
(2004) 02 AHC CK 0162
In the Allahabad High Court
Case No : C.M.W.P. No. 29613 of 2003

Sharda Ram and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 6

Citation : (2004) 2 AWC 1649 : (2004) 2 UPLBEC 1140

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

Bench : Division Bench

Advocate : Sanjay Kumar Jaiswal, for the Appellant; N. Mishra, W.H. Khan, Anurag Khanna and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the respondents to withdraw the notice dated 6.3.2002 Annexure-5 to the petition and not to interfere in the possession of the petitioners over the land in dispute as it is abadi land which is situated on Khasra Nos. 586 and 606a. It is further prayed that construction on the land in question may not be demolished.

2. The petitioners have also prayed for a writ of certiorari to quash the impugned order dated 6.3.2002.

3. It is alleged in para 2 of the petition that the petitioners were the residents of Village Shadarpur Mauza Bhakhtawarpur district Gautam Budh Nagar since their forefathers. The impugned notice dated 6.3.2002 has been issued for acquisition of the abadi of the petitioners. It is also alleged that in the revenue records it has been recorded as abadi land vide Annexure-1 to the petition and it is also alleged that a notification was issued by the State Government on 28.11.2001 for acquisition of the land u/s 4(1) of the Land Acquisition Act for development of industries by NOIDA. In this notification the acquisition of petitioner's abadi land has also been notified. True copy of the notification dated 28.11.2001 is

Annexure-2 to the petition. The petitioners made representation dated 20.1.2001 praying that the aforesaid land of the petitioners be not acquired vide Annexures-3 and 4 to the petition. However, despite these representations the respondent No. 2 has issued notice dated 6.3.2002 for acquisition of the land and fixed the date of appearance of the petitioner for 22.3.2002 vide Annexure-5. The petitioners submitted their objection dated 21.3.2002 vide Annexure-G. It is alleged in para 9 of the petition that without giving opportunity to the petitioners and without going through their objection and without deciding it the respondents awarded the compensation on 23.3.2002 and distributed it amongst the land holders. The petitioners have alleged that they have not been given compensation and their objection was not considered.

4. A counter-affidavit has been filed on behalf of NOIDA copy of which was submitted on learned counsel for the petitioners on 23.7.2003 as is evident on a perusal of the endorsement on the same. No rejoinder-affidavit has been filed in reply to this counter-affidavit so far although more than six months have expired. In para 4 of the, counter-affidavit it is stated that the land in dispute is being used for development of an Express Highway and the land was acquired by the State Government after notices under Sections 4/17 and 6 of the Land Acquisition Act had been issued. True copy of the said notifications are contained in Annexure-C.A. 1 to the affidavit. In para 5 of the counter-affidavit it is denied that the land in dispute is abadi land. In para 6 it is stated that the land in dispute was acquired as per Land Acquisition Act and is in possession of the respondent since 23.3.2003. The formalities for entering the name of the respondent authority in the revenue record has already started. In para 7 it is stated that the notification u/s 4/17 of the Land Acquisition Act was issued on 28.11.2001. In para 8 it is stated that the representation of the petitioners has been rejected by the answering respondent. In para 9 it is stated that the petitioners were given opportunity of hearing.

5. In para 10 it is stated that since the acquisition was in a case of urgency u/s 17 of the Land Acquisition Act, there was no requirement to invite objections., In para 13, it is stated that the amount which has to be paid to the land holders is on the basis of compromise and settlement arrived with them. In para 14, it is stated that the land in dispute is about 1-1/2 kms. away from the abadi and is agricultural land, In para 18, it is stated that the plots on which the abadi exist have not been acquired. Rest of the area which was agricultural land has been acquired. In para 21 it is stated that the land in dispute is in Sector 126, 127 and 128 and development work is being carried on by the answering respondent as well as other agencies. In para 22 it is stated that the answering respondent has got possession of the land in dispute on 23.3,2003.

6. Since the allegations in the counter-affidavit have not been rebutted by filing rejoinder-affidavit although six months have expired since the petitioners received copy of the counter-affidavit we are treating the allegations in the counter-affidavit of NOIDA to be correct as they are unrebutted.

7. The land in question has been acquired under Sections 4/6/17 of the Land Acquisition Act. A perusal of the notification u/s 4/17 of the Land Acquisition Act (copy of which is Annexure-C.A. 1 to the counter-affidavit) shows that the land has been acquired for planned industrial development for NOIDA. As held by a Division Bench of this Court in W. P. No. 29031 of 2003, Amar Singh v. State, decided on 11.7.2003, such acquisition is valid. Infact the notifications u/s 4/6/17 have not been challenged in this petition.

8. The allegation in the counter-affidavit that the land is not abadi but agricultural has not been disputed by the petitioners by filing any rejoinder-affidavit. However, we may observe that a Division Bench of this Court in Writ Petition No. 29031 of 2003, Amar Singh v. State of U. P., decided on 11.7.2003, has held even abadi land can be acquired under the Land Acquisition Act. Hence even assuming that the land is abadi the same can be acquired as held in the above decision.

9. The writ petition is dismissed.