
(2008) 08 AHC CK 0143
In the Allahabad High Court
Case No : Writ Petition No. 17366 of 2008

Subey Ram

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 6
Uttar Pradesh Industrial Area Development Act, 1976 — Section 10

Citation : (2008) 08 AHC CK 0143

Hon'ble Judges : Anjani Kumar, J and Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

1. The petitioner, Subey Ram, resident of Village Dabara, Tahsil Dadri, District Gautambudh Nagar has approached this Court by means of the present writ petition aggrieved by the proceedings initiated by the respondents for acquisition of his land. He has sought a writ of cert/bran for quashing the entire acquisition proceeding including the notifications dated 31.10.2005 published under Section 4(1)/17(1)/(4) of the Land Acquisition Act, 1854 (hereinafter referred to as the "Act, 1894") and dated 1.9.2006 published under Section 6/17 of the Act, 1894. He has also challenged the notice dated 21.2.2007 issued under Section 10 of the U.P Industrial Development Act, 1976 (hereinafter referred to as the "1976 Act") and the order dated 15.2.2008 passed by Chief Executive Officer, Greater Noida Industrial Development Authority, Gautambudh Nagar (hereinafter referred to as the "GNOIDA") rejecting his representation for exempting land in question from acquisition. Lastly, he has prayed for a writ of mandamus commanding respondents not to dispossess the petitioner from land in question situate at Khasra No. 2643.1160 in Village Dabara, Tahsil Dadri, District Gautambudh Nagar.

2. In brief, the facts giving rise to the present writ petition are, that, the petitioner claims to be the owner of certain land at Village Dabara, Tahsil Dadri, District Gautambudh Nagar bearing Gata No. 2500.4550,2643.1160 and 2740.0300. He has got a Kachha and Pukka house constructed thereon besides other construction and the said land is in Abadi. The said land is in common

share of petitioner and his four brothers. The State Government published a notification under Section 4(1) read with Section 17(1) of the Act, 1894 on 31.10.2005 notifying its intention for acquisition of the said land alongwith other for planned industrial development in District Gautambudh Nagar through GNOIDA and dispensing with requirement of inquiry under Section 5A of the Act, 1894. The petitioner aggrieved by the aforesaid notification preferred a Writ Petition No. 679 of 2006 challenging aforesaid notification wherein an interim order was passed by this Court on 06.1.2006 directing parties to maintain status quo with respect to the land in .question. Thereafter a notification under Section 6/17 of the Act, 1894 was published by the State Government on 1.9.2006 for acquisition of land in question. Notice under Section 9 of the Act, 1894 was issued by the Additional Collector (Land Acquisition) on 16.10.2006. The petitioner in the meantime submitted applications under Section 48 of the Act, 1894 initially on 23.3.2006 and thereafter on 4.9.2006 requesting authorities to exempt his land but no action was taken by the respondents thereon. Instead GNOIDA issued a notice on 21.2.2007 under Section 10 of 1976 Act stating that the petitioner has made certain unauthorised construction and, therefore, should remove the same otherwise steps will be taken by the authorities concerned for removal thereof. Aggrieved thereto the petitioner approached this Court in Writ Petition No. 27094 of 2007 wherein also he sought a writ of certiorari for quashing notifications dated 31.10.2005 and 1.9.2006 and also the notice dated 21.2.2007 and sought a writ of mandamus commanding the respondents not to dispossess him. The aforesaid writ petition was finally disposed of by this Court on 13.6.2007 directing the Chief Executive Officer, GNOIDA to take decision on the petitioner's reply dated 13.3.2007. Pursuant to the aforesaid direction the Chief Executive Officer, GNOIDA has passed order on 15.2.2008 rejecting his representation. Hence this petition.

3. Learned counsel appearing for respondent No. 4 raised a preliminary objection that in respect to the relief sought by petitioner with respect to the acquisition notifications dated 31.10.2005 and 1.9.2006, this is the third and second writ petition respectively and, therefore, is liable to be dismissed as successive writ petitions for the same cause of action are not maintainable and, therefore, is barred under Chapter XXII, Rule 7 of the Rules of the Court. He further contended that so far as the decision taken by respondent No. 4 on the petitioner's reply against the notice under Section 10 of 1976 Act the same has been passed after considering factual aspects of the matter and hence a finding of fact having been recorded which has not been shown to be perverse by placing any material on record, therefore, no inference is called for against the impugned order. So far as the petitioner's contention that his land ought to have been exempted under Section 48 of 1894 Act, it is contended that the said provision only confers discretion upon the State Government to exempt a land which is not required for acquisition but no corresponding right has been created in favour of the person whose land has been acquired. He also contended that the said power is not to be exercised as and when requested by the owner of the

land whose land has been acquired. He contended that the issue is squarely covered by a Division Bench decision of this Court in Writ Petition No. 15483 of 2008, Babu v. State of U.P. and others decided on 24.4.2008.

4. We have heard learned counsel for the parties and perused the record and also the written submission filed on behalf of the petitioner through his counsel Sri A. Prasad.

5. It is not in dispute that the notification dated 31.10.2005 was challenged by the the petitioner in Writ Petition No. 679 of 2006 which is pending before this Court and in which an interim order is operating in favour of petitioner till date. The reliefs sought in the aforesaid writ petition are as under:

"(i) to call forth the records of the case.

(ii) to issue a writ or order in the nature of certiorari the Land Acquisition Proceeding dated 31.10.2005 published on 10.11.2005 (Annexure2).

(Hi) to issue a writ of order in the nature of mandamus commanding the respondents not to acquire the land of Khasara No. 25004550, house, building boundary wall etc. of the petitioner and further to restrain them not to dispossess the petitioner from the land and not to demolish the construction etc.

(iv) to issue a writ or order in the nature of mandamus commanding the respondents to decide the objection filed by the petitioner.

(v) to issue any other writ or order which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

(vi) to award the cost of the petition to the petitioner."

6. Thereafter notification under Section 6/17 of the Act, 1894 was published. Another notice under Section 10 of 1976 Act was issued to the petitioner for removing the alleged unauthorised construction which is a separate proceeding. The petitioner again approached this Court in Writ Petition No. 27094 of 2007 wherein also he sought a writ of certiorari for quashing the notifications dated 31.10.2005 as well as 1.9.2006 and notice dated 21.2.2007 issued under Section 10 of 1976 Act. The reliefs sought in the said writ petition are quoted as under:

"(i) to issue a writ or order to call forth the records of the case.

(ii) to issue a writ or order in the nature of certiorari for quashing the entire land acquisition proceeding and or process of the publication of Notification No. 5484/77040559N/05 dated 31.10.2005 under Section 4(1)/17(1) and (4) (Annexure 1) and the declaration Notification No: 5079/77040659N/05 dated 1.9.2006 under Section 6/17 of the Act (Annexure 8) and further in pursuance of order/notice dated 21.2.2007 (Annexures 15 and 16) in respect of Gata/ PlotKhasara No. 2643.1160 situated in villageDabara, Tahsil and ParaganaDadri, G.B. Nagar.

(iii) to issue a writ or order in the nature of mandamus restraining the

respondents that the petitioner may not be dispossess from his arazi/abadi No. 2643.1160 and further his Kachha and Pakka houses other constructions over there may not to be demolished situated at village Dabara, Tehsil and Paragana Dadri, District G.B. Nagar.

(iv) to issue a writ or order in the nature of mandamus directing the respondents i.e. "the competent authority" (the State Government) to comply the judgment and order and the direction issued by the Hon"ble Court in cases of:

(A) W.R1889687 (M/s Sons Engineer Corporation v. State of U.P.) decided on 11.9.91.

(B) 1992 (Suppl) 2 SCC136 (UOI v. BalRam Singh)

(C) 1996(7) SCC 269 (Sfate of Tamil Nadu v. Maha LaxmiAmmal and others)

(D) W.P 648405 (Hem Raj Singh v. State of U.P. and others) decided on 3.4.2007.

and the application(s)/representation(s)/objection(s) (Annexures 7 and 9) be decided finally.

(v) to issue any other writ or order which this Hon"ble Court may deem fit and proper under the facts and circumstances of the case.

(vi) to award the cost of the petition to the petitioner."

7. It appears from the record of aforesaid writ petition that the above matter came up before the Vacation Judge on 13.6.2007. Before the Court the petitioner did not raise any argument with respect to the acquisition notification issued under Sections 4 and 6 of the Act, 1894 and instead argued that he has submitted a reply against the notice dated 21.2.2007 issued under Section 10 of 1976 Act but the same has not been decided by the competent authority and, therefore, this Court disposed of the said writ petition by passing the following order:

"Heard learned counsel for the petitioner Sri A. P. Prasad and Sri Pradeep Kumar for the respondents.

On 21.2.2007, notice has been issued by Chief Executive Officer, Greater Noida Industrial Development Authority, G.B. Nagar. To the said notice, petitioner has already submitted his reply on 13th March, 2007 contending therein that said notice is liable to be recalled as the said notice has been issued in the name of his dead father who died 25 years ago and the property has already been inherited by him and his brother.

In these circumstances and in this background, the Chief Executive Officer, Greater Noida Industrial Development Authority, G.B. Nagar is directed to proceed to consider the objection which has been preferred on behalf of the petitioner and take appropriate decision in accordance with law preferably within next eight weeks from the date of receipt of the certified copy of this order.

With this observation, the present writ petition is disposed of."

8. From the relief sought in the above writ petition and also the order passed by this Court it is evident that neither the notice dated 21.2.2007 has anything to do with the acquisition notification published under the Act, 1894 nor the reply dated 31.3.2007 given by petitioner to notice dated 21.2.2007 has any relevance with respect to the acquisition proceeding. From the order of this Court it is evident that though the petitioner challenged acquisition proceedings in the aforesaid writ petition but during the course of arguments neither raised any issue with respect to the acquisition proceeding nor required the Court to pass any order in respect to the aforesaid reliefs. In this circumstances, we are clearly of the view that having failed to press his relief sought against acquisition proceedings in Writ Petition No. 27094 of 2007, he cannot be permitted to seek same relief in this writ petition since it is barred by principles of constructive resjudicata and also under Chapter XXII Rule 7 of the Rules of the Court which provides that for the same relief second application would not lie.

9. In Smt Manju LataAgrawalv. State of U.P. and others, 2007(9) ADJ 447 a similar issue came to be considered by this Court and it observed that even if the relief sought had not been specifically rejected by the Court, It would be deemed to have been rejected as all the submissions made in the subsequent writ petition were agitated therein and the acquisition proceedings were sought to be quashed on the same ground but this Court did not grant any relief in respect thereto. The Court held:

"These petitioners cannot be permitted to agitate the issues which had been agitated by them in earlier writ petition."

10. We have noticed that the grounds of challenge for acquisition proceeding in this writ petition are same as that were raised in earlier Writ Petition No. 27094 of 2007 and therefore to the extent the petitioner has sought relief challenging acquisition proceedings and notification dated 31.10.2005 published under Section 4(1)717(1) and 17(4) of the Act, 1894 and notification dated 1.9.2006 published under Sections 6 and 17 of the Act, 1894 this petition being second writ petition is not maintainable and, therefore, is liable to be dismissed to that extent.

11. Now coming to the question as to the validity of notice dated 21.2.2007 and the order dated 15.2.2008 passed by Chief Executive Officer, GNOIDA under Section 10 of 1976 Act, the petitioner could not point out any perversity or error apparent on the face of record in the findings recorded by respondent No. 4 with respect to the alleged unauthorised construction on the premises in question. The scope of judicial review in such matters is limited and this Court will not sit in appeal over the findings of fact recorded by the competent authority unless it is shown and demonstrated to be perverse or based on misreading of material on record. No error in decision making process has been shown by petitioner. We, therefore, do not find any reason to interfere against the notice dated 21.2.2007

and order dated 15.2.2008. The writ petition is, accordingly, dismissed. No order as to costs.