

(2012) 01 AHC CK 0639

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3590 of 2010

Sipahi Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0639

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard Shri B.P. Shukla, Learned Counsel for the petitioner. Learned Standing Counsel appears for the State respondents.

2. The petitioners were recorded as tenure holder of plot No. 407 area 3 bigha 15 biswa 10 biswansis situate in Village Tenduvan, Pargain Arail, Tehsil Karchana, Distt. Allahabad. They have filed a copy of the Khatauni (record of rights) of the year 1397 F to 1402F in which they were recorded as bhumidhars. The competent authority under the Urban Land Ceiling declared plot No. 407 measuring 7433.69 sq. mtrs. out of plot No. 407 as surplus land by order dated 13.1.1982. The remaining area of 6 biswa 13 dhoor continued to be recorded in the name of the petitioners.

3. On the repeal of the Urban Ceiling Act, the writ petition No. 50737 of 2002 was filed by the petitioner in which status quo order was passed on 27.11.2003. The writ petition was finally decided on 2.5.2005 in terms of Chavi Nath's case and the matter was remanded to the District Magistrate, Allahabad to find out whether the petitioner is still in possession of the land, and whether in such case the proceedings of urban ceiling would have abated.

4. It is submitted by Learned Counsel for the petitioners that 6 biswa 13 dhoor land of the petitioners out of the same plot area 0.071 hectes. was illegally transferred by the State in favour of the defence department, in exchange for the

land taken from the defence department for construction of approach road to the New Yamuna Bridge, constructed by the National Highway Division-1, Allahabad for which a large part of land was acquired for Public Works Department by a notification issued under the Land Acquisition Act, 1894, and for which compensation was paid to the tenure holders by the Special Land Acquisition officer (Joint Organisation), Allahabad.

5. It is submitted that the petitioner's land was not acquired under the Land Acquisition Act, 1894. It was taken away from them and given in exchange to the defence department. By this writ petition the petitioner prayed for deciding his representation dated 16.12.2008 for making award and payment of compensation.

6. It is admitted that the possession of the land was taken from the petitioner on 11.8.2006 and was handed over to the defence department. The petitioners have not challenged the compulsory acquisition and exchange of their land, without taking recourse to the Land Acquisition Act. They have confined their reliefs for fair and reasonable compensation, which the petitioners have quantified on the basis of the circle rate prevalent in the year 2006 for semi urban areas on square meter basis, totalling Rs. 8,16,118/-.

On 25.11.2011 we passed following orders:-

The short question that arises for consideration of this case is compensation, which the petitioner will be paid by acquisition of 0.119 hect. of land in plot No. 407 in Village Tenduavan, taken over from the petitioner for construction of Yamuna bridge. There is no actual date of possession. It is however admitted that the land was handed over to the Public Works Department on 11.8.2006.

The Collector in pursuance to our order has offered compensation of Rs. 92,272/- on the rates prevalent in the year 1990 with 30% solatium and 15% interest for the lands, which were acquired.

The petitioner submits that the circle rate in the year 2010-11 fixed by the Collector were Rs. 16,000/- per hect. and if the plot was less than 1500 sq. mtrs., Rs. 1700/- per sq. mtr. Both the parties have filed sale deeds.

Although the fixation of the market rate for taking over the land for public purpose by resorting to Land Acquisition Act would require an enquiry to be made by the Special Land Acquisition Officer, the petitioner agrees for a fair and reasonable compensation, to avoid any further delay.

We find that both the petitioner as well as the Standing Counsel representing the Collector, Allahabad are agreeable to a reasonable solution for fixing the compensation.

Learned Standing Counsel submits that since the compensation was fixed without hearing the petitioner, the Court may refer the matter back to the Collector to hear the petitioner. In our opinion since the sale deeds as exemplars are

available on record, it may be appropriate with the consent of the parties to fix the compensation. Any further litigation can be avoided, if they agree to any amount. Let the parties file the orders passed by the Collector fixing circle rates applicable to the land for similarly situate land in August, 2006. It will be open to them to file sale deeds executed by the willing parties in that area in the year 2006.

List again on 2nd December, 2011 as part heard.

7. The Union of India has filed counter affidavit of Smt. Bhawana Singh, DEO, Allahabad in which it is stated in para 3 and 4 as follows:-

That the location of land as mentioned in petition is the same which the State Government had handed over in exchange of Defence Land. An area admeasuring 10.642 acres Allahabad Fort Cantt. was transferred to State Government U.P. for construction of Bridge across river Yamuna at Naini Allahabad in exchange of State Government land of equivalent value as sanctioned vide Government of India letter No. 13015/97-D (L) on 5.10.98 (copy enclosed as Annexure-CA1).

That it is further submitted that the acquisition of land was carried out by the State Government and not by the UOI (GOI), Ministry of Defence, hence there was no role to play in the payment of compensation etc. by the Government of India.

8. Learned Standing Counsel appearing for the State respondents has filed affidavit of Smt. Vandana Tripathi, Special Land Acquisition Officer, Distt. Allahabad stating therein that since the entire plot No. 407 was declared as surplus land under Urban Land Ceiling, the same was rightly proposed to be transferred to the Defence Department for construction of approach road for new Yamuna Bridge.

9. We had prima facie found that the petitioners were in possession of the land upto 11.8.2006 and thus the proceedings under the Urban Land Ceiling, on the defacto possession of the petitioner on the date of repeal of the Urban Ceiling Act on 22.3.1999, and even thereafter, the proceedings, qua the dispute land had abated. The petitioner was thus entitled to retain the land, which was later on 11.8.2006, was taken from them and handed over to the Defence Department.

10. In order to find out the fair and reasonable compensation to be paid to the petitioner, we directed the District Magistrate to settle the matter with the petitioner.

11. The petitioners admit that the spot inspections were carried out and meetings were held in which the petitioners participated. The petitioners met with Special Land Acquisition Officer on 23.7.2011, after which the local/spot inspections were carried out of the plot on 28.7.2011. The officers of the Public Works Department, the Land Acquisition Officer and Naib Tehsildar representing the Sub Divisional Magistrate, Karchana were present on the spot.

12. In the affidavit of Shri Ramashrya, Special Land Acquisition Officer (Joint Organization), Allahabad, initially the valuation was worked out in paragraphs 9 and 10 as follows:-

9. That on the basis of the sale deed executed in the year 2010 the market value of the land in dispute comes to Rs. 81,021.00 and on the basis of the sale deed executed in the year 2011, the market value of the land comes to Rs. 86,232.00.

10. That on the basis of the award dated 24.07.2008 in respect of the acquisition of the other land for the same scheme, the valuation of the petitioners land is Rs. 92272.00 which consist of solatium and interest as permissible under the law.

13. The petitioner was not satisfied and filed affidavit to demonstrate that as the disputed land falls within the semi urban area, and that according to the valuation fixed by the Addl. District Magistrate, Finance and Revenue, determining the circle rates under the powers conferred upon the District Magistrate, in Indian Stamp Act, the circle rate of the land was fixed at Rs. 12,15,000/- per acre or Rs. 300/- per sq. mtr. vide orders dated 24.6.2006 for minimum price of agricultural and non-agricultural land under the U.P. Stamp (Valuation of Property) Rules, 1997.

14. After perusing the documents filed by the parties, we passed orders on 24.5.2011 and 2.8.2011, as follows:-

24.5.2011

Shri Brijesh Chandra Tripathi appears for the Union of India.

The petitioner has produced the order of the Sub Divisional Magistrate, Karchana, Allahabad dated 26.2.2011 in which it was found that out of total area of 0.862 hect. of the khata only 0.743 hect. was taken in the Urban Ceiling. The remaining area of 0.119 hect. be recorded in the name of the petitioners.

Learned Standing Counsel has also verified and has filed a chart prepared and signed by the Special Land Acquisition Officer, Allahabad admitting that out of entire land of 0.826 hecets. of the plot given to the Defence Department, the State was entitled to transfer only 7433.69 sq. mtrs. which was declared as surplus in proceedings under Urban Ceiling and possession was taken. The remaining area of the land (0.119 sq. mtr.) belonged to the petitioner.

The petitioner is only demanding compensation for 0.119 Hectares of land.

Let the documents filed by the parties be brought on record by way of supplementary affidavits. The respondents are directed to pay the compensation of 0.119 Hectares of land of which possession was taken on 14.1.1990, at the prevailing market rate as on date, or on the market rate in the year 1990 with 30% solatium and 15% interest per annum, or to show cause by filing counter affidavit. The petitioner will appear before the Special Land Acquisition Officer, Allahabad along with copy of the order and will be allowed to negotiate for the compensation of the 0.119 Hectares of land.

List on 25th July, 2011.

2.8.2011

Learned Standing Counsel on the basis of the instructions received has stated that in terms of the order dated 24th May, 2011 the value of the land has been worked out on the basis of the prevalent market rate, on the basis of the rate of the land acquired by the Department and also on the basis of the value of the land in the year 1990 plus solatium and interest. It is not acceptable to the petitioner. Let an affidavit be filed within ten days. List before the Bench presided over by Hon"ble Mr. Justice Sunil Ambwani as the said order dated 24th May, 2011 passed by the said Bench has to be complied for.

Let the papers be placed before the Hon"ble

Acting Chief Justice for passing appropriate orders.

15. Shri U.K. Pandey, learned Standing Counsel has filed affidavit of Shri O.P. Singh, Special Land Acquisition Officer (Joint Organisation), Allahabad on 02.12.2011, stating in paragraphs 2, 3 and 4 as follows:-

2. That on dated 26.11.2011 the Court directed the standing council to make calculation of the value of Land of the petitioners measuring 0.119 Hect. Land situating in Village Tenduavan, Pargana Arail, Tehsil Karchhana, District-Allahabad as per the circle rate prevalent in year 2006 when the land of the petitioners was taken under possession by respondents. Court has also directed the standing council including solatium at the rate of 30% and interest 15% per annum.

3. That is compliance of direction of this Court the deponent filing herewith the description of circle rate as prevalent in year 2006 as Annexure No. 1 to the affidavit as per the circle rate of the year 2006 applicable on agricultural land of the area is Rs. 4,00,000/- (Rs. Four Lacs only) per acres which has been in para No. 6 of the chart (Annexure No. 1). According to this circle rate the value of the petitioner's land measuring 0.119 Hect. comes to Rs. 2,74,352/- with includes solatium at the rate of 30% and the interest at the rate of 15% from 11.08.2006 to till date.

4. That the deponent is filing Sale-Deed of neighbouring area executed in the year 2006 in which the sale consideration for 0.313 Hect. of land is Rs. 1,25,000/- according to this Sale-Deed as exemplar the value of land belonging tot he petitioners measuring 0.119 Hect. will be Rs. 1,10,935/- only for a kind perusal the deponent is filing a Photo state copy of Sale Deed of the year 2006 as Annexure No. 2 after adding solatium on the rate of 30% and interest at the rate of 15% payable amount is Rs. 1,10,935/-.

16. The Special Land Acquisition Officer in his affidavit dated 2.12.2011, has relied upon same circle rates as described above as well as exemplar sale deeds, and has worked out the value of the petitioners" land measuring 0.119 hect.,

which comes to Rs. 2,74,352/-, which includes solatium at the rate of 30% and interest at the rate of 15% from 11.8.2006 till date.

17. Learned counsel for the petitioners states that valuation determined by the Special Land Acquisition Officer is not fair and reasonable compensation at the then prevailing market rate or even the circle rates fixed by the Collector. The offer does not satisfy him, as the land is in the semi urban area in Naini, which is industrial area and possession of which was taken over without acquisition of land in accordance with the procedure prescribed under the Land Acquisition Act, and which would have given him statutory right of enhancement of compensation. He submits that the petitioner is entitled to Rs. 8,16,118/-, calculated at the rate of Rs. 300/- per sq. mtr. as fair compensation for the land determined by the notification issued by the Collector, notifying circle rates of the area.

18. We find that the parties have not agreed to any specific amount towards compensation. The Special Land Acquisition Officer, Joint Organisation, Allahabad has determined the value at Rs. 2,74,352/- with solatium and interest, whereas the petitioners are claiming an amount of about Rs. 8,16,118/-, based on circle rates of semi-urban areas in Naini of the year 2006. We also find that in order to determine the market rate apart from circle rate, which is only an indication of market rate, the Court will be required to take evidence of the situation, and quality of land and the rate on which a willing purchaser would have purchased the land from the willing sellers, in the year 2006. The petitioners will be required to produce the evidence to prove the market rate, on the guidelines provided in the Land Acquisition Act, 1894.

19. The writ petition is accordingly disposed of with directions that the amount of Rs. 2,74,352/- shall be paid over to the petitioner within a period of one month without prejudice to his rights to file civil suit to claim any higher amount. It will be open to him to satisfy the civil court that he is entitled to compensation, at a higher rate, which is not less than the market value on 11.8.2006, when the possession was taken and solatium with interest at the rate of 15% for the remaining amount, if found due upto the date, when the amount directed is paid to the petitioners.

20. The petitioners will be entitled to Rs. 10,000/- as costs of pursuing the writ petition, to be recovered from the State.