

(1996) 03 AHC CK 0003
In the Allahabad High Court
Case No : C.M.W.P. No. 178 of 1991

Smt. Prabha Wati Kunwar and Another APPELLANT
Vs
State of U.P. and Others RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17(1), 4, 4(1), 6

Citation : (1996) 03 AHC CK 0003

Hon'ble Judges : T.P. Garg, J;R. Dayal, J

Bench : Division Bench

Advocate : V.P. Varshney, for the Appellant;

Final Decision : Dismissed

Judgement

R. Dayal, J.—Petitioners are the daughters of late Ishwar Jeet Singh. Some of his land was acquired under the Land Acquisition Act for the purpose of constructing reservoir for Rihand Dam in the year 1956. In lieu of the land which was then acquired, father of the Petitioners was granted by the Governor of Uttar Pradesh 10 bighas of land comprising Khasra plots No. 308/19 admeasuring 7 Bighas and No. 365/5 admeasuring 3 Bighas as Government grant vide Government grant dated 14.2.1966 (Annexure "1" to the writ petition). The Petitioners have alleged that the Respondents illegally acquired plot No. 308/19 admeasuring 7 Bighas after issuing notification under Sections 4 and 6 of the Land Acquisition Act and paid a meagre amount at the rate of Rs. 2,800 per Bigha, totalling Rs. 19,600 as compensation without payment of interest or solatium. As regards plot No. 365/5, they have alleged that though the same was included in the notifications issued under Sections 4 and 6 of the Land Acquisition Act, it was not included in the list of the plots required by the National Thermal Power- Corporation Ltd. Moreover, at the same time, while taking possession of other plots, possession over this plot, i.e. plot No. 365/5 was also taken forcibly. The Petitioners have further said that they have neither been paid any compensation for this plot nor have the Respondents returned the plot despite several requests. A prayer has

been made for a writ, order or direction commanding the Respondents to pay compensation to the Petitioners according to present market rate and also to pay interest and solatium.

2. No counter-affidavit has been filed on behalf of Respondent No. 1, State of U.P., and Respondent No. 4, Sub-Divisional Officer, Pipri, Dudhi, District Sonbhadra. A counter affidavit has been filed on behalf of the General Manager, National Thermal Power Corporation Ltd. and Chairman/Managing Director, National Thermal Power Corporation Ltd. who have been impleaded as Respondents No. 2 and 3 respectively. Respondents No. 2 and 3 have pleaded in their counter-affidavit that the land in question was allotted to the Petitioners' father subject to the condition contained in Para 10 of the grant, according to which State Government had the right to acquire the land allotted to the father of the Petitioners for any public purpose or any other purpose and in that case, the Petitioners would be entitled to such compensation as might be assessed by the District Officer. Further, they have averred that for plot No. 308/19, the compensation was accepted by the Petitioners without any reference or appeal. They have admitted that plot No. 365/5 was not included in the list of the plots required by the National Thermal Power Corporation Ltd., but possession was taken over this plot which admeasured 2 Bighas and 5 Biswas on the spot at the time of taking of possession. It is also deposed in the counter-affidavit that after the possession of plot No. 365/5 was taken by the National Thermal Power Corporation Ltd., a request was made to the Sub-Divisional Officer, Dudhi/Pipri through letter dated 6.12.1984 (Annexure "CAT") requesting him that the land admeasuring 2 Bighas and 5 Biswas be added to the land acquired by the National Thermal Power Corporation Ltd., and action might be taken for payment of compensation to the owners of the land. Vide letter dated 26.5.1987 (Annexure "CA-3"), the Sub-Divisional Magistrate, Dudhi/Pipri informed the National Thermal Power Corporation Ltd. that the land admeasuring 2 Bighas and 5 Biswas of plot No. 365/5 was recorded in the name of the Petitioners and they were entitled to compensation of Rs. 11,550. Vide letter dated 27.6.1987 (Annexure "CA-4"), the National Thermal Power Corporation Ltd. was informed that the Corporation had to deposit the amount of compensation. In pursuance of this letter, the Corporation sent to the Petitioners letter dated 13.7.1987 (Annexure "CA-5") enclosing therewith a draft agreement and asking the Petitioners to send the agreement duly executed on a non-Judicial stamp paper of Rs. 6 so that disbursement of compensation could be expedited. This was followed by a reminder dated 25.1.1988 (Annexure "CA-6"). Vide letter dated 25.1.1988 (Annexure "CA-7"), written on behalf of the Petitioners, the Corporation was informed that compensation offered to them was not acceptable and that compensation should be paid at the market rate of Rs. 14,000 per acre. Required agreement was not executed by the Respondents and so compensation could not be paid.

3. We have heard Sri V. P. Varshney, Advocate, for the Petitioners, Sri I. S. Singh, standing counsel for Respondents No. 1 and 4 and Sri G. C. Bhattacharya,

Advocate, for Respondents No. 2 and 3.

4. Learned counsel for the Petitioners, has, during arguments, not pressed for any relief regarding plot No. 308/19. Regarding plot No. 365/5, he has submitted that the land was acquired by the notification dated 6.10.1976 issued u/s 4 of the Land Acquisition Act and a declaration u/s 6 was published in the Official Gazette on 19.10.1976, but no award u/s 11 of the Act has been made and the Petitioners are entitled to compensation at the market rate and also to solatium as per the provision of the Act and has referred to State of Haryana Through G.P. Duggal and others Vs. Sukhdev and others, . Head-note (A) of the report which says that by publication of the notification u/s 4 and declaration u/s 6 in the Gazette within the prescribed period, acquisition becomes final and valid, is inappropriately worded. The relevant portion of the judgment is as under:

Suffice to start with that the State Government had issued notification u/s 4(1) of the Land Acquisition Act, 1894 in respect of Ajronda and Mujesar village on April 7, 1986 and the notification was published in the State Gazette acquiring 7-91 acres of land for the development and utilisation as Green Belt opposite City Centre, Sector 12. In respect thereof, declaration u/s 6 was published on April 6, 1987 and an award also was made by the Land Acquisition Act on March 13, 1989. As a result, the acquisition in respect of that land has become final and therefore, it must be deemed that it is valid acquisition and the interference of the High Court in respect of this land is illegal.

Thus, acquisition was held to be final and valid not merely because of the issue of the notification u/s 4 and publication of declaration u/s 6 within the prescribed period but also because award was made within the stipulated period. This authority, therefore, does not support the Petitioners. Mere issue of notification u/s 4 and publication of declaration u/s 6 of the Land Acquisition Act does not complete the act of acquisition. Neither possession was taken u/s 17(1) nor award was made u/s 11 of the Land Acquisition Act. Though possession was taken but not u/s 17(1) of the Act. So, the act of acquisition was never complete under the provisions of the Land Acquisition Act. According to the Respondents, possession over plot No. 365/5 was taken in pursuance of term No. 10, contained in the grant dated 14.2.1966 (Annexure "1"). according to which the U.P. Government could take possession for any public purpose or any other purpose and the allottee was entitled to such compensation as was to be assessed by the District Officer. It is clear from Annexures "CA-4" and "CA-7" that compensation was offered to the Petitioners at the rate of 7,700 per acre but the same was not accepted by them. Thus, the case taken by the Petitioners in the petition that the Petitioners were neither offered any compensation nor did they return the plot, inspite of requests, is factually not true. Learned Counsel for the Petitioners has also submitted that compensation should be offered at the market rate and for an area of 3 acres and not for 2 Bighas and 5 Biswas. In reply, learned counsel for the Respondents have submitted that the land on the spot measured only 2 Bighas and 5 Biswas and compensation offered was not less than that offered for

the other plot, i.e., plot No. 308/19. They have further submitted that writ petition is not a proper proceeding to dispute the quantum of compensation which was assessed as per term 10 of the grant and that the petition also suffers from laches, inasmuch as the Petitioners refused to accept compensation long back vide letter dated 10.2.1988 (Annexure "CA-7") and the writ petition was filed on 6.1.1992. We see considerable force in the submissions made on behalf of the Respondents. Neither the Petitioners raised any dispute in the petition about quantum of compensation, nor laid factual foundation about it. They did not plead that compensation was not assessed by the authority, competent to do so, as per the stipulation in term 10 of the grant or that any law or rule about it was violated. They did not even dispute the quantum of compensation offered to them. For this reason alone, the petition is liable to fall. The petition also suffers from laches.

5. In the result, the petition is dismissed with costs quantified as Rs. 2,000 (Rupees two thousand).