

(2011) 04 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18327 of 2011

Smt. Guddi Devi and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4, 6
Registration Act, 1908 — Section 17, 17(1), 17(2), 49
Transfer of Property Act, 1882 — Section 54, 54(4)

Citation : (2011) 5 ADJ 121 : (2012) 1 AWC 447 : (2011) 8 RCR(Civil) 1950

Hon'ble Judges : Ran Vijay Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Supplementary affidavit filed by the Petitioners is taken on record.
2. Heard learned Counsel for the Petitioners, learned Standing Counsel and Sri A.K. Singh, learned Counsel for the Respondent No. 2.
3. By this writ petition the Petitioners have prayed for writ of certiorari for quashing the notification dated 29.11.1990 issued u/s 4 of the Land Acquisition Act and notification dated 12.6.1991 issued u/s 6 of the Land Acquisition Act as being lapsed by operation of law relating to the plot No. 286, Phaphamau, District Allahabad and has further prayed for mandamus commanding the Respondents not to dispossess the Petitioners from the premises No. 225/6V(1) situated over plot No. 286, Phaphamau, Allahabad.
4. The writ petition was heard on 30.3.2011 on which date a preliminary objection was raised by the learned Counsel for the Respondent that the Petitioners are subsequent purchasers after issuance of the notification u/s 4 of the Land Acquisition Act and therefore, at their instance the writ petition is not maintainable.
5. Petitioners' case in the writ petition is that Abdul Ajij was tenure holder of plot

No. 286. Petitioners claim that a sale-deed was executed in the year 1986 and subsequently an agreement was executed between Abdul Ajij and Petitioner No. 1 on 30.10.1994 due to non-availability of sale-deed, copy of the agreement has been filed as Annexure No. 2 to the writ petition.

6. In paragraph No. 3 of the supplementary affidavit, it has been stated that in the year 1986 tenure holder of the aforesaid plot has transferred the plot in favour of the Petitioner No. 1 through unregistered sale-deed and possession has also been handed over to the Petitioner No. 1 and since then the Petitioner No. 1 is in possession and occupation of the aforesaid plot. In paragraph 4 of the supplementary affidavit it has been stated that due to non-availability of the sale-deed of the year 1986, another sale-deed has been prepared by the tenure holder of the aforesaid plot in favour of the Petitioner No. 1 on 13.10.1994 verifying the earlier sale-deed in the year 1986.

7. Learned Counsel for the Petitioners submits that although the sale-deed of plot of 286 area 0009 hectare was not registered document but the title has passed in favour of the Petitioner No. 1 since the Petitioners have taken possession of the land. In this regard, learned Counsel for the Petitioner has placed reliance on the judgment of Apex Court rendered in the case of Kaliaperumal Vs. Rajagopal and Another,

8. Learned Counsel for the Petitioners further submits that no award has been made and the acquisition has lapsed u/s 11A.

9. Learned Counsel for the Respondent submitted that the Petitioners have earlier filed writ petition being Writ Petition No. 15546 of 2001 which was dismissed on 15.3.2011 in which it was noticed that the Petitioners have filed Suit No. 2148 of 2010 before the Civil Judge (Sharki) Allahabad in which notice has been issued to the Allahabad Development Authority. Learned Counsel for the Respondent further submitted that challenge to the notification which was issued 20 years ago cannot be entertained and the writ petition is also barred by laches.

10. We have considered the submission of the learned Counsel for the parites and perused the record.

11. The writ petition has been filed on 24.3.2011 challenging the notification dated 29.11.1990 and 12.6.1991. The Land Acquisition proceedings are sought to be challenged after more than 20 years. The writ petition is clearly barred by time and this Court cannot entertain the writ petition for the aforesaid relief after lapse of 20 years. Thus the writ petition on this very ground alone is liable to be dismissed. However, since the parties have addressed their submission as to whether the Petitioners have locus to challenge the aforesaid notifications it is also necessary to consider the said submission. The land acquisition proceedings were initiated by issuance of notification 29.11.1990 and declaration on 12.6.1991. From the perusal of the averments made in paragraph Nos. 3 and 4 of the supplementary affidavit, it appears that the case of the Petitioner is that

the tenure holder of the aforesaid plot has transferred the plot in favour of the Petitioner No. 1 through unregistered sale-deed and possession has been handed over to the Petitioner No. 1 and again in the year 1994, another unregistered sale-deed has been prepared by the tenure holder of the aforesaid plot in favour of the Petitioner No. 1 verifying the earlier sale-deed in the year 1986. The submission which has been pressed by the learned Counsel for the Petitioners is that title has passed in favour of the Petitioners even if sale-deed was not registered. Thus, question first to be considered is as to whether the Petitioners have locus to challenge the notifications dated 29.11.1990 and 12.6.1991 issued under Sections 4 and 6 of the Land Acquisition Act.

12. Section 54 of the Transfer of Property Act, 1882 is quoted below:

54. "Sale" defined.--"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made--Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale--A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

13. Thus, Section 54 of the Transfer of Property Act provides that transfer in case of tangible immovable property of Rs. 100 and upward can be made only by registered instrument. In the writ petition and the supplementary affidavit no registered instrument has been brought on record to indicate any transfer thus the claim of the Petitioners that title was transferred cannot be accepted in view of the specific provision of 54 of the Transfer of Property Act.

14. The provisions of Section 17 and Section 49 of the Registration Act 1908 are also relevant in this context Section 49 of the Registration Act is quoted below:

49. Effect of non-registration of documents required to be registered.-- No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or unless it

has been registered.

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]

15. According to Sections 17(1) and 17(2) as amended by UP. Act No. 57 of 1976 a contract for sale also requires compulsory registration according to Section 49 no document required by Section 17 to be registered shall affect any immovable property.

16. In the present case, the Petitioners although refer to two agreements-one alleged to be executed in 1986 and second on 30th October 1994 but neither of them are registered document. There being no registered instrument in favour of the Petitioners with regard to the immovable property, the Petitioners cannot claim that the title of the land has passed in their favour.

17. The judgment which has been relied by the learned Counsel for the Petitioners in the case of Kaliaperumal's case (supra) was a case where the properties were sold for consideration of Rs. 43,000/-. An amount of Rs. 3,000/- was to be appropriated towards discharge of the mortgage in the Appellants favour and the balance of Rs. 40,000/- was to be paid before the Sub-Registrar at the time of registration of the deed. The case of the Appellant was that before the document was to be presented for registration, he paid to the Respondents a sum of Rs. 25,000/- on 21.7.1983 and at the time of registration he was required to pay only balance of Rs. 15,000/-. On presentation of document Sub-registrar summoned the Respondents who appeared. The first Respondent admitted execution of the deed but refused to put his thumb impression or to sign the endoresement to be made on the deed in token of admitting execution on the ground that the Respondents were not paid the remaining consideration of Rs. 40,000/- as stipulated in the deed. The Sub-registrar registered the document on 26.10.1983. In the facts and circumstances, The Apex Court took the view that after title having been passed, the remedy of the vendor is only to sue for receiving the balance consideration. The said case is clearly distinguishable with the present case since in the said case the sale-deed with regard to the transferred property was registered and issue was with regard to payment of balance consideration. In the said judgment no such proposition has been laid down that even though document has not been registered, the title shall pass.

18. In the above judgment of the Apex Court, the Apex Court has laid down that there is one mode of transfer by sale with regard to the immovable property of the value of Rs. 100/- or more and that is by a registered instrument. Paras 16,17 and 18 of the Judgment, which are relevant, are quoted below:

16. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs. 100 or more and that is by a registered instrument.

17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of the title, as Section 54 of the Transfer of Property Act, 1882("the Act", for short) defines "sale" as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price, he cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, u/s 55(4)(b) of the Act.

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale-deed with effect from the date of execution of the sale-deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The aforesaid proposition laid down by the Apex Court does not help the Petitioners in the present case. In view of the foregoing discussions, we are of the view that title never passed the Petitioners with regard to the land in dispute and the Petitioners have no right to challenge the acquisition of land. Thus, there is no locus of the Petitioners to challenge land acquisition proceedings initiated by notification dated 29.11.1990 and declaration dated 12.6.1991 as observed above. The writ petition is highly barred by laches. Notification issued u/s 4 was issued on 29.11.1990 and notification u/s 6 was issued on 12.6.1991. After about two decades, the Petitioners cannot be permitted to challenge the land acquisition proceedings that too without there being any explanation for such inordinate delay in the writ petition. The Petitioners are not entitled for any relief in the writ petition.

20. With the aforesaid observations, the writ petition is dismissed.