
(2004) 03 AHC CK 0240
In the Allahabad High Court
Case No : C.M.W.P. No. 24111 of 2001

Shiv Murat Lal and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2004) 5 AWC 4299

Hon'ble Judges : M. Katju, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.P. Sahi, G.K. Singh and Sanjay Srivastava, for the Appellant; S.C. Srivastava and R.K. Saxena, S.C. and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed with a prayer for mandamus directing the Respondent to make payment of compensation for the land which was taken over by the Respondent in terms of letter dated 30.12.1997 Annexure-2 to the writ petition and letter dated 15.2.2001, Annexure-3 to the writ petition or in the alternative to restore back the possession of the Petitioner's land in question being plot No. 38-Ga, village Bheekhampur, Tahsil Chakia, district Chandauli.

2. Heard learned Counsel for the parties.

3. It is alleged that the Petitioners are bhumidhars of the land in question as stated in paragraph 4 of the writ petition. The aforesaid land was acquired for building a canal. However, it is alleged in paragraph 5 of the writ petition that neither compensation has been awarded nor was the land acquired or requisitioned under any law but instead possession has been taken over illegally by the Respondent for building canal.

4. It is well-settled that in view of Article 300A, nobody's property can be taken over without authority of law. The word "law" in Article 300A in our opinion

means statutory law. Hence, we are surprised that in case after case coming before us we find that the land of some citizen is being acquired for building a canal, road, etc. but without following the procedure under the Land Acquisition Act or any other statute but only on the basis of some G.O.

5. In Civil Misc. Writ Petition No. 45372 of 2002, Laxmi Narain and Ors. v. Nagar Palika, Shamli decided on 1.3.2004 ; Civil Misc. Writ Petition No. 46187 of 2000 Awadh Narain and Anr. v. State of U.P., decided on 25.2.2004, we have deprecated this practice as it is violative of Article 300A of the Constitution, and the rule of law.

6. In the counter-affidavit there is no mention that the procedure in the Land Acquisition Act or any other statute was followed before acquiring the Petitioner's land, and the Respondent have only relied on some G.O. dated 21.6.1999, for determining compensation. In our opinion, the question of determining compensation arises when land is acquired in accordance with the Land Acquisition Act or some other statute. When the land is not acquired under any statute then taking over possession is wholly illegal and destructive of the rule of law in the country. However, in the ends of justice we direct that the payment of compensation be made to the Petitioners within two months from today in terms of letters dated 30.12.1997 and 15.2.2001. Apart from that the Respondent must also pay a sum of Rs. one lac within two months to each of the Petitioners for their wholly illegal and arbitrary act as exemplary costs. The petition is allowed.