
(2016) 11 AHC CK 0088
In the Allahabad High Court
Case No : Writ-C No. 48056 of 2015

Shri Krishan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 171 AIC 939 : (2017) 120 ALR 886 : (2017) 135 RD 116

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Shekhar Chaudhary and Siddharth Nandan, Advocates, for the Petitioners; C.S.C, for the Respondents

Final Decision : Allowed

Judgement

V.K. Shukla and Mahesh Chandra Tripathi, JJ. - In these writ petitions, the petitioners have prayed for quashing the order dated 19.8.2015 issued by the District Magistrate, Forazabad- 2nd respondent by which he had directed the petitioners to appear before him for correction in the sale deeds executed by the petitioners on 24.8.2015, otherwise the consideration amount mentioned in the notice will be transferred in their respective accounts, and for direction commanding the respondents to make payment of consideration amount at the rate mentioned in the sale deeds as approved by the Committee headed by respondent no.2 along with 12% interest.

2. Record in question reflects that a notification dated 7.10.2013 was issued under Section 4 of the Land Acquisition Act 1894 (in short, 1894 Act) inviting applications from interested tenure holders, who wanted to sell their land for "Green Field Project (Agra to Lucknow) Entry Control Express Way". Thereafter, the 6th respondent issued a letter dated 24.12.2014 by which he had fixed the rate on which the land was to be acquired and the compensation was to be paid to the farmers, who were willing to give their land for acquisition. Admittedly, the petitioners have entered into an agreement on 31.12.2014 and executed

registered sale deeds in favour of 2nd respondent. The detail regarding the compensation has been averred in para-11 of the writ petition. The record further reveals that the circle rate of petitioners' land was offered @ Rs.4000/- per sqr. mtrs and the circle rate fixed by the Committee headed by the District Magistrate was of Rs.8000/- per sqr. mtrs after enquiry and survey of the land in question. As per sale deeds so executed between the parties, it was clearly mentioned that the entire consideration amount would be paid within 15 days from the date of execution of the sale deed in their respective accounts, otherwise the interest @ 12% per annum would be paid to the incumbents.

3. In pursuance of the Government Order dated 2.9.2013 a Committee was constituted for consideration of the offers given by the tenure holders and consequently, the Committee in its meeting dated 15.12.2014 had approved certain rates for the purpose of executing the sale deeds and only in that response the sale deed was executed. The petitioners' land was declared as abadi in consolidation proceedings under Section 5(1) (c) of The Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as the 1953 Act). Based on such declaration, the Committee had offered a rate of Rs.8000/- per square metre, treating the petitioners' land as abadi only on the basis of the said report and as such, the rate offered was accepted by the petitioners. Consequently, the sale deed dated 31.12.2014 was executed.

4. In the present matter, admittedly the amount of compensation in question has not been disbursed. The impugned order dated 19.8.2015 has been passed by the District Magistrate/Collector, Firozabad on the ground that in the present matter, in collusion the order under Section 5 (1) (c) of U.P. Consolidation of Holding Act, 1953 has been obtained and the wrong fixation towards the compensation has been paid and as such, the petitioners are not entitled for the compensation at such rate.

5. Shri T.P. Singh, Senior Advocate submits that in the present matter, the actual rate of the land is much higher and just for the Lucknow-Agra highway purpose, the parties have entered into an agreement. Admittedly, in the present matter the acquisition has not been taken place in consonance with the 1894 Act and in case they feel that more higher compensation has been paid to the tenure holders, then they may release the land in question from the acquisition proceeding and the same should be restored back to the tenure holders. At the very outset, he has placed reliance on the judgement dated 17.8.2016 passed by a coordinate Bench of this Court in Writ Petition No.16006 of 2016 (Arvind Kumar v. State of UP and ors) and as such, it has been prayed that similar relief may be accorded to the petitioners, otherwise the petitioners would suffer irreparable loss and injury.

6. On the other hand, Shri Ramesh Upadhyay, Chief Standing Counsel has vehemently opposed the writ petitions by submitting that the similar benefit cannot be extended to the petitioners as has been given by the Division Bench in Arvind Kumar's case (supra). In the said case, the entire compensation has been

disbursed whereas in the present matter, the compensation has not been paid. He further made submission that the sale deeds were executed on the basis of the documents produced by the officers and employees of the Consolidation Department, but when physical possession of the land was being taken, the respondents noticed the discrepancy and found that the land was not abadi and same was agricultural land. Consequently, a Three-Member Enquiry Committee was constituted, which found the discrepancy in the nature of the land. According to the respondents the inquiry report clearly indicates that the officers and employees of the Consolidation Department were in collusion with the tenure holders and that an ante dated order dated 30.7.2012 was passed under Section 5(1)(c) of the 1953 Act after publication of the notification issued under Section 4 of the 1894 Act, thereby causing loss to the Government. It is submitted that once the fraud has been found established, then definitely the authority has every right to proceed in the matter and as such, the similar benefit cannot be extended to the petitioners.

7. We have heard Sri T.P. Singh, Senior Advocate assisted by Sri Siddharth Nandan for the petitioners and Sri Ramesh Upadhyay, Chief Standing Counsel assisted by Shri Pankaj Rai, Additional Chief Standing Counsel for the State respondents.

8. Having heard learned counsel for the parties at some length, we find that the allegation, that the order dated 30.7.2012 passed under Section 5 (1) (c) of the 1953 Act is ante dated, has not yet been proved. Even though the details regarding enquiry proceedings have been mentioned in the counter affidavit but even after lapse of considerable time, nothing has been brought on record to the extent that some proceeding had been finalised. The order dated 30.7.2012 passed under Section 5 (1) (c) of the 1953 Act has not been recalled by the authority concerned. Consequently no recovery can be made on the basis of allegation, which is yet to be proved. The entire controversy in hand has been considered in detail by the coordinate Bench of this Court in Arvind Kumar's case (supra). For ready reference, relevant portion of the judgement is extracted below:-

"10. Having heard the learned counsel for the parties at some length, we find that the contention that the order dated 30.7.2012 passed under Section 5(1)(c) of the Act is ante dated has not as yet been proved. It is only an allegation nor has the said order dated 30.7.2012 been recalled by the authority concerned. Consequently, no recovery can be made on the basis of an allegation, which is yet to be proved. At the moment the land of the petitioner is abadi in view of an order passed under the Act. So long as the order treating the land of the petitioner as abadi stands, recovery cannot be made from the petitioner's treating the said land as an agricultural land.

11. Allegation of collusion by the petitioner or by other tenure holders with the officials of the Consolidation Department is yet to be proved. At the moment, on the basis of allegations of fraud recovery cannot be made.

12. It is alleged that there is a stipulation in the sale-deed for recovery of the amount as arrears of land revenue, in the event excess amount was paid to the petitioner. A copy of the said sale deed has been annexed to the writ petition. The recital contained in the sale-deed indicates that in case there is a discrepancy in the area of the land, on the basis of which if it was found that excess amount had been paid, in that eventuality, the excess amount would be recovered as arrears of land revenue along with 12% interest. This clause in the sale-deed does not entitle the petitioner to recover any amount paid towards consideration of the land. The sole contention of the respondents is, that the rate offered by them to the petitioner was the rate for abadi land whereas rate for agriculture land should have been offered.

13. In our opinion, if a wrong rate has been offered by the respondents to the petitioner, the same cannot be recovered as arrears of land revenue, as per the recital contained therein. If a fraud has been played by the petitioners upon the respondents, the remedy available to the respondents is to file a suit for cancellation of the sale deed. At the moment, there is a concluded contract, namely, an offer made by the respondents with regard to the rate of land, which was duly accepted by the petitioner. A sale deed has been executed and the consideration has been paid to the petitioner. The amount can only be recovered after the sale deed is cancelled and not otherwise.

14. In the light of the aforesaid, the recovery notice against the petitioner is wholly illegally and without any authority of law. The recovery cannot be sustained and the impugned order is quashed.

15. The writ petition is allowed."

9. We have proceeded to examine the record in question and find that in the present matter, admittedly the sale deed has already been executed between the parties but the compensation has not been disbursed whereas in Arvind Kumar's case (supra) the compensation was already disbursed. We are also of the considered opinion that the entire action so initiated by the respondents is solely based on the ground that the order dated 30.7.2012 passed under Section 5 (1) (c) of the 1953 Act is ante dated but as observed by the coordinate Bench of this Court in Arvind Kumar's case (supra), such allegation has not yet been proved. The amount in question has been fixed on the ground that the land in question is abadi, as such so long as the order treating the land of petitioner as abadi stands, recovery cannot be made from the petitioners treating the said land as agricultural land. Once the sale deed had been executed by the respondents with open eyes then only remedy lies to the respondents to file suit for cancellation of the sale deed and as such, the entire action is per se bad.

10. We are also conscious about the fact that the present land in question has been acquired for "Green Field Project (Agra to Lucknow) Entry Control Express Way" and it has also been informed at the bar that the project in question has already been completed and as such, at this stage the argument so advanced by

Shri T.P. Singh to the effect, that in case the respondents are aggrieved with the higher compensation to the petitioners, in such eventuality they may release the land in question, cannot be accepted. The land in question has been utilised for public purpose for "Green Field Project (Agra to Lucknow) Entry Control Express Way". Once in the open eyes the Authority on the spot had proceeded to enter into the agreement and executed the sale deeds, then we are of the considered opinion that the petitioners are entitled for the same benefit as was given in Arvind Kumar's case (supra).

11. We are of the full agreement with the judgement rendered by the coordinate Bench of this Court in Arvind Kumar's case (supra).

12. Following the decision in Arvind Kumar's case (supra), the present writ petition is also allowed and the impugned order is quashed.