
(2012) 07 AHC CK 0314

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8734 of 2012

Shree Pal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 17, 17(1), 17(3)B

Citation : (2012) 9 ADJ 574 : (2013) 2 AWC 1130

Hon'ble Judges : Ashok Bhushan, J;Abhinava Upadhyay, J

Bench : Division Bench

Advocate : Sharad Mandhyan, for the Appellant; Anoop Trivedi, Bal Krishna, Kapil Tyagi and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Ashok Bhushan, J.—Heard Sri Sharad Mandhyan, learned Counsel for the petitioner, Sri Bal Krishna, learned Standing Counsel for the State respondents and Sri Anoop Trivedi, learned Counsel appearing for the respondent No. 5. By this writ petition, the petitioner has prayed for quashing the recovery citation and sale proclamation dated 23.1.2012, issued by the Sub-Divisional Officer for recovery of an amount of Rs. 40,54,000/- towards compensation dues.

2. Brief facts of the case as emerged from pleadings of the parties are; the respondent No. 5, Bhumidhar of plot No. 20, area 1.4310 hectares, executed a power of attorney in favour of the petitioner No. 1 Sree Pal on 4.4.2003. On the basis of power of attorney, the petitioner No. 1 executed a sale-deed on 23.1.2004 in favour of his wife Smt. Krishna Devi of 1/3rd share of respondent No. 5 in plot No. 20. On the basis of sale-deed, Smt. Krishna Devi moved an application for mutation of her name, which was allowed on 11.3.2005. Against the order dated 11.3.2005, an appeal was filed by the respondent No. 5 before the Sub-Divisional Officer which appeal was allowed by the Sub-Divisional Officer on 31.3.2006 by setting aside the order dated 11.3.2005. The case was remanded to the Sub-Divisional Officer to pass fresh order on merit. After order

of the appellate authority, the Tahsildar again passed an order dated 4.5.2007 by which the mutation application filed by Smt. Krishna Devi was rejected. Against the order dated 4.5.2007, passed by the Tahsildar, again an appeal was filed by Smt. Krishna Devi before the Sub-Divisional Officer which appeal was allowed vide order dated 31.10.2007. The order dated 4.5.2007 was set aside. The mutation order dated 11.3.2005 was restored. By notification dated 12.3.2008 u/s 4 read with Section 17 of the Land Acquisition Act, plot No. 20 area 1.4310 hectare was sought to be acquired. Declaration u/s 6 was issued on 23.9.2008. In the meantime, the respondent No. 5 had filed a revision against the order dated 31.10.2007 before the Commissioner and the Commissioner by order dated 21.5.2009 allowed the revision. The revisional Court set aside the appellate Court's order dated 31.10.2007 and remitted the matter to the Tahsildar. Smt. Krishna Devi moved an application to the Special Land Acquisition Officer for payment of compensation on which objection was filed by the respondent No. 5. Special Land Acquisition Officer however, by order dated 16.6.2009 rejected the objection of respondent No. 5 and directed for taking proceedings for payment of compensation to Smt. Krishna Devi with regard to plot in question. After the order dated 16.6.2009, again respondent No. 5 filed an application relying on the order dated 21.5.2009 of the revisional Court by which the order dated 31.10.2007 was set aside. The respondent No. 5 claimed to be recorded tenure holder and prayed that the compensation paid to Smt. Krishna Devi be recovered and a reference u/s 30 of the Land Acquisition Act be made to the District Judge. Special Land Acquisition Officer issued notice to Smt. Krishna Devi and passed an order on 9.9.2009 setting aside the earlier order dated 16.6.2009 and also directed for recovering the compensation already paid to Smt. Krishna Devi. Special Land Acquisition Officer also made reference u/s 30 of the Act to the District Judge. Against the order dated 9.9.2009, a writ petition was filed by Smt. Krishna Devi in this Court being writ petition No. 56189 of 2009 which writ petition was dismissed as not pressed on 6.1.2010.

3. One more fact relevant to be noticed is that the respondent No. 5 had also filed a suit being suit No. 195 of 2005 in the Court of Civil Judge (Junior Division) Gautam Budhha Nagar praying for cancellation of the sale-deed dated 27.10.2004, in which an interim injunction order was passed on 14.10.2007 by Civil Judge (Junior Division) directing for maintaining status-quo with regard to plot No. 20. The present writ petition has been filed by the petitioner challenging the notice issued by the Sub-Divisional Officer dated 23.1.2012 in ZA Form 73A by which recovery of amount of Rs. 40,54,000/- as dues of compensation from the petitioner. The proclamation was issued that the land in dispute is attached. Writ petition has been filed challenging the aforesaid proclamation. Smt. Krishna Devi died on 15.5.2011, leaving behind the petitioners as her legal heirs.

4. Sri Sharad Mandhyan, learned Counsel for the petitioners submits that the petitioners in this writ petition are not challenging the order dated 9.9.2009 by which order, the Special Land Acquisition Officer directed for recovery of compensation already paid to Smt. Krishna Devi, by this writ petition, the

petitioners are challenging only the mode of recovery initiated by the respondents as arrears of land revenue. He submits that compensation which was paid to Smt. Krishna Devi could not be recovered as arrears of land revenue since there is no provision under the Land Acquisition Act for recovering the said compensation as arrears of land revenue. Learned Counsel for the petitioners further submits that when the land was acquired, the name of Smt. Krishna Devi was entered into the revenue record and she was entitled to receive compensation. Sri Mandhyan further submits that reference u/s 30 of the Land Acquisition Act having already been made, till the reference remains pending, compensation already paid cannot be recovered from the petitioners.

5. Learned Standing Counsel refuting the submissions of learned Counsel for the petitioners contended that the State is fully entitled to recover compensation paid to Smt. Krishna Devi as arrears of land revenue, it being compensation which was already directed to be recovered from the petitioners by order dated 9.9.2009. It is submitted that the order dated 9.9.2009 has already become final since, the writ petition filed by Smt. Krishna Devi was got dismissed on 6.1.2010. Thus, the petitioners are no longer entitled to retain the compensation and the compensation can very well be recovered as arrears of land revenue. Learned Standing Counsel has further referred to provisions of Section 12A (as amended in U.P.) and Section 17(3-B) as well as rules; namely U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997. Learned Standing Counsel submits that according to the aforesaid provisions, the compensation paid in excess can be recovered as arrears of land revenue and in the present case also the recovery as arrears of land revenue is fully permissible. Learned Counsel for the respondent No. 5 submits that on the date when Smt. Krishna Devi received compensation her name was already directed to be struck off by order dated 21.5.2009 passed by the revisional Court hence, the payment of compensation wrongly made to Smt. Krishna Devi, was rightly directed to be recovered on 9.9.2009. It is submitted that Smt. Krishna Devi had already challenged the order dated 9.9.2009 and the writ petition against the said order having been dismissed on 6.1.2010, this writ petition is not maintainable and the petitioner is not entitled for any relief in this writ petition.

6. We have considered the submissions of learned counsel for the parties and have perused the record.

7. Sri Anoop Trivedi, learned counsel for the respondent No. 5 submitted that the writ petition filed by Smt. Krishna Devi against the order dated 9.9.2005 having already been dismissed by this Court on 6.1.2010, the present writ petition being for the same cause of action, cannot be entertained. The order dated 9.9.2009 has been brought on record as Annexure-9 to the writ petition. The order dated 9.9.2009 is in two parts. Firstly, the Special Land Acquisition Officer has referred the dispute u/s 30 of the Land Acquisition Act to the District Judge and secondly while setting aside the order dated 16.6.2009, it was directed that compensation

paid to Smt. Krishna Devi be recovered. The writ petition against the aforesaid order being writ petition No. 5169 filed by Smt. Krishna Devi has been dismissed on 6.1.2010, as not pressed. By dismissal of the writ petition against the order dated 9.9.2009, the petitioner cannot be allowed to challenge the said order in this writ petition. However, learned Counsel for the petitioner has submitted that the petitioner is not challenging the order dated 9.9.2009 in the writ petition nor any such prayer has been made in the writ petition and the writ petition is confined only to the effect that the said amount cannot be recovered as arrears of land revenue. In view of the submissions which has been pressed in the writ petition that recovery of compensation cannot be made as arrears of land revenue, we are satisfied that the writ petition cannot be said to be not maintainable and the petitioner can challenge the proceeding initiated as arrears of land revenue on limited ground that it cannot be recovered as arrears of land revenue and the dismissal of earlier writ petition dated 6.1.2010 against the order dated 9.9.2009 does not come in way in maintaining the writ petition. Thus, the preliminary objection of the respondent No. 5 against the maintainability of the writ petition is overruled.

8. As noticed above, the question that the petitioner Smt. Krishna Devi now represented by her legal representative, the petitioners are liable to refund the compensation paid for plot in question has become final between the parties and the petitioners cannot be heard in saying that they are not liable to refund the compensation. Only submissions pressed by Sri Sharad Mandhyan, learned Counsel for the petitioners is that the said amount cannot be recovered as arrears of land revenue. Whether the compensation received by a tenure holder under the Land Acquisition Act as payment of compensation for acquisition of the land can be recovered as arrears of land revenue is a question which is to be considered in the present case. It is useful to refer to certain provisions of the Land Acquisition Act and the Rules framed thereunder for considering the said question. Under the Land Acquisition Act, compensation are payable to tenure holders after an award is made u/s 11 of the Act by the Collector. In a case where urgency clause has been invoked, possession is taken u/s 17(1) and in case, the 80% amount tendered/paid is in excess to the amount determined as compensation u/s 11 of the Act, the same is required to be refunded within three months failing which it can be recovered as arrears of land revenue. Section 17(3)B of the Land Acquisition Act is quoted below:

(3B) The amount paid or deposited u/s (3A), shall be taken into account for determining the amount of compensation required to be tendered u/s 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector u/s 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue

9. One more provision which is relevant is Section 12 as amended in State of U.P. Section 12A as inserted in the State of U.P. by U.P. Act No. 20 of 1954 is as follows:

12-A. Power to correct award.--(1) The Collector may, at any time but not later than six months from the date of award, or where a reference is required to be made u/s 18, before making of such reference, correct any clerical or arithmetical mistake in the award either on his own motion or on the application of any person interested.

(2) The Collectors shall give immediate notice of any correction made in the award to all persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result to the correction made under sub-section (1), such person shall be liable to refund the excess, and if he defaults, or refuses to pay, the same may be realised as an arrear of land revenue.

10. Section 12A(3) provides that where any excess amount has been paid to any person as a result to the correction made under sub-section (1), such person shall be liable to refund the excess and if default is committed the same may be realised as an arrears of land revenue. Sri Satish Mandhyan, learned Counsel for the petitioners referring to Section 17(3-B) as well as Section 12-A (3) contends that the said provisions are not applicable in the facts of the present case. Since as far as applicability of Section 12A (3) is concerned, the present is not a case for correction of the Award. He submits that in so far as Section 17(3-B) is concerned, the same is applicable when Section 17(3-A) is applied i.e. where 80% compensation is paid by Collector before taking possession.

11. The provisions of Section 12-A(3) is applicable in the U.P. Section 17(3-B) provides that in the circumstances as enumerated thereunder, the compensation already paid to a tenure holder can be recovered as arrears of land revenue though the aforesaid provisions confined its application to the cases as enumerated therein for recovery of compensation as arrears of land revenue. It is relevant to notice that the recovery of compensation as arrears of land revenue is contemplated for recovery of compensation paid in excess to a tenure holder. In a case where compensation has been paid wrongly to a person, whether the same cannot be recovered as arrears of land revenue is a question which has arisen in the present case. When in a case on excess payment of compensation recovery as arrears of land revenue has been statutorily contemplated under the provisions of Act, we fail to see that why the same procedure shall not be adopted by the State in case of recovery of compensation wrongly paid to a person, who is held to be not entitled. If the State can recover the amount of compensation excess paid to a person surely it has jurisdiction to recover the same where it has wrongly been paid to a person. In the present case, the award made u/s 11 has not been brought on record. In the State of U.P., the compensation is also paid according to 1997 Rules as noted above. In 1997 Rules when compensation is paid on the basis of agreement with a tenure holder there is a specific provision under 1997 Rules for recovery of such compensation as arrears of land revenue which is apparent from format of agreement as given in the Rules itself, The condition No. 5 has been mentioned

in the format of the agreement as referred to in rule 4(2) which is to the following effect:

12. Thus, in the State of U.P., when compensation is paid according to agreement there is specific provision to recover the same as arrears of land revenue. Thus, the recovery of compensation already paid, as arrears of land revenue is not alien to the scheme of the Land acquisition Act and the Rules framed there under as applicable in the State of U.P. rather statutory provisions specifically provides for recovery of compensation as arrears of land revenue. Learned Counsel for the respondent has placed reliance on the Division Bench judgment of this Court in Smt. Shashi Agarwal and Another Vs. State of U.P. and Others, , in which writ petition was filed by the petitioner challenging the order dated 20.7.2009 of the Special Land Acquisition Officer directing for attaching the compensation received by the petitioner. The compensation was paid to the petitioner under the agreement. Special Land Acquisition Officer has also in the said case made a reference u/s 30 of the Land Acquisition Act. The writ petition was dismissed. However, the issue as to whether the compensation already paid can be recovered as arrears of land revenue, has neither been gone into nor decided in the said.

13. One more submission which has been pressed by Sri Sharad Mandhyan, learned Counsel for the petitioner that reference u/s 30 of the Land Acquisition Act being pending, the compensation cannot be recovered also needs to be considered. As noticed above, the reference u/s 30 as well as the order for recovering the compensation already paid to the petitioner has been passed by Special Land Acquisition Officer on 9.9.2009. The order dated 9.9.2009 was unsuccessfully challenged by Smt. Krishna Devi in the writ petition, which writ petition having been dismissed as not pressed on 6.1.2010, the petitioners cannot be allowed to contend that they are not liable to refund the compensation. The pendency of reference u/s 30 does not give any right to the petitioners to retain the compensation which has been wrongly received by them. Thus, the pendency of reference u/s 30 of the Act before the District Judge does not help the petitioner in the facts of the present case.

14. Sri Sharad Mandhyan, learned Counsel for the petitioner has relied on an order dated 26.8.2010, passed by the Division Bench of this Court in writ petition No. 50778 of 2008. It is useful to quote the aforesaid order, which is to the following effect:

Learned counsel for the petitioner has contended that his reference is pending before the Reference Court and he is being harassed pursuant to the impugned recovery certificate dated 11.4.2008.

Considering the facts and circumstances of the case, but without prejudice to the merits of the case, and in view of the fact that the reference is pending before the Reference Court, it is provided that till decision in reference no recovery shall be made from the petitioner.

With aforesaid observation, the writ petition is finally disposed of.

15. The aforesaid order was passed by the Division Bench in the facts and circumstances of the said case and no ratio is deducible from the order that during the pendency of the reference u/s 30 of the Land Acquisition Act recovery as arrears of land revenue cannot be made. In the present case, by order dated 9.9.2009 recovery of the compensation was directed from the petitioner which order had become final since the writ petition filed against the said order has already been dismissed as not pressed. Only issue which has been raised in the writ petition is as to whether the compensation received by the petitioners can be recovered as arrears of land revenue which issue has already been considered as above. The aforesaid Division Bench judgment thus, does not help the petitioners in any manner.

16. In view of the foregoing discussions, we do not find any substance in the submissions of learned Counsel for the petitioners that the compensation which has been received by the petitioners cannot be directed to be refunded as arrears of land revenue. The writ petition is dismissed.