additional District Judge by the impugned order dated 23rd August, 2007 rejected the applications filed by the Petitioners dated 3rd December, 2003, which was forwarded by the Special Land Acquisition Officer to the District Judge. This writ petition has been filed challenging the order dated 23rd August, 2007.

4. Sri Shashi Nandan, learned Counsel for the Petitioners, challenging the order passed by the Additional District Judge, contended that Petitioners being purchasers of the land in question have stepped into shoes of the original tenure holder and their applications dated 3rd December, 2003 were liable to be allowed. He further submits that compensation was received by the Petitioners from the Special Land Acquisition Officer. It is further submitted that possession was actually given to Meerut Development Authority on 24th May, 2002, hence it is contended that learned Additional District Judge committed error in treating the date of taking possession as 17th March, 1991 only on the basis of mentioning of date in the application filed by the Petitioners dated 3rd December, 2003. The contention is that possession having been taken in the year 2002, the land did not vest in the State and the Petitioners' sale-deeds were fully valid and were not void sale-deed.

5. Learned Counsel appearing for Meerut Development Authority refuted the submission of the Petitioners and submitted that the learned Additional District Judge has rightly rejected the applications of the Petitioners.

6. Learned Counsel for both the parties have placed reliance on various judgments of the Apex Court, which shall be referred to hereinafter.

7. Learned Additional District Judge in the impugned order held that as per admission of the applicant the possession u/s 17 of the Act shall be deemed to be taken on 21.8.1991 and the land vested in the State and the sale-deeds executed by Murtaza Hasan in favour of the Petitioners cannot give any title or interest in favour of the Petitioners and they cannot be said to be persons interested. It has further been held that no application could have been made by

the Petitioners u/s 18 of the Act by virtue of provisions of Section 18(2)(b) of the Act, hence the applications moved by the Petitioners before the Special Land Acquisition Officer were not legally maintainable. It was further held that subsequent transfer of possession by the State to the Meerut Development Authority of the land cannot come to the rescue of the Petitioners.

8. The first question to be considered is as to whether by virtue of sale-deeds dated 20th September, 1996 and 29th February, 2000, executed by Murtaza Hasan in favour of the Petitioners whether any right or title in the land in dispute was transferred to the Petitioners. In the preset case, the notification u/s 4 of the Act was issued on 6th February, 1990, declaration u/s 6 of the Act was made on 22nd March, 1990 and the award by the Special Land Acquisition Officer was made on 17th March, 1992. Learned Counsel for the Petitioners has placed reliance on a judgment of the Apex Court in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, In the said case also sale-deed was executed in favour of Kalra Properties after issue of notification u/s 4 of the Act. The Apex Court laid down following in Paragraph 3 of the said judgment:

3... It is settled law that after the notification u/s 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification u/s 4(1) was published on 24.3.1973, possession of the land admittedly was taken on 5.7.1973 and pumping station house was constructed. No doubt, declaration u/s 6 was published later on 8.7.1973. Admittedly power u/s 17(4) was exercised dispensing with the enquiry u/s 5A and on service of the notice u/s 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State u/s 17(2) free from all encumbrances. It is further settled law that once possession is taken by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification u/s 48(1) is published in the Gazette withdrawing from the acquisition. Section 11A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification u/s 4(1) and the declaration u/s 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification u/s 48(1) was published and the possession is surrendered pursuant thereto. That apart, since M/s. Kalra Properties, Respondent had purchased the land after the notification u/s 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration u/s 6 was published.

9. Any sale after issue of notification u/s 4 cannot encumber the land nor any right or title shall pass on the purchaser on the strength of any such sale-deed. In view of the law declared by the Apex Court in U. P. Jal Nigam's case (supra),

the sale-deed in favour of the Petitioners were void and did not confer any right or title to the Petitioners.

10. The submission, which has been much pressed by counsel for the Petitioners, is that Petitioners had received compensation by the Special Land Acquisition Officer on the strength of the sale-deed in the year 2001 ; by virtue of sale-deed they have stepped into the shoes of the owner ; with regard to question of compensation they have right to be impleaded in proceedings u/s 18 of the Act ; forwarding of their applications by the Special Land Acquisition Officer was fully justified and the Additional District Judge committed error in rejecting the said applications. Learned Counsel for the Petitioners has relied on paragraph 4 of the judgment in U. P. Jal Nigam's case (supra), where following observations were made by the Apex Court:

... Therefore, the purchaser as a person interested in the compensation, since he steps into the shoes of erstwhile owner, is entitled to claim compensation.

11. Two more judgments of the Apex Court relied by counsel for the Respondents are relevant to be noted in this context. The Apex Court in Ajjam Linganna and Others Vs. Land Acquisition Officer, Revenue Divisional Officer, Nizamabad and Others, , considered a case where after expiry of period as provided u/s 18, application was made for impleadment in the existing reference and the reference court had allowed impleadment. Following was laid down by the Apex Court in paragraphs 3, 4 and 5 of the said judgment:

3. The High Court came to the conclusion inter alia that the reference court is not entitled to amend a reference under Sections 30 and 31 into a reference also u/s 18 of the Land Acquisition Act. The High Court had given other findings against the Appellants but it is not necessary for the purpose of these appeals to refer to them. Suffice it to say that after the award was passed on 16.1.1976 the first Appellant Ajjam Linganna in SLP (C) No. 15481 of 1999 was the only person who filed an application before the Land Acquisition Officer seeking a reference u/s 18. By that date it appears that a reference under Sections 30 and 31 was pending before the civil court. The Land Acquisition Officer did not take any action upon an application filed by Ajjam Linganna seeking a reference u/s 18. Thereafter, the said claimant filed an application in the Court seeking reference u/s 18 and for amendment of the existing reference under Sections 30 and 31. This was allowed by the reference court on 16.12.1993. Subsequently, other Appellants in these appeals had also made applications to the reference court on 10.12.1993 and obtained orders of impleadment on 25.1.1994 and proceeded to seek enhancement of compensation.

4. In our view, it was not open to the Appellants (other than Ajjam Linganna) to have applied directly to the reference court for impleadment and to seek enhancement u/s 18 for compensation. The only person for whom some consideration can be shown is Ajjam Linganna who had at least filed an application on 14.9.1993 before the Land Acquisition Officer seeking reference.

5. In the above facts and circumstances, these appeals preferred by the various Appellants except Ajjam Linganna are liable to be set aside inasmuch as it was not open to the reference court to implead the said Appellants in the reference court without their having approached the Land Acquisition Officer seeking reference earlier.

12. Anr. judgment relied by counsel for the Respondents is Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. Vs. Allahabad Vikas Pradhikaran and Another, In the said case after notifications under Sections 4 and 6, the award was made on 12th October, 1987 u/s 30 of the Act. The Additional District Judge, Allahabad sent a communication dated 11th August, 1992 to the Special Land Acquisition Officer stating that on perusal of the case file, an application filed u/s 18 of the Act by the Appellant herein, namely, Prayag Upnivesh Awas Evan Nirman Sahkari Samiti Ltd. was found to be on the file and that no mention had been made regarding that application in the letter of reference. Therefore, a clarification was sought by the Additional District Judge. The Special Land Acquisition Officer sent the reply stating that such an application was also attached and due to an error, the same was not mentioned in the letter dated 12th October, 1987. After receipt of the said letter, the Additional District Judge impleaded the Appellant and proceeded in the matter. The award was made by the Additional District Judge, which was challenged by the Allahabad Development Authority on the ground that there was no proper reference. The High Court held that there was no proper reference u/s 18 and the order made by reference court was set aside. Following was laid down by the Apex Court in paragraphs 5 and 6 of the judgment:

5. In the reference letter sent by the S.L.A.O. on 12.10.1987, nothing has been stated regarding the claim for enhancement of compensation put in by any of the parties. It is also pertinent to note that in the reference letter, the Appellant Samiti is not shown as a party. The first claimant is one Shiv Narain Chaudhary and there are six other claimants. The reference letter of the S.L.A.O. clearly shows that the Appellant Samiti was not a party to such reference. It is surprising as to how the learned Additional District Judge could seek a clarification on the basis of an application which was found on the file and if such an application was made by any party, naturally there would have been a reference u/s 18 of the Act and it would have been specifically mentioned in the reference letter. It is equally surprising that even though the Appellant was not a party to the reference case and was allegedly not having knowledge of the proceedings, how and at whose instance the clarification was sought by the Additional District Judge. It is also pertinent to note that the clarification issued by the S.L.A.O. subsequent to the letter from the Additional District Judge, cannot be construed as reference u/s 18 of the Act. The letter from S.L.A.O. reads as follows:

This is with reference to your letter dated 11.8.1992 whereby you have enquired as to whether in the reference forwarded on 12.10.1987 entitled as State

Government v. Shiv Narain Chaudhary, the reference of Prayag Upnivesh Sahkari Samiti, u/s 30/18 was also made. In this connection it is submitted that in the file of the office, the reference of Prayag Upnivesh Sahkari Samiti Ltd., is also attached. Probably, due to error in the previous reference letter dated 12.10.1987 the same was not mentioned.

6. The letter quoted above by itself is not sufficient to make it as a reference purported to have been made u/s 18 of the Act. The learned Additional District Judge clearly erred in assuming that there was a reference u/s 18 of the Act. The subsequent impleadment of the Samiti as a party to the reference, which was pending u/s 30 of the Act and the conversion of the same also as a reference u/s 18, was illegal and has rightly been quashed by the High Court.

13. The reference u/s 18 of the Act having already been made by Respondent No. 4 on 21st April, 1992 on the basis of which land acquisition reference was already registered and proceedings in the Court of Additional District Judge were started, there was no occasion for filing applications dated 3.12.2003 by the Petitioners before the Special Land Acquisition Officer purporting to be u/s 18 of the Act. The Special Land Acquisition Officer has no authority or jurisdiction to forward the said application to the reference court for any adjudication. The judgment (specially paragraph 4) of the Apex Court in U. P. Jal Nigam's case (supra), on which much reliance has been placed by counsel for the Petitioners was a case in which the issue as to whether a purchaser whose sale deed is void has right to be impleaded in the reference u/s 18 was not in issue nor any proposition was laid down in the said judgment to the effect that such purchaser is entitled to be impleaded in proceedings u/s 18 of the Act. As observed above, the sale deeds of the Petitioners being void, they cannot claim any right or entitlement to be impleaded in proceedings u/s 18 of the Act nor the Special Land Acquisition Officer had any jurisdiction to forward the applications dated 3.12.2003 of the Petitioners purported to be made u/s 18 of the Act to the reference court.

14. Learned Counsel for the Petitioners has also referred to and relied on Anr. judgment of this Court in Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, The question, which was raised in that case, was with regard to exercise of power u/s 48 of the Act by the State Government. No such proposition was laid down in the said case, which helps the Petitioners on the issues, which have been raised in this case. Learned Counsel for the Petitioners has placed much reliance on the fact that Meerut Development Authority was given possession in the year 2002, hence it will not be treated that possession was taken by the State and the land vested with the State. At this juncture, it is relevant to note the pleadings in the applications made by the Petitioners dated 3rd December, 2003 u/s 18 of the Act before the Special Land Acquisition Officer with regard to possession of the land. In paragraph 8 of the application, following was stated by the Petitioners:

8. That notices u/s 9 of the L.A. Act were issued on 5.8.1991, from the office of

the then S.L.A.O. and after lapsing of 15 days the possession shall be deemed to be taken by the State and M.D.A. in view of the fiction of the Act as the Notification u/s 4 was to be read with Section 17 of the L.A. Act which is emergency clause, but the possession has been deemed to be taken on 21.8.1991 and the applicant is entitled for interest from the date 21.8.1991 till the date of actual payment of the compensation to the applicant. While no interest has been paid by the A.D.M. (L.A.) Meerut to the applicant on the amount of compensation awarded by the S.L.A.O. vide Award dated 17.3.1991 and in law it is not permitted to the State to acquire land and do not take the possession even on the date of the declaration of the Award and by fiction of law it shall be deemed that the possession has been taken by the State on 21.8.1991 of the aforesaid acquired land.

15. The Petitioners in the said applications clearly came with the pleadings that possession shall be deemed to have been taken on 21st August, 1991. The learned Additional District Judge did not commit any error in referring to the said pleading of the Petitioners and accepting that possession was deemed to have been taken on 21st August, 1991 vesting the land in the State. The fact that Meerut Development Authority was given possession by the State in the year 2002 is not of much significance. Further the Meerut Development Authority's request to the State Government to denotify the land u/s 48 of the Act also has no bearing on the issues since the State Government never accepted any such request nor issued any notification u/s 48 of the Act. The Additional District Judge has considered all aspect of the matter and has rightly rejected the applications 24C and 26C filed by the Petitioners before the Special Land Acquisition Officer, which were forwarded to the reference court. There is no error in the order passed by Additional District Judge, which may warrant any interference in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

The writ petition lacks merit and is dismissed.