
(2003) 11 AHC CK 0070
In the Allahabad High Court
Case No : C.M.W.P. No. 32715 of 2000

Smt. Leela Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17, 17(3A)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 20

Citation : (2004) 3 ACC 247 : (2004) 1 AWC 529

Hon'ble Judges : Umeshwar Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : Krishna Murari Vishnu Gupta and Paramatma Rai, for the Appellant;
P.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju and Umeshwar Pandey, JJ.—Heard counsel for the parties.

2. The petitioner has prayed for a mandamus directing respondents to pay compensation to the petitioner for acquisition of the disputed land under the Land Acquisition Act with interest and solatium.

3. It is alleged in para 2 of the writ petition, that the petitioner is the owner of plot Nos. 7, 8 and 55 in village Harthana, District Moradabad. This land was among the land which was acquired under the Land Acquisition Act. The Notification u/s 4 of the Act was issued on 13.9.1991 and Notification u/s 6 on 10.9.1992. Possession of the plot was taken by respondent No. 3, Moradabad Development Authority on 28.10.1994, which is also admitted in para 4 of the counter-affidavit filed by the Special Land Acquisition Officer, Moradabad on behalf of respondent Nos. 1, 2 and 4. Copy of the possession certificate is Annexure-1 to the writ petition. True copy of the award dated 6.8.1997 is Annexure-2 to the writ petition. In this award the petitioner's aforesaid land is not included and no award has been made in respect of the disputed plots.

4. It is not disputed that the land was exempted from the Urban Land (Ceiling and Regulation) Act by order dated 11.5.1987 (Annexure-3 to the writ petition). It appears that the land was declared surplus by the competent authority under Urban Land (Ceiling and Regulation) Act on 19.6.1992 but in our opinion this order was wholly void because the land was already exempted earlier u/s 20 of the Act. In fact as letter dated 1.12.1999 (Annexure-6 to the petition) was issued by the Secretary U.P. Government to the Collector, Moradabad, to make payment to the petitioner in accordance with Land Acquisition Act, but as yet no compensation has been made to the petitioner.

5. We have perused the counter-affidavit filed by Moradabad Development Authority and also on behalf of other respondents.

6. There is no dispute that the plots in question belong to the petitioner, either as owners or as bhumidhars. When a person's land is acquired then obviously he is to be given compensation for that, while in this case possession of the land was taken by the Collector on 28.10.1994, but as yet compensation has not been paid to the petitioner nor any award given in respect of the plots in question.

7. It may be noted that in this case Section 17 of the Land Acquisition Act has been invoked. Hence, in view of Section 17(3A) of the Act 80% of the estimated compensation should have been paid by the Collector to the petitioner before taking possession.

8. Section 17(3A) states :

"Before taking possession of any land under Sub-section (1) or Sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3) :

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by someone or more of the contingencies mentioned in Section 31, Sub-section (2) ;

and where the Collector is so prevented, the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section."

9. We are sorry to say that in many cases coming before this Court we find that possession is taken u/s 4 read with Section 17 of the Land Acquisition Act, but without paying compensation as required by Section 17(3A). In our opinion, this practice of the authorities is wholly illegal. Section 17(3A) clearly mandates that the payment of 80% of the estimated compensation must be paid whenever Section 17 is invoked before taking possession, by the State Government.

10. In the present case, possession was taken by the respondents as far back as in October, 1994, i.e., more than nine years ago, but compensation has not yet been paid to the petitioner. An honest person pays for the things he acquires. The State is expected to maintain high standard of ethics, and set an example

for others, but we find in many cases that the State is taking possession u/s 17 of the Land Acquisition Act, without paying compensation as prescribed u/s 17(3A).

11. For the reasons given above, the petition is allowed. The respondents are directed to pay the compensation mentioned in Section 17(3A) to the petitioner alongwith interest at 10% per annum from 28.10.1994 within two months from today and also to give award in respect of the plots in question within two months of production of a certified copy of this order before the Special Land Acquisition Officer. Payment in accordance with the award must be made within a month after the award is given to the petitioner alongwith solatium and interest as prescribed under the Act.