
(2002) 05 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 3945 of 1998

Sunit Kumar Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17, 17(3A), 4(1), 48

Citation : (2002) 3 AWC 2293 : (2002) 93 RD 623

Hon'ble Judges : R.P. Misra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : W.H. Khan, for the Appellant; Ranjeet Saxena and U.S. Awasthi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed praying that a writ, order or direction in the nature of mandamus be issued commanding the respondents to pay 80 per cent of the estimated amount of the compensation as provided by Section 17(3A) of Land Acquisition Act to the petitioner in respect of plot Nos. 947 and 1019/2 of village Makanpur, Tehsil Dadri, district NOIDA, along with 24 per cent interest from 13.11.1997 when the respondents took possession over the aforesaid plots. The writ petition was filed on 29.1.1998 and subsequently on 27.1.1999, an amendment application was moved wherein a prayer has been made to amend the body of the writ petition and also to add another relief that a writ, order or direction in the nature of mandamus be issued commanding the respondent Nos. 2 and 3 to make an award in respect of the petitioner's land u/s 11 of the Land Acquisition Act within the shortest possible time fixed by the Court.

2. The case set up in the writ petition is as follows. The petitioner was bhumidar in possession of plot No. 947 area 1 bigha 16 biswas and plot No. 1019/2 area 2 bighas 3 biswa situate in village Makanpur, Pargana Loni, Tehsil Dadri, district Ghaziabad. Originally plot No. 1019/2 had an area of 2 bigha 14 biswas but the

petitioner transferred 11 bisujas area of this plot by a power-of-attor-ney to Rameshwar Prasad. The Stale Government issued a notification u/s 4(1) read with Section 17 of the Land Acquisition Act (hereinafter referred to as the Act) on 20.6.1995 for acquiring large number of plots in village Makanpur for a public purpose, namely, for Planned Industrial Development in district Ghaziabad. This was followed by a notification u/s 6 of the Act. which was published on 27.7.1995. The notification mentioned that the Government was satisfied that the case was one of urgency and the provisions of Section 17(1) of the Act were applicable to the same. Accordingly, a direction was issued to the Collector of Ghaziabad to take possession of the land mentioned in the Schedule annexed to the notification after expiry of 15 days from the date of publication of the notice mentioned in Sub-section (1) of Section 9 though no award u/s 11 of the Act had been made. Thereafter, the notice u/s 9(1) of the Act was issued on 15.11.1995 and the possession over the aforesaid two plots was taken over on 13.11.1997. The petitioner approached respondent No. 2 several times but 80 per cent of the estimated amount of the compensation was not paid to him which he was entitled to get u/s 17(3A) of the Act.

3. The main counter-affidavit on behalf of the respondents has been filed by Jagdamba Prasad Gupta, Tehsildar, Gautam Budh Nagar and the case set up therein is that plot Nos. 947 and 1019/2 of village Makanpur, Pargana Loni, Tehsil Dadri district Ghaziabad, were previously recorded as property of Gram Samaj, Makanpur. The petitioner filed a suit u/s 229B of U. P. Z. A. and L. R. Act, in which he was declared as bhumidhar of the plots and thereafter his name was recorded over the said plots in the revenue records. The notification u/s 4(1) read with Section 17 of the Act was issued on 10.4.1995 for acquiring the land for a public purpose, namely, for Planned Industrial Development through NOIDA. After the publication of the notice in the locality and also the publication of the notification u/s 6 of the Act dated 27.7.1995, which was published in the Gazette on 8.8.1995, the petitioner executed a power-of-attorney with regard to 11 biswas area in favour of Lokesh Sharma son of Ram Bharose Sharma, to manage and transfer by way of sale the aforesaid plot. On the basis of the aforesaid power-of-attorney, later on Lokesh Sharma executed a sale deed of 11 biswas area of plot No. 1019/2 on 8.3.1996 in favour of Rameshwar Prasad. The aforesaid sale deed had been executed after the notification under Sections 4(1) and 6 of the Act had been published. A joint survey of plot Nos. 947 and 1019/2 was conducted by Vijay Kumar. Amin. Land Acquisition. NOIDA. Jagveer Singh, Lekhpal, NOIDA, Ram Singh. Kanoongo, NOIDA and Naib Tehsildar, NOIDA on 13.8.1997 and it was found that 51 persons had raised constructions over plot No. 947 and 23 persons had raised constructions over plot No. 1019/2 and were residing therein. A notice was issued on 11.11.1997 by Additional Collector (Land Acquisition), NOIDA to the petitioner directing him to remove the illegal encroachments from the acquired land. It was mentioned in the notice that the 80 per cent of the estimated amount of the compensation would be paid to him only after he had removed all the illegal encroachments from the aforesaid plots.

A survey was conducted on 14.7.2000 and 15.7.2000 and at the time more than 25 persons who have raised constructions over the disputed plot gave a written application to the A.D.M., Gautam Budh Nagar stating that they had purchased different portions of the land from Rohtash to whom a power-of-attorney had been executed by the petitioner Sunit Kumar Tyagi, on 4.3.1989 and in case they were dispossessed they would be completely ruined. They further prayed that no compensation should be paid to the petitioner Sunil Kumar Tyagi. A copy of this application has been filed as Annexure-5 and a copy of the report of the A.D.M. dated 18.7.2000, has been filed as Annexure-CA 6 to the counter-affidavit. In his report, the A.D.M. mentioned that the entire land is now covered by the constructions raised by many people and the same cannot be of any use to NOIDA. It is averred in para 8 of the counter-affidavit that the inspection report dated 13.8.1997, which is annexed along with Annexure-CA 4 shows that the construction had been raised in the entire area which had been acquired. A copy of the power-of-attorney executed by the petitioner Sunit Kumar Tyagi with regard to plot No. 947 in favour of Rohtash on 4.3.1989 by which he empowered the latter to do anything on the land, namely, to do plotting on the same and to sell it or to execute any agreement with regard to the same or to carry on any other kind of activity or to move applications and a copy of similar power of attorney executed by the petitioner in favour of Lokesh Sharma for plot No. 1019/2 on 22.2.1996, have been filed as Annexure-CA 7 to the counter-affidavit. It is averred in para 11 that when the symbolic possession of the aforesaid plots was delivered to NOIDA, the same was done with the construction standing over the same. In para 12, it is averred that the petitioner, had illegally transferred plot Nos. 947 and 1019/2 to various persons who are still in occupation of the same and. therefore, he is not entitled to any compensation. In compliance of an Interim order passed by the High Court on 7.10.1998, the petitioner has been paid compensation amounting to Rs. 8.94,700. In para 13, it is averred that the petitioner had not come to Court with clean hands and he had concealed the material fact that he had sold the plots in dispute to many persons and that he was not in possession over the land on, the date when a symbolic possession was delivered to NOIDA.

4. A counter-affidavit sworn by Narendra Pal Sharma, Naiyab Tehsildar, has also been filed by NOIDA, which has been impleaded as respondent No. 4 to the writ petition. The case set up therein is that after acquisition of the land compensation amount had been paid by NOIDA to District Magistrate, Ghaziabad, NOIDA was given possession on papers only on 13.11.1997, The petitioner had transferred the land in dispute to a large number of persons who had raised constructions. The NOIDA (respondent No. 4) had requested the District Magistrate, Ghaziabad on 6.1.1998 to remove the encroachment and unauthorised constructions existing over the plot in dispute and to deliver actual physical possession of the same to it. Even before possession had been delivered to NOIDA on paper, it had written to the District Magistrate to get the unauthorised constructions removed and to deliver it actual physical possession

of the land. It is further pleaded that the petitioner is not entitled to any compensation as he had sold the land to more than 53 persons who had raised constructions over the same. . .

5. In the rejoinder-affidavit filed by the petitioner, it has been stated that the possession was taken over by NOIDA on 13.11.1997 and the petitioner had not transferred land of plot Nos. 947 to 51 persons nor of plot Nos. 1019/2 to 23 persons as alleged in the counter-affidavit. It is also pleaded that few encroachments and Illegal constructions were created by the NOIDA authorities.

6. The record shows that before the admission of the writ petition, time for filing counter-affidavit was granted to the learned State counsel by the order dated 3.2.1998. The matter was heard on 7.10.1998 and till then, no counter-affidavit had been filed. On the said date, an order was passed directing the respondents to pay 80 per cent of the estimated amount of compensation to the petitioner within six weeks. In pursuance of this order, Rs. 8,94,700 was paid to the petitioner. The writ petition was admitted thereafter on 23.3.1999.

7. Sri W. H. Khan, learned counsel for the petitioner has submitted that the State Government has acquired the petitioner's plots by issuing notifications under Sections 4(1) and 6 of the Act and, therefore, the Collector is bound to make an award u/s 11 of the Act and to pay compensation to him. He has referred to Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, wherein it has been held that once a notification u/s 4 and a declaration u/s 6 of the Act is made, the Land Acquisition Officer has no power to decline to pass the award in respect of land(s) notified, either partially or wholly. It has been further held that unless and until the land(s) are denotified under and in accordance with Section 48, the Land Acquisition Officer has to pass an award with respect to the lands notified.

8. Learned standing counsel has, on the other hand, submitted that the requirement of law u/s 17(3A) of the Act is that before taking possession of any land, the Collector has to tender 80 per cent of the estimated amount of compensation to the persons interested and entitled thereto and it has to be paid to them unless prevented by some one or more of the contingencies mentioned in Section 31(2) of the Act. It has been urged that a large number of persons to whom the petitioner had transferred the land and who had raised construction over the same had lodged a serious protest that the compensation should not be paid to the petitioner as in the event they were dispossessed, they will be completely ruined. A copy of the application given by these persons to the District Magistrate, Gautam Budh Nagar, on 17.7.2000 has been filed as Annexure-C.A. 5 to the counter-affidavit. A copy of the report dated 18.7.2000 submitted by A.D.M. (Land Acquisition) to the Rajashav Adhikari, Noida, wherein, it is mentioned that applications had been given by those who have raised constructions and also a video cassette showing the constructions on the spot was made available to him has been filed as Annexure-CA 6 to the counter-affidavit of the State Government. It is, thus, urged that there is a dispute as to

the title to receive the compensation. Learned standing counsel has further submitted that if the possession is taken after demolition of the structures, the real sufferer would be those whose constructions would be demolished. The petitioner had already earned huge amount of money by transferring plots to these persons and in these circumstances, no compensation should be paid to the petitioner.

9. There is another aspect of the case to which attention of the Court has been drawn by the learned standing counsel. The petitioner claims that he had been declared as bhumidhar of the plots in dispute by virtue of a decree passed in his favour in a suit instituted by his father u/s 229B of U. P. Z. A, and L. R. Act. A Division Bench of this Court had passed order on 20.2.2001 and then on 12.3.2001 directing the petitioner to file a certified copy of the judgment and decree which had been passed in his favour. In pursuance of the said direction, the petitioner filed photo copy of the judgment of Second Appeal No. 242 (z) of 1982-83, Ram Kumar v. State, decided by the Board of Revenue, Allahabad, on 13.3.1989. Though the direction issued was for filing a certified copy of the judgment but only a photo copy of the judgment and decree have been filed. In the judgment, the name of the appellant is mentioned as Ram Kumar while in the decree, the name of the parties is mentioned as Sunit Kumar Tyagi v. State of U. P. The petitioner Sunit Kumar Tyagi claims to be son of Ram Kumar. The attention of the Court has also been drawn to certain facts appearing in the judgment which are as under.

10. The plaintiff Ram Kumar instituted a suit u/s 229B of U. P. Z. A, and L. R. Act against (1) State of U. P. and (2) Gaon Sabha, Makanpur, for a declaration that he is sirdar of the land in dispute. The plea taken in the plaint was that on account of his continuous adverse possession, he had matured his rights and had perfected his title u/s 210 of U. P. Z. A. and L. R. Act. The suit was contested by the defendants on the ground that the land was banjar land (barren and uncultivated land) which vests in the Gaon Sabha and the plaintiff had forcibly occupied the land for the first time in 1380/fasli and, as such, there was no question of his maturing rights by adverse possession u/s 210 of U. P. Z. A. and L. R. Act. The Additional Sub-Divisional Officer dismissed the suit on 29.12.1975. The appeal preferred by the plaintiff was also dismissed by the Additional Commissioner, Meerut on 10.6.1983. Thereafter, the plaintiff preferred a second appeal before the Board of Revenue which lies on same grounds as that of Section 100. C.P.C. This second appeal was allowed by the Board of Revenue on 13.3.1989. It appears from the Judgment that the name of the plaintiff was not found recorded in the khasra continuously and it was urged by the D.G.C. (Revenue) that no right could accrue in favour of the plaintiff. In the judgment, there is an observation to the following effect :

".....The omission of the plaintiffs name in the years between 1365 to 1375 fasli seems to be either clerical or Intentional and as such, omission cannot cause any adverse effect on his title....."

11. It is not understandable as to how some one can mature rights by adverse possession if his name is not recorded continuously for a period of ten years in the revenue records. The judgment further shows that the learned D.G.C. (Revenue) had argued that on account of the amendments made in U. P. Z. A. and L. R. Act in 1976 and 1977, the period of limitation prescribed thereunder for filing a suit against Gaon Sabha had been removed altogether and, consequently, no rights could accrue on Gaon Sabha land by adverse possession. Reliance had also been placed on a decision rendered by the Allahabad High Court in *Chattar Singh v. Sahayak* 1979 RD 226, where this point had been examined threadbare and it was held that on account of amendments in the Act, no sirdari rights can accrue over Gaon Sabha land by adverse possession. However, the Board of Revenue brushed aside this argument and allowed the second appeal and decreed the suit and declared the plaintiff to be bhumidhar of the land in dispute. To say the least, the Board of Revenue could not have brushed aside an authority of High Court where this point had been specifically. The period of limitation for filing a suit by the Gaon Sabha has been amended several times and in such a manner that no one can mature rights over the Gaon Sabha land by adverse possession. The last amendment which was made by U. P. Land Laws (Amendment) Act, 1976, before expiry of the period then prescribed for filing of the suit, reads as follows :

For Section 210 of the Principal Act, the following section shall be substituted and be deemed always to have been substituted namely :

"210, If a suit for eviction from any land u/s 209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall :

(i) where the land forms part of the holding of a bhumidhar or sirdar, become a sirdar of such land, and the rights, title and interest of an asami if any, in such land shall be extinguished ;

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, become an asami thereof holding from year to year."

12. The result of this amendment was that the effect of non-filing of the suit by the Gaon Sabha as contemplated in Section 209 (1) (b) of the Act, which was provided in subsection (iii) of Section 210, was taken away. It has been held by several decisions of this Court that after the aforesaid amendment, a person in possession for 12 years over the property of a Gaon Sabha would not acquire sirdari rights. It has been further held that the "effect of amendment having been given retrospective effect means that a trespasser even from July, 1952, could not acquire sirdari rights on the land belonging to Gaon Sabha. See *Bhurey v. Board of Revenue* 1984 RD 294 and *Chattar Singh v. Sahayak Sanchalak, Chakbandi*, U. P. Lucknow and Ors. 1979 RD 226. It is therefore, obvious that the

petitioner could not have matured any kind of rights over the Gaon Sabha land. However, the Board of Revenue by a strange process of reasoning held that the petitioner had matured rights by adverse possession and had consequently become sirdar and thereafter bhumidhar of the land.

13. The averments made in the counter-affidavit filed on behalf of the State Government and also by NOIDA show that a notification dated 10.4.1995 u/s 4(1) of the Act was published in the Gazette on 20.5.1995. Public notice of the notification was given in the locality by beat of drums on 20.6.1995. Thereafter, a declaration u/s 6 of the Act was made on 27.7.1995, which was published in the Gazette on 8.8.1995. The petitioner had executed a registered power of attorney with regard to plot No. 947 in favour of Rohtash son of Nakli Singh on 4.3.1989 (Annexure-CA 7 to the counter-affidavit). By this, he gave right to Rohtash to do anything on the land including plotting, selling of plots, entering into agreement for sale, to deliver possession or to move application etc.. This power-of-attorney was executed more than six years before the notification u/s 4 was published in the Gazette. He executed another similar power-of-attorney with regard to plot No. 1019/2 in favour of Lokesh Kumar Sharma, son of Ram Bharose Sharma on 22.2.1996, who in turn executed a sale deed in favour of Rameshwar Prasad on 8.3.1996. It is specifically averred in para 6 of the counter-affidavit that on 13.8.1997, a joint survey of the aforesaid plots was made by Vijay Kumar, Am in, Land Acquisition, NOIDA, Jagveer Singh, Lekhpal, NOIDA, Ram Singh, Kanoongo, NOIDA and also by Naiyab Tehsildar, NOIDA and they found that 51 persons were in occupation of different portions of plot No. 947 (area varying from 50 sq. yds. to 450 sq. yds.) and had made construction over the same. Similarly, 23 different persons were in occupation of different portions of plot No. 1019/2 (area varying from 50 sq. yds. to 200 sq. yds.) and had made constructions over the same. A copy of this report dated 13.8.1997 has been filed as part of Annexure-4 to the counter-affidavit. Thereafter, a Kabja Parivartan Adhikar Patra (document authorising transfer of possession) was executed on 13.12.1997. When the A.D.M. (Land Acquisition) NOIDA and other officials went to the spot on 17.7.2000, the persons in possession of the plots gave application in writing that they had purchased small areas in plot Nos. 947 and 1019/2 from the power-of-attorney holder after paying heavy amount and had made constructions of their houses. They also submitted photo copies of the registered sale deed executed in their favour and also a video cassette showing the constructions standing on the spot. In the application, they prayed that no compensation should be paid to the petitioner Sunit Kumar Tyagi as he had already sold the land to them. A copy of this application has been filed as Annexure-CA 5 and a copy of the report of the Amin (Land Acquisition) has been filed as Annexure-CA. 6 to the counter-affidavit. It is noteworthy that the petitioner had executed power-of-attorney in favour of Rohtash on 4.3.1989 more than 6 years before the notification u/s 4(1) was published. Thereafter he executed sale deeds in favour of 51 persons of plots of different sizes and now 51 houses are standing over the same. The power-of-attorney with regard to

1019/2 was also executed within six months of the publication of the declaration u/s 6 of the Act. Houses belonging to 23 persons have been constructed over this plot. The document regarding delivery of possession dated 13.11.1997 has been described as Kabja Parivartan Adhikar Patra, which means an authority to transfer possession. It is clear that actual physical possession over the plot was never taken by the State or by the NOIDA. On the contrary, a document showing symbolic delivery of possession has been executed. The material filed with the counter-affidavit shows that the entire acquired land is covered by the constructions raised by many people and there is absolutely no possibility of the State or NOIDA getting physical possession over the land until the constructions standing over the same are demolished.

14. The petitioner can claim compensation for the acquired land provided he was owner of the same on the date of publication of notification u/s 4(1) of the Act. So far as plot No. 947 is concerned, the record shows that he had already executed a power-of-attorney with regard to the said plot in favour of Rohtash, son of Nakli Singh more than six years earlier on 4.3.1989, who in turn executed sale deeds in favour of large number of persons. Therefore, the petitioner cannot claim any right to get compensation for plot No. 947.

15. So far as plot No. 1019/2 is concerned, the petitioner executed power of attorney in favour of Lokesh Kumar Sharma on 22.2.1996, i.e., about six months after publication of declaration u/s 6 of the Act. Lokesh Kumar Sharma sold the plot to Rameshwar Prasad on 8.3.1996, who then sold different portions thereof to various people. The petitioner played a fraud by executing the power-of-attorney after the publication of the notification under Sections 4(1) and 6 of the Act whereby a large number of persons, who were ignorant of the aforesaid notifications, purchased different portions of the plot and raised construction over the same. The petitioner by his fraudulent conduct has frustrated the acquisition proceedings. The persons who purchased land of plot No. 1019/2 have been cheated by the fraudulent conduct of the petitioner. The reliefs claimed in the writ petition are that the writ petitioner should be paid 80 per cent of the estimated amount of compensation u/s 17(3A) of the Act and the respondents may be directed to make an award of the acquired land u/s 11 of the Act. The petitioner succeeded in getting an interim order whereunder he was paid Rs. 8.94,700 as interim compensation. He has also made money by transferring the same land to various persons. There can be no manner of doubt that the petitioner had played great fraud and he wants compensation for the same land which he has sold to various people. The proceedings under Article 226 of the Constitution are equitable in nature and they are not meant to aid and help a dishonest person. In our opinion, on account of the fraudulent act of the petitioner, the reliefs claimed by him in the writ petition cannot be granted and he is not entitled to any compensation.

16. In order to get possession of the acquired land, the authorities will have to demolish more than 74 houses, which is well-nigh impossible looking to the

ground realities. There should not be a stalemate in the matter. The document of possession Kabja Parivartan Adhikar Patra executed on 13.11.1997 merely gave an authority to NOIDA to take possession of the land. However, it is fully established that actual physical possession over the land has not been taken either by the State or by the NOIDA on account of the fact that about 74 houses are standing over the same which have been constructed by the transferees of the petitioner. So long as actual physical possession has not been taken, it is open to the State to withdraw from the acquisition of any land in view of Section 48 of the Act. The persons who have raised constructions should not be left under a constant fear and threat that their houses can be demolished and physical possession of the land may be, taken. Interest of justice requires that the respondents should take a quick decision whether they would pursue with the acquisition proceedings and would take possession of the land or they would like to withdraw from acquisition of the land by taking appropriate action in accordance with Section 48 of the Act. The respondents are accordingly directed to take a final decision expeditiously preferably within 4 months in the matter whether they would still proceed with the acquisition proceedings and take possession of the land by dispossessing those who had raised constructions over the plot in dispute or they would withdraw from the acquisition of the land. If a decision is taken to withdraw from acquisition of the land, appropriate steps shall be taken by the Government to issue a notification in that regard. If, however the respondents decide not to withdraw from the acquisition and take the acquisition proceedings to its logical end, the award for the acquired land u/s 11 of the Act shall be made expeditiously and in accordance with law without being Influenced in any manner by the interim order passed by this Court on 7.10.1998. The Collector/ Special Land Acquisition Officer would also adjudicate the question as to who is entitled to get the compensation.

17. Subject to the directions made above, the writ petition is dismissed.