

(2008) 01 AHC CK 0037
In the Allahabad High Court

Sundar Garden Welfare Association

APPELLANT

Vs

State of U.P. and U.P. State Industrial Development
Corporation Limited

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Constitution of India, 1950 — Article 300A
Land Acquisition Act, 1894 — Section 11, 16, 17, 4, 5A

Citation : (2008) 105 RD 62 : (2008) 2 UPLBEC 1928

Hon'ble Judges : V.C. Misra, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.C. Misra, J.—The present writ petition has been filed by the petitioners-Sundar Garden Welfare Association formed by the residents of the society. The petitioner No. 2 is the Secretary of the society who has been authorized by the residents of the colony to prefer the present writ petition vide resolution dated 28.11.2004 of the association and authorized the petitioner No. 2 to sign and contest the petition on their behalf challenging the notification issued under Sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as the Act) in respect with the plots purchased and owned by the petitioners mentioned in para 5 of the writ petition and seeking a writ order or direction in the nature of certiorari for quashing the said gazette notification along with a writ of mandamus commanding the respondents not to dispossess the petitioners by demolition of the houses situate on the aforesaid plots have been acquired by the State Government.

2. The facts of the case of the petitioners in brief are that the petitioners-association purchased the aforesaid bhumidhar land free from all encumbrances bearing plot Nos. 496, 497, 544, 501, 500, 578, 502, 504, 505, 498, 536, 538, 539 and 541 distributed amongst its members through registered sale deeds. After purchasing the aforesaid plots a colony was developed by the petitioners in

the name of Sundar Garden Colony and after developing the said land the houses were constructed thereupon by the members of the society. The said houses are being occupied by the members of the society. The State Government acquired a large area of land under the Act. The members of the petitioners society had filed Case No. 2 of 2001 before the Assistant Collector u/s 143 of U.P.Z.A. & L.R. Act for being declared as abadi land. Since the petitioners, as per the report of the Tehsildar, were registered as bhumidhar with transferable rights over the said land on 2.1.2001, the Tehsildar, Ghaziabad recommended for declaration of the said land as abadi and the same was being used as tenure holders for residential purposes and was not being used for Agriculture, Horticulture and Animal Husbandry. The Sub Divisional Magistrate, Loni, Ghaziabad vide its order dated 19.3.2001 declared the said land as abadi.

3. On coming to know of some acquisition proceedings to be initiated by the respondents-State Government in respect with the said land, they filed their objections before the State Government and a survey was made by the concerned authorities of the State Government. As per survey report there exists several residential houses of the members of the society on the aforesaid plots. However, the State Government vide gazette notification dated 16.4.2003 acquired the aforesaid land-which was published in an unknown newspaper, namely, "Dainik Pralayankar". A gazette notification dated 16.4.2003 u/s 17(1) of the Act was issued by the State Government to the effect that the provisions of Section 17(1) of the Act are applicable to the said land inasmuch as the same was urgently required for the Planned Industrial Development in District Ghaziabad and it was necessary to ward off the delay likely to be caused by an inquiry and hearing of objections from the owners of the land u/s 5-A of the Act with further directions u/s 16(4) of the Act making the provisions of Section 5-A of the Act inapplicable. Thus, the due procedure as provided u/s 4 of the Act was not followed as the notification was not published in two local newspapers having wide circulation neither local publication was made in original language nor the notice was pasted on conspicuous place, even Munadi was not made. This notification was followed by a gazette notification dated 30.6.2003 u/s 6 of the Act being satisfied that the land mentioned in the schedule was needed for the purpose of Industrial Development of Ghaziabad through Uttar Pradesh State Industrial Development Corporation, Kanpur (hereinafter referred to as the Corporation) and directed the Collector, Ghaziabad to take out the order of acquisition for the said land u/s 7 of the Act and that there being urgency to take possession of the land u/s 9(1) of the Act and to pass an award u/s 11 of the Act.

4. The members of the society on gaining knowledge of such acquisition filed a representation dated 12.5.2004 before the State Government that the aforesaid plots of the petitioners are abadi land declared vide order dated 19.3.2001 by the revenue authorities over which their houses are standing and the same may be excluded from the acquisition. Since no action was taken by the State Government on the representation and the authorities were in hot haste to demolish the construction standing upon the land, in question, the petitioners

filed the present writ petition and prayed for an interlocutory order restraining the respondents from dispossessing and demolishing the constructions made upon the said land and obtained an interim order dated 20.12.2004.

5. Development in District Ghaziabad and it was necessary to ward off the delay likely to be caused by an inquiry and hearing of objections from the owners of the land u/s 5-A of the Act with further directions u/s 16(4) of the Act making the provisions of Section 5-A of the Act inapplicable. Thus, the due procedure as provided u/s 4 of the Act was not followed as the notification was not published in two local newspapers having wide circulation neither local publication was made in original language nor the notice was pasted on conspicuous place, even Munadi was not made. This notification was followed by a gazette notification dated 30.6.2003 u/s 6 of the Act being satisfied that the land mentioned in the schedule was needed for the purpose of Industrial Development of Ghaziabad through Uttar Pradesh State Industrial Development Corporation, Kanpur (hereinafter referred to as the Corporation) and directed the Collector, Ghaziabad to take out the order of acquisition for the said land u/s 7 of the Act and that there being urgency to take possession of the land u/s 9(1) of the Act and to pass an award u/s 11 of the Act.

6. The members of the society on gaining knowledge of such acquisition filed a representation dated 12.5.2004 before the State Government that the aforesaid plots of the petitioners are abadi land declared vide order dated 19.3.2001 by the revenue authorities over which their houses are standing and the same may be excluded from the acquisition. Since no action was taken by the State Government on the representation and the authorities were in hot haste to demolish the construction standing upon the land, in question, the petitioners filed the present writ petition and prayed for an interlocutory order restraining the respondents from dispossessing and demolishing the constructions made upon the said land and obtained an interim order dated 20.12.2004.

7. The main ground raised in this petition is that the land in question was recorded as abadi land in the revenue records and was being used as such and was not being used as agricultural land and thus could not be acquired, as per the decision given by the Hon'ble Apex Court in the case of Ved Prakash and Others Vs. Ministry of Industry, Lucknow and Another, Learned Counsel for the petitioners has submitted that the notification issued under Sections 4 and 6 of the Act were null and void as mandatory requirements regarding gazette and publication etc. prescribed under the Act had not been followed and complied with. More so, there was no necessity of applying the provisions of urgency under u/s 17(4) of the Act dispensing with the provisions of Section 5-A of the Act preventing the petitioners from being heard of their objections and holding of an inquiry.

8. In the counter affidavit filed on behalf of the State-respondents No. 1, 2, & 3 it has been stated that the plots of land in question have been acquired under the provisions of U.P.Z.A. & L.R. Act and the owners of the aforesaid land have

obtained money and the affected persons have not challenged the Government Notification dated 30.6.2003 thereafter the agreement has come to an end which has not been challenged, and that the petitioners have not been shown as the owners of the land and as such the writ petition is liable to be dismissed with costs. It has also been submitted that the State Government published a news item in two daily-newspapers, viz. "Dainik Jagran" on 23.5.2003 and "Dainik Pralayankar" on 25.5.2003 and a beat of drum was also made and therefore, after expiry of the agreement the petitioners did not continue as owner of the Sundar Garden and since their names do not find place in the revenue record, it seems doubtful that the petitioners have purchased the land for construction of the colony. It is also stated that the General Manager of the Corporation made a proposal for requirement of land for the development of industrial area. On 3.6.1997 about 83.9 acres of land was acquired but considering the gravity of the grievance of the villagers 12 bighas and odd land was left for the interests of the villagers and according to the Nigam proposal for amended acquisition was made. It has also been stated that in the order dated 19.3.2001 passed by Sub Divisional Magistrate with reference to the report of the Tehsildar dated 2.2.2001 wherein it has been mentioned over the vacant land in which plotting had been done for abadi, roads are being constructed between the plots 4 and 5 and consequently, acquiring body entered into some agreement with the land holders which was done in accordance with Section 11(2) of the Act and after the decision the land owners have been paid their compensation. It has been further stated that the petitioners (Sundar Garden Welfare Association) had entered into an agreement with the land owners" through power of attorney and the sale deeds were executed after the expiry of the period of agreement and as such the petitioners are left with no right, title or interest over the land and as the land in question is registered in the names of land holders in the revenue records therefore, after settlement with the acquiring body the compensation has been paid to them.

9. It has been contended that the counter and supplementary counter affidavits have been filed on behalf of respondent No. 4-the requiring body. In para 5 of the counter affidavit filed on behalf of respondent No. 4 it has been stated that a proposal was prepared to acquire the land in question and the same was sent to the Collector, Ghaziabad. It has also been contended that the land was being used for agricultural purposes only and was totally vacant.

10. Sri V.K. Singh learned Senior Advocate appearing for the respondent No. 4 has raised a preliminary objection regarding maintainability of the writ petition on two counts; Firstly, no document is annexed for establishing the averments made in the paragraphs 3 and 4 of the writ petition by the association or person for enforcement of rights of the members. Neither the rules nor the regulation of the society are available to authorise the association to take legal proceedings on behalf of the members for giving binding effect on them of any order passed or to be passed by the Court in the proceeding even when the association is unregistered. Secondly, payment of single Court fee on behalf of the association

in such a situation cannot give in jurial relationship between the members of the association. More so, each of the member of the petitioners' association has a separate cause of action having purchased land under separate sale deed hence, single writ petition cannot be held to be maintainable. He has placed reliance upon a Full Bench decision of this Court in the case of Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, Learned Counsel for the respondents has further submitted that the interlocutory order passed by this Court on 12.1.2005 for giving particulars of the members has not been complied with. Therefore, the petitioners are not entitled to be heard in the present writ petition as the petitioners did not disclose the identity of the petitioners and the number of his members and the description of the land/plots and the constructions made thereupon. The bye laws of association has not been filed neither the resolution referred to in para 2 of the writ petition has been filed.

11. Having heard extensively the learned Counsel for the parties and perusal of the record including Full Bench decision of Umesh Chand (supra) in respect with the preliminary objections, we are of the view that the writ petition is very much maintainable on both the counts. Petitioner Nos. 1 and 2 have described in para 3 the details of the plots held by the members of the petitioners' association. No doubt, in para 17 a mention has been made to the effect that there are about 150 members in the petitioners' association but in the supplementary affidavit dated 16.12.2007 the figure of Members has been shown as 291 who had purchased the land in question through registered sale deeds, much before the initiation of land acquisition proceedings, and at that time the land was recorded as abadi. So far as the joinder or misjoinder of petitioners is concerned, the petitioners have a right to approach this Court in a single writ petition through the association as the right seeking relief against respondents arises from the same act of acquisition of land under the Land Acquisition Act and common questions of law arise and the petitioners are jointly interested in the same cause of action which has been settled by the Full Bench decision of our Court in Mal Singh's case reported in 1968 A.L.T. 210 Paras 24 and 28 followed by another Full Bench decision of this Court reported in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, in the case of Umesh Chand (supra) which reads as under:

36. Where a single writ petition by an association or by more than one person is maintainable as mentioned as above, only one set of court-fees would be payable. The levy of court-fee will not depend on the number of persons - who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nonetheless several persons joint in it, then the principle laid down in Mota Singh and Others Vs. State of Haryana and Others, will apply; namely, each petitioner will have to pay court-fee separately as if he had filed a separate writ petition. In such cases the writ petition may not, in the discretion of the Court, be dismissed outright. The defect of misjoinder of petitioners can be cured by requiring each petitioner to pay separate court-fees.

37. Our answer to the third question is that where a single writ petition by an association or by more than one person is maintainable, then a single set of court-fees would be payable. Else, each petitioner is liable to pay separate court-fees.

38. Our answer to fourth question is that the technical defect of misjoinder of petitioners can, in the discretion of the Court, be cured by each petitioner paying separate court-fees.

12. In the instant case, we are of the view that although the single writ petition on behalf of the association whether registered or unregistered can be held to be maintainable but in the present circumstances particularly in view of the interim order, separate Court fees are directed to be paid to cure the defects, if any. The 291 members of the association disclosed in Annexure-2 of the supplementary affidavit dated 16th December 2007 are directed to pay the Court fees separately for each of them to cure the technical defect of misjoinder of petitioners which the petitioners shall file the Court fees before the Registry and only under such circumstances the certified copy would be made available to the petitioners. The preliminary objections raised by the respondent No. 4 is accordingly disposed off.

13. On coming to the merits of the case the learned Counsel for the petitioners have submitted that the change of nature and purpose of the user vitiated the entire proceedings under the Land Acquisition Act. The objections u/s 5-A of the Act have not been disposed off by the State Government-the acquiring body on the ground of urgency and Section 17 of the Act cannot be invoked in the present circumstances since Section 5-A is depriving the legal rights of the petitioners under Article 300-A of the Constitution. The land was surveyed for the purpose of acquisition under the scheme of Planned Industrial Development as far back as in 1997 but the notification was issued u/s 4 of the Act only on 16.4.2003 in respect with the opinion of the State Government for acquiring the land followed by Section 6 of the Act. Both of them have independent scope but while proceedings u/s 17 of the Act depriving the petitioners of their legal rights to file objections and be heard followed by an inquiry while going through satisfaction of the urgency, two matters arise; first is urgency to dispossess and the second is urgency to deprive. Once there is no ground of urgency apparently found to be present then the burden lies on the State to show as to why the objections u/s 5-A of the Act are to be ignored. Secondly, there is non compliance of the consideration u/s 6 of the Act while declaring that the land is required for public purpose. The public purpose has to be specified which in the present case was for Planned Industrial Development required by respondent No. 1 the U.P. State Industrial Development Corporation. It has been urged that the abadi land being situated in Ghaziabad which is hub of the residential area and under the master plan the land is put for residential purposes only and not for industrial purpose. Thus, there being a change in user all these facts could be seen and looked into by the State Government at the time when the petitioners' objections u/s 5-A of the Act would have been considered. The industrial

development was the only public purpose for which the land was acquired and not the present scheme and no details had been furnished as is required u/s 4 notification. The impugned notification u/s 4 is thus assailed on the ground of vagueness in disclosing the scheme. Reliance has been placed on State of Tamil Nadu and another Vs. A. Mohammed Yousef and others, of the said decision it has been held that acquisition proceedings cannot be allowed to be reopened and land would be available to the owners. Reliance is placed on Registrar, Cooperative Societies Vs. Maharshi Dayanand Cooperative Housing Society and Others,

14. From the record it is found that the land is no more required for industrial purpose and has been made subject to Ghaziabad Development Authority and placed with the master plan of 2021 of Ghaziabad Development Authority which has already taken necessary steps for proceeding accordingly, as per minutes dated 20.6.2005, a translated copy in English of the said minutes has been placed by the learned Counsel for the petitioners before the Court, which is kept on record. A reference has been made to the booklet of Ghaziabad Master Plan 2020. Reliance has been placed on the decision in the cases of Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, Union of India (UOI) and Others Vs. Mukesh Hans etc., and 2006 (3) UPLBEC 2484 (Kashama Sahkari Avas Samiti Ltd. v. State of U.P.).

15. We are of the view that once the land was acquired and taken over by the requiring body for the purposes of industrial development, then it can be public or commercial and residential accommodation connected with the said industrial development but it cannot enter into simple housing development scheme performing the job of the development authorities and Nagar Nigams etc., which are authorized under the U.P. Urban Planning and Development Act, 1973 and other similar Acts.

16. We find that the notification dated 16.4.2003 u/s 4 read with Section 17 of the Act is unsustainable on the grounds of non consideration of correct facts, therefore the opinion of the Governor is not based upon cogent material and therefore non consideration of relevant facts such as abadi land, as per report of the revenue authorities etc., non compliance of due procedures, as envisaged u/s 4 of the Act, i.e. non publication of notification into two local newspapers having wide circulations in area. The contesting respondents alleged to have published in Dainik Pralayankar and Dainik Bhavi which have not been proved to be widely circulated and known in the area to make people aware of acquisition proceedings. In such circumstances, the notification dated 30.6.2003 u/s 6 read with Section 17 is wrong, bad, unsustainable and illegal and since the objections have not been considered, at all, the satisfaction of the Governor is void ab initio as the relevant factor regarding use of the land is as abadi and not for the agricultural use nor it was vacant land.

17. We further find that the UPSIDC is a company registered under the provisions of the Companies Act and the same is established for planned

industrial development as per Memorandum of Association, under which the UPSIDC is not empowered to develop an abadi for residential purpose, specially when the land, in question had already been declared abadi land subject to the provisions of Ghaziabad Development Authority. The land acquired was abadi in 2001 u/s 143 of the U.P.Z.A. and L.R. Act where as the initiation of the acquisition proceedings took place in April 2003, as such this fact is undisputed that the land in question was abadi land much before the initiation of the acquisition proceedings for which no further enquiry is needed, as the same is already on record and in view of the same, the land in question was not liable to be put under acquisition proceedings, as held in 1998 (6) SCC (Om Prakash v. State of U.P. and Ors.) and Ved Prakash and Others Vs. Ministry of Industry, Lucknow and Another,

18. Under the aforesaid facts and circumstances of the case, the Notification No. 203/77-4-203-116-Bha/99 Lucknow dated 16.4.2003 u/s 4 of the Land Acquisition Act (Annexure-8 to the writ petition) as far as it relates to plot Nos. 496, 497, 544, 501, 500, 578, 502, 504, 505, 498, 536, 538, 539 and 541 of village Harampur, Pargana Loni, Tehsil and District Ghaziabad and the Gazette Notification dated 30.6.2003 u/s 6 of the Land Acquisition Act, 1894 are hereby quashed.

19. With the above observations, the writ petition is allowed to the extent indicated above. No order is passed as to costs.

Amitava Lala, J.

20. I agree.