

(1988) 02 AHC CK 0017

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14316 of 1982

Smt. Prakashwati and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-02-1988

Acts Referred:

Avas Evam Vikas Parishad Rules, 1967 — Rule 6, 6(1), 6(2)

Constitution of India, 1950 — Article 226

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 28, 29, 6(1)

Citation : (1988) 1 AWC 626

Hon'ble Judges : A. Banerji, Acting C.J.; K.P. Singh, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Appellant; S.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings for acquisition of petitioners' plots under the provisions of Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act No. I of 1966).

2. The petitioners claim ownership in plots Nos. 316, 317, 318 and 320, situate on Delhi Road, Saharanpur. It has been alleged that on plots Nos. 316 and 317 there exists a Charitable clinic and dispensary which has been running for several years. The opposite parties are trying to take the petitioners' plots without serving requisite notice regarding acquisition of the petitioners' land as contemplated by the provisions of the above-mentioned Act, therefore, the acquisition proceedings regarding the petitioners' land stand vitiated in law being against the principles of natural justice. According to the petitioners they came to know about the acquisition*of their land for the first time in February, 1981. Thereafter an objection was filed before the opposite party No. 2 in the present writ petition regarding exemption of plot No. 316 and claim for compensation in respect of other plots at the rate of Rs. 100/- per sq. yard. A letter dated 21-8-1981 was also sent to the opposite party No. 2 for deciding the

petitioners" objection (see Annexure IV attached with the writ petition). On 5-9-1981, the petitioners received a communication whereby it has been learnt that the petitioners' plots Nos. 316 and 317 were exempted from acquisition and that they would not get any compensation with regard to the aforesaid two plots, namely plots Nos. 316 and 317 (see Annexure V). It appears that thereafter the petitioners wanted to make certain constructions in connection with the charitable clinic. The officers of the opposite party No. 3 in the present writ petition tried to interfere on the allegations that the aforesaid two plots had also been acquired by them, therefore, no construction should be raised on the aforesaid two plots. On 15-1-1982 Dr. A. K. Mittal, complained to the opposite party No. 2 about the wrong action of the officers of the opposite party No. 3 as is evident from Annexure VI attached with the writ petition. Annexure VII dated 1-3-1982 is a letter written by Shri D. C. Saxena, Special Land Acquisition Officer Illrd, Meerut (opposite party No. 3 in the present writ petition) on the complaint made by Dr. A.K. Mittal. In this letter it has been indicated that the earlier order dated 5-9-1981 was not available on the record. The petitioner No. 1 also made an application to the opposite party no, 3 for exemption of plots Nos. 316 and 317 and averred that the officials of Isthaniya Avas Vikas illegally interfered with the petitioners' possession over plots Nos. 316 and 317 against the order dated 5-9-1981 and they should be restrained from interfering with the possession of the petitioners. Again in June, 1982 the officers of the Parishad orally informed the petitioners not to raise any construction over their plots Nos. 316 and 317, therefore, the present writ petition on the ground that the acquisition proceedings regarding the petitioners' land are violative of the principles of natural justice and against the mandatory provisions of U.P. Act No. I of 1966.

3. The claim of the petitioners has been contested by the opposite parties on the ground that the petitioners' plots have been acquired strictly in accordance with law and that the order dated 5-9-1981 relied upon by the petitioners was a forged document and was obtained in collusion with the previous Special Land Acquisition Officer, therefore, the writ petition should be dismissed.

4. The main emphasis of the learned Counsel for the petitioners before us is that they had not been served with requisite notice as contemplated by the provisions of U.P. Act No. I of 1966 therefore, the acquisition of the petitioners' land should be quashed. In this connection our attention was drawn to the provisions of Sections 28 and 29 of the above-mentioned Act as well as Rule 6 of the Avas Evam Vikas Parishad (Form and Manner of Service of Notice) Rules, 1967.

5. For better appreciation of the contention raised on behalf of the petitioners it is proper that Section 29 of the above-mentioned Act should be reproduced and the aforesaid provision reads as below:

29. Notice of proposed acquisition or levy of betterment fee-Within six weeks from the date on which any notice is first published u/s 28 in respect of any housing or improvement scheme the Board shall serve a notice in such form, on such persons or classes of persons and in such manner as may be prescribed,

stating that the Board proposes to acquire any specified land or building for the execution of the scheme or proposes to levy betterment fee.

Rule 6 of Avas Evam Vikas Parishad Rules, 1967 provides as below:

6. (1) Every such notice shall be served by an officer or servant of the Board (i) by giving or tendering the notice to the person to whom it is addressed or (ii) if such person is not found, by leaving the notice at his last known place or abode or by giving or tendering it to some adult member or servant of his family, (iii) if his address elsewhere is known by forwarding such notice to him by registered post under cover bearing the said address.

(2) If after due diligence it has not been possible to serve a notice on any person in the manner prescribed in Sub-rule (1) a copy of the notice shall be affixed on some conspicuous part of his land or building which the Board proposed to acquire or in regard to which the Board proposed to levy betterment fee.

6. Annexures I, II and HI to the counter affidavit are the notices alleged to have been served upon the petitioners. The perusal of Annexure I indicates that the address of the petitioner No. 1 is so vague that it cannot reasonably be inferred that the same was ever served upon the petitioner. The notings on the reverse of Annexure I indicate that the petitioner No. 1 could not be found out due to incorrect address. The aforesaid notice appears to have been pasted but the noting does not indicate where it was pasted. Rule 6(2) quoted above indicates that the notice should be affixed on some conspicuous part of the land sought to be acquired. Therefore, we are unable to accept the contention of the learned Counsel for the opposite party that the notice contemplated by the provisions of the above Act was served upon the petitioner No. 1 in the facts and circumstances of the present case. The disputed land is situate in village Mohammadpur Mafi, Pargana, Tahsil and District Saharanpur. The address of the petitioner No. 1 in the alleged notice is Smt. Prakashwati, widow of Bhushan, resident of Saharanpur. The address is so vague and imperfect that it is difficult to accept that the aforesaid notice could ever be served upon the petitioner. In the case of the petitioner No. 1 it is apparent that the three conditions of Rule 6 (1) were not at all adhered to by the opposite parties and the affixation of the notice in the case of petitioner No. 1 cannot be accepted because the opposite parties did not make effort to serve the petitioner No. 1 with due diligence as well as it is not evident where the notice was affixed. The necessary ingredient of affixing the notice on the land sought to be acquired is also not established, therefore, we come to the conclusion that the land of the petitioner No. 1 has been illegally acquired without following the principle of natural justice and the mandatory provisions of Section 29 of the Act read with Rule 6 quoted above.

7. Annexures II and III to the counter affidavit relate to the notices regarding petitioners Nos. 2 and 4. The notings on the reverse of these notices also do not indicate where the notices were affixed- Therefore, an essential ingredient regarding affixation of the notice on the land sought to be acquired is wanting in

the cases of the petitioners Nos. 2 and 4, therefore, it can reasonably be inferred that the petitioners Nos. 2 and 4 were also not served with requisite notices contemplated by the provisions of Section 29 of the above Act read with Rule 6 quoted above. The acquisition of land of the plots belonging to the petitioners Nos. 2 and 4 is also against the principle of natural justice and the mandatory provisions of the Act and the Rules. We think that the acquisition proceedings regarding the petitioners' land stand vitiated in law and are in Violation of the principles of natural justice.

8. On behalf of the petitioners it has been contended that it was obligatory on the part of the opposite parties to comply with the conditions mentioned in Rule 6(1) (i) and thereafter they should have taken recourse to the affixation of notice. We think that the contention raised on behalf of the petitioners has force. In *Gujarat Electricity Board Vs. Girdharlal Motilal and Another*, , their lordships of the Supreme Court have indicated in para. 6 as below:

Section 6(1) confers power on the State Electricity Board to take away the property of the licensee. Such a power must be exercised strictly in accordance with law. The legislature has prescribed the manner of its exercise. It must exercise in that manner and in no other way.

Viewing from the angle indicated by the above observation we think that the notices were not served upon the petitioners strictly in accordance with law. Therefore, the acquisition of the land belonging to the petitioners Nos. 1, 2 and 4 is bad in law and violative of the principles of natural justice.

9. It has been alleged that the petitioner No. 3 was also not served with the requisite notice and no material was placed before us to controvert the allegations made on behalf of the petitioner No. 3. In the facts and circumstances of the present case and in the absence of requisite material before us despite an opportunity given to the counsel for the opposite parties to produce the record of the case before us, we think that the allegations made on behalf of the petitioner No. 3 are correct and his interest in the plots sought to be acquired could not be acquired without effecting service of notice contemplated by the provisions of Section 29 of the above Act read with Rule 6 quoted above. In 1986 UPLBEC 185, *Brahma Prakash v. U.P. Avas Vikas Parishad*, Lucknow a Division Bench of this Court has indicated that the affixation of notice cannot be resorted to without evidence that the addressee was not found. It has also indicated that the authority concerned must file relevant papers for showing that notice was issued and that was served on the person concerned. Failure to produce relevant papers vitiates the proceedings for acquisition. We fully agree with the observations made in this reported ruling, therefore, we think that in the facts and circumstances of the present case the proceedings for acquisition of the petitioners' land stand vitiated in law and deserve to be quashed.

10. An argument was advanced on behalf of the contesting opposite parties to the effect that the writ petition should be dismissed on the ground of delay. Since

the writ petition was admitted on 9-12-1982 and we have heard the learned Counsel for the parties and we find that the acquisition of the petitioners land is in clear violation of the principle of natural justice in the facts and circumstances of the present case. Therefore, we think that sound exercise of our discretion in the exercise of powers under Article 226 of the Constitution should be in favour of the petitioners. We are unable to accept the suggestion of the learned Counsel for the Respondents to dismiss the writ petition on the ground of delay specially when the writ petition has remained pending in this Court for five years and the actions of the Respondents are in clear violation of the principles of natural justice. It is not necessary to deal with other cases cited on behalf of the petitioners in support of their contention on the question of mandatory nature of the manner in effecting service upon the petitioners under the provisions of the Act and the Rules.

11. From the foregoing discussions we conclude that the contentions raised on behalf of the petitioners have force and the writ petition should be allowed. Accordingly, we allow the writ petition and quash the acquisition proceedings with regard to the petitioners' plots giving rise to the present writ petition. The opposite parties are restrained from interfering with the possession of the petitioners over Plots Nos. 316 and 317 situate in village Mohammadpur, Delhi Road, Saharanpur. Parties are directed to bear their own costs.