
(1996) 07 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12242 of 1992

Subhash Chandra Gupta and Others

APPELLANT

Vs

Special Land Acquisition Officer, Sanyukt
Sangathan, Ghaziabad, and Others

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 13A

Citation : (1996) 07 AHC CK 0072

Hon'ble Judges : R.A.Sharma, J and Kundan Singh, J

Final Decision : Allowed

Judgement

R.A. Sharma, J.—A plot of village Pabi Sadapur, Paragana Loni District Ghaziabad was purchased through registered sale deed by Smt. Anaro Devi. She executed a power of attorney in favour petitioner No. 2. Another plot was sold by Sawal Das to Subhash Chandra Gupta, petitioner No. 1 by registered sale deed. names of both the purchasers were mutated in revenue record of the village. It appears that these plots were acquired under the Land Acquisition Act (hereinafter referred to as the Act) and 80 per cent of the amount of compensation was paid to the petitioners. While accepting the compensation the petitioners have executed the indemnity bonds. It appears that the original tenureholder, who have sold the aforesaid plots, made some applications before the Tahsildar for recalling the order of mutation. Those applications have been allowed and the mutation proceedings have become pending in the court of the Tahsildar. Thereafter the Special Land Acquisition Officer has passed the order dated 31.1.1992 for refund of the amount of compensation, paid to the petitioners on the ground that the case pending regarding the plots in question in the court of the Tahsildar. Pursuant to the said order an order for recovering the amount of compensation as arrears of land revenue from the petitioners has also been passed. Being aggrieved by these orders the petitioners have filed this writ petition.

2. Notice of the writ petition was given to the learned Standing Counsel on 24.11.1992. On 24.11.1992 this court granted one month's time to the learned Standing Counsel for filing counteraffidavit. As no counteraffidavit was filed, on 29.3. 1996 one month and no more time was again granted to the learned standing counsel to file counteraffidavit. In spite of the stop order the counteraffidavit has not been filed, with the result the averments made in the writ petition are liable to be accepted as correct. We have heard the learned counsel for the petitioners and the learned Standing Counsel.

3. Section 13A of the Act, under which the impugned notices have been issued, is reproduced below:

" 13A. Correction of clerical errors etc. (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under Section 18 to make a reference to the Court, before the making of such reference, by order correct any clerical or arithmetical mistakes in the award or error arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under, subsection (1) the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue."

4. This section merely permits the Collector to correct the clerical or arithmetical mistakes in the award and to recover the excess amount which has been paid as a result of the correction. The instant case is not a case of correction of any clerical or arithmetical error. On the other hand the amount is sought to be recovered from the petitioners on the ground that some case is pending in the Court of the Tahsildar. This is not a ground on the basis of which power under Section 13A of the Act can be exercised. That apart, the impugned orders have been passed without giving reasonable opportunity of being heard to the petitioners. The impugned orders, as such, cannot be sustained.

5. For the reasons given above, this writ petition is allowed with costs. The impugned orders are quashed.

6. Certified copy of this order may be given to the learned counsel for parties on payment of usual charges within three weeks. Petition allowed.