

(1992) 01 AHC CK 0025

In the Allahabad High Court

Case No : First Appeal No's. 825, 827, 828, 833, 834, 844, 849, 866, 872, 873, 884, 892, 918, 1020 and 1033 of 1990

State of U.P. and Others

APPELLANT

Vs

Roshan Lal

RESPONDENT

Date of Decision : 17-01-1992

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 87
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 1(2), Order 41 Rule 1(3), Order 41 Rule 5, Order 41 Rule 5(1)
Constitution of India, 1950 — Article 300A, 31
Land Acquisition Act, 1894 — Section 18, 4, 54, 6

Citation : (1992) 1 AWC 412

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, M.C. Dwivedi and B. Dayal, for the Appellant; A.K. Sharma and Pankaj Mittal, for the Respondent

Judgement

B.L. Yadav, J.—These are the applications for the grant of interim stay in the form of staying operation of the judgment and order passed by the learned Additional Distt Judge, Meerut, enhancing the amount of compensation in Reference u/s 18 of the Land Acquisition Act, 1894, (for short the Act). These applications for interim stay purported to have been filed under Order 41, Rule 5 of the Code in First Appeal No. 892 of 1990 preferred u/s 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure, 1908, (for short the Code). Since these applications involve similar questions for determination, hence it is convenient to dispose them of by a common order. Civil Misc. Application No. nil of 1990 in First Appeal No. 892 of 1990 State of U.P. v. Roshan Lal shall, however, be the leading case. The applications to vacate the interim stay on behalf of Respondents, the tenure holders whose land have been acquired, have also been filed.

2. Normally the application for grant of interim stay need not be disposed of by a

detailed order, but as these cases are of considerable importance from the point of view of the State of U.P. and the Meerut Development Authority and also in view of the fact that detailed arguments were advanced by Sri V.K.S. Chowdhary, learned Advocate General, for whom I have got profound regards, and also learned Counsel for the Appellants and detailed reply given by learned Counsel for Respondents, hence the present applications for grant of interim stay and applications to vacate the same are being disposed of by a bit detailed order.

3. Factual matrix of the case is that the land possessed by different tenure holders were acquired by issuing notification u/s 4 of the Act dated 12-7-80 and the publication of notification u/s 6 dated 1-5-81. Possession of the said land was taken over on 9-7-82. In First Appeal No. 892 of 1990 reference was allowed in part by judgment dated 7-5-90 passed by learned Ist Additional District Judge, Meerut enhancing compensation of the claimants at the rate of Rs. 70/- per sq. yard for the first belt and at the rate of Rs. 37.50 per sq. yard for the second belt. Claimants were also entitled to additional amount at the rate of 12% per annum from the date of notification u/s 4 of the Act till the date of possession, ie. 9-7-82. Claimants were also entitled to get solatium at the rate of 30% and also interest at the rate of 9% per annum for one year from the date of possession. For the second year, however, they were entitled to interest at the rate of 15% per annum till the date of payment on the balance of amount.

4. Sri V.K.S. Chowdhary, learned Advocate General, urged that absolute interim stay has been granted in these appeals by the Division Bench while admitted the appeal on 5-10-90. The interim stay was to the following effect.

Issue notice returnable within 6 weeks. Until further orders realization of amount awarded by the court below shall remain stayed.

NNM 5-10-90.VNM.

Consequently that stay may continue. The appeals have sanguine hopes of success, inasmuch as the exemplers have not been correctly interpreted and material evidence have been overlooked, the nature of land has not been taken into account and arbitrarily the amount of compensation awarded by the Special Land Acquisition Officer has been enhanced. Sri Sudhir Chandra, learned Senior Advocate also urged on similar lines as learned Advocate General has urged and substantially to the same effect.

5. On behalf of Respondents Sri A.K. Sharma and Sri Pankaj Mittal appeared in some cases and in other cases other counsel appeared and urged that in reference proceedings u/s 18 of the Act the learned Additional District Judge has power to enhance compensation. Relevant facts including exemplers and other evidence etc led by the parties have been taken into account. Some of the Respondents have also preferred cross appeals and cross-objections which are pending in this Court. The land acquired is the primary source of livelihood of Respondents who are the tenure holders. It is a compulsory Acquisition and the tenure holders have no say in the matter. A considerable number of Respondents

have lost their entire land and now it is difficult for them to make both ends meet. It is virtually a money decree which has been passed in favour of Respondents, who can be termed as decree holders against the State of U.P. and Ors. who can be termed as judgment debtors. It was also urged that in the matters of money decree there need not be any stay. This fact is also evident from the provisions of Order 41 Rule 1(3) of the Code. Sub-rule (3) of Rule 1 of Order 41 has been added by Section 87 of the CPC (Amendment) Act, 1976, with effect from 1-2-77. This sub-rule provides that while presenting memorandum of appeal signed by the Appellant, in case appeal is against the decree for payment of money, the Appellant shall, within such time, as the appellate court may allow, deposit the amount disputed in appeal or furnish such security in respect thereof as the court may think fit. This indicates intention of legislature that in appeals directed against the decree for payment of money the amount disputed has to be deposited in the court or furnish such security as the court may think fit. Under these circumstances the absolute stay would not be justified and would be against the provisions of Order 41, Rule 1(3) of the Code. As the plots in dispute were primary source of earning of the Respondents, the tenure holders, hence in case the amount enhanced in the reference u/s 18 of the Act was not paid to them, they are on the verge of starvation. It was accordingly urged that the interim stay granted by this Court may be vacated.

6. Having heard learned Counsel for the parties the question for determination is as to whether there can be interim stay against the judgment and decree enhancing the amount of compensation in reference u/s 18 of the Act, and if so, to which extent ? keeping in view the provisions of Order 41, Rule 1(3) of the Code. It is to be noticed that the legislature was conscious while enacting Sub-rule (3) of Rule 1 of Order 41. Sub-rule (1) also starts with the expression "every appeal shall be preferred in the form of memo signed by the Appellant...." Sub-rule (2) also commences with the expression "the memorandum shall set forth...." Sub-rule (3) also starts with the words "where the appeal is against the decree for payment of money, the Appellant shall, within such time as the court may allow, deposit the amount disputed in appeal or furnish such security in respect thereof as the court may think fit. The word shall" normally indicates mandatory provision, whereas the word "may" indicates directory provision. But it may be vice versa if the intention of legislature so requires. The use of words "shall" and "may" at the same time in Rub 9 of Order 41 indicates that the word "shall" has been used consciously by the legislature for mandatory purposes, whereas the word "may" indicates directory and discretionary provision. In such situation, where both the words have been used by the legislature, there remains no discretion with the court to interpret the same, as the intention of legislature has been manifest by using both the expressions in the same provision. Sub-rule (3) of Rule 1 of Order 41 of the Code indicates that the Appellant, the judgment debtor "shall" deposit the money disputed in appeal. It means it is mandatory for the Appellant to deposit the amount. The court has been given discretion to allow time for making deposit. In other words in the matter of appeals against money

decree the court has been left with very limited discretion and the amount has invariably to be deposited before the court along with presentation of the appeal itself and the Appellant, the judgment debtor has to furnish security.

7. Before proceeding further the distinction between interlocutory orders and final disposal of appeal may be noticed. The incidental or interlocutory order would continue till the disposal of appeal on merits. As the suit or appeals, as in the present case, would take normally some it is likely to take more time for final disposal, hence the court has to be conscious in passing interim stay with a view that the same may protect the rights of the Appellants as well as the Respondents. The interim stay consequently need not be one sided so as to leave the interest of the Respondent unprotected. These interim matters are distinct from the final disposal and they are, in other words, supposed to facilitate just and fair disposal of the main dispute between the parties. Such orders have to be passed so that it may serve the cause of both the parties and may keep them active and possessed of means so that they may continue with litigation till the final end. *Food Corporation of India v. Yadav Engineering and Contractor* AIR 1982 SC 1302

8. It need not be stated that there are a number of principles as to how a particular provision of a statute has to be considered. *Ex abundanti cautela*, reference may be made only to a few of them. There is a maxim "*EX VISCERIBUS ACTUS*" which connotes that every part of a statute should be construed with reference to context- There is another maxim "*UT REAS MAGIS VALET QUAM PEREAT*" which connotes that a particular provision of a statute must be so construed as to make it more effect and operative. *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . It is evident that the legislature has taken precaution by adding Sub-rule (3) of Rule 1 of Order 41, of the Code by Section 87 of the Code of Procedure Amendment Act, 1976. As stated earlier the judgment debtor has to make deposit in the court so that appropriate orders may be passed with regard to payment of money so deposited or the security so furnished.

9. It is to be noticed that by Section 34 of the 44th Amendment Act, 1978 (w.e.f. 19-6-79), Article 31 of the Constitution providing for compulsory acquisition of property was deleted in its entirety and similar provisions were added to Article 300-A in Part 12 of Chapter IV--Right to Property. Prior to its deletion Article 31 provided that no person shall be deprived of his property save by authority of law and no property was to be compulsorily acquired save for public purposes and it was to be acquired for an amount of compensation which may be fixed by such law or which may be determined in accordance with such principles as provided. *A Fortiori*, in the matters of compulsory acquisition of property the payment of compensation was a must. Similar provision has now been incorporated in Article 300-A. Article 31 before its deletion and now Article 300-A makes reference to the doctrine of "eminent domain" imperative. In American Law as well as English Law under the doctrine of eminent domain, payment of just compensation is a

necessary incident of compulsory acquisition. Before the 44th Amendment Act, 1978, the provisions for payment of compensation and its determination by the court was a fundamental right but as at present it is a constitutional right and the acquisition is compulsory against all the wishes of the tenure holders, particularly in the country like ours, where it is well known that the tenure holders in the countryside have agriculture as their primary source of sustaining their family. In such situation to deprive tenure holders by State action from their source of livelihood without making adequate arrangement for their fair and equitable arrangement would be against all canons of justice. There is a Latin Maxim JUSTITIA ESTCONSTANS ETPERPETUA VOLUNTAS JUS SUUM CUIQUE TRIBUENDI i.e. Justice is a steady and unceasing disposition to render every man his due.

10. In Central Bank of India Vs. State of Gujarat and Others, , where money was deposited in the court by the judgment debtor, but the High Court directed the amount so deposited to be refunded to the judgment debtor. Their Lordships of the Supreme Court ruled that the High Court in its discretion can either direct the payment of amount to the decree holder, subject to terms safeguarding the interest of judgment debtor in the eventuality of the reversal of decree or direct the amount to be deposited or invested on terms of interest so that on disposal of First Appeal appropriate directions can be made.

11. I have also kept in mind the provisions of Rule 5 of Order 41 of the Code to the effect that the appeal shall not operate as stay of proceedings in execution of a decree nor shall the execution of decree be stayed, simply by the fact that appeal having been preferred from a decree But the appellate court may, for sufficient cause, stay the execution of such decree. Sub-rule (30) of Rule 5 provides that no order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the court making it is satisfied that substantial loss would result to the party. The provisions of Order 41 Rule 1(3) may be read along with the provisions of Order 41 Rule 5. These are the procedural provisions, hence they have to be interpreted in such a way so that they may serve purpose to achieve the ends of justice. They are instrument to facilitate justice, hence they have to be considered in a way so that they promote justice prevent its miscarriage. (JUSTITIA NEMINI NEGANDA EST) & (JUSTITIA NON EST NEGANDA NON DIFFERENDA) These Maxim cannote that justice is to be denied to none nor to be delayed.

12. Broadly speaking the grant of interim stay in the appeal directed against the money decree or similar decree is matter of judicial discretion which must be consistent with Order 41 Rule 1(3) and Order 41 Rule 5(3) of the Code. Judicial discretion has to be exercised consistent with the primary object of protection of rights of the parties. The only precaution is to be taken that the interest of Appellant is also safeguarded in eventuality of reversal of decree. There is another aspect that where a particular mode has been provided for the purpose to do a thing in particular manner, the thing has to be done in that way and not

in a different way. (i.e. ACTUS LEGI-TIMI NON RECIPIUNT MODUM). The stay applications are conspicuous by the absence of the fact that great injustice would be done to the applicants in case any interim stay was not granted. In these appeals only this much is stated (vide para 16 of the stay application in First Appeal No. 892 of 1990) that in case the amount of compensation is paid to claimant Respondents it would be very difficult for the Appellant to realize the same back in case the appeal succeeds. But that cannot be treated to be a ground for interim stay.

13. Under the facts and circumstances of the case and balancing the equity between the parties, particularly in view of provisions of Order 41 Rule 1 and Order 41 Rule 5(3) of the Code, the interim stay granted by a Division Bench of this Court is modified to the extent that the Appellants are directed to deposit the entire amount enhanced in the reference preferred u/s 18 of the Act by the learned Viditiocat D strict Judge, Meerut, who has enhanced by the amount by the impugned orders, by 28th February, 1992. Out of the amount so deposited, half of the amount shall be paid to Respondents without any security within a week thereafter and the remaining half would be invested by purchasing National Savings Certificate or would be similarly invested in some better way, so that it may fetch enhanced interest and that amount would be paid to the successful party in accordance with the directions contained in the operative portion of the judgment of these appeals on merits. In case, however, the entire amount as enhanced, is not deposited by the aforesaid date, the interim stay would stand automatically vacated and the application for interim stay would be rejected and it shall be open to the decree holder, the Respondents, to proceed with the decree in the manner provided under law.