
(2006) 10 AHC CK 0186
In the Allahabad High Court

U.P. Avas Evam Vikas Parishad

APPELLANT

Vs

Smt. Pushpa Devi and State of Uttar Pradesh

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Constitution of India, 1950 — Article 19, 300A
Contract Act, 1872 — Section 23
Land Acquisition Act, 1894 — Section 11, 19, 26, 4
Specific Relief Act, 1963 — Section 21
Transfer of Property Act, 1882 — Section 3, 6

Citation : (2006) 10 AHC CK 0186

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The above four first appeals were heard together and are being disposed of by a common judgment. The learned Counsel for the parties jointly agreed that a common question of law is involved in these appeals and they can be disposed of on the said common question. In order to appreciate the controversy involved in these four cases the facts of first appeal no. 281 of 1992 are being taken into account as the arguments were advanced by the learned Counsel for the parties in this appeal only and they submitted that the said arguments cover the remaining appeals also. The brief facts of the case are as follows:

2. It arises out of L.A. Case No. 121 of 1987 decided on 13th of November, 1991 along with other land acquisition cases filed by Amar Singh and two cases by Smt. Usha Singh being L.A. Case Nos. 115 of 1987, 120 of 1987 and 122 of 1987 respectively.

3. A parcel of land measuring 130.35 acres of village Mathura Bangar was, acquired by the State Government for the development of residential colony of U.P. State Avas Evam Vikas Parishad, Lucknow which included 35.01 acres of land

of village Mathura Bangar involved in these appeals. The compensation offered by the Special Land Acquisition Officer was enhanced by the Reference Court, namely, District Judge Mathura by the judgment under appeal. Although in the memo of appeal the enhancement of the compensation by the Reference Court has been challenged but during the course of the argument enhancement of the compensation was not pressed by Shri Shri Kant, Advocate, the learned Counsel for the appellant. It is, therefore, not necessary to notice in detail the facts concerning the market value of the land involved in these appeals on the date of relevant notification issued u/s 28 of U.P. Avas Evam Vikash Parishad Act equivalent to Section 4 of the Land Acquisition Act.

4. As many as sixteen grounds have been raised in the memo of appeal but the learned Counsel for the appellant did not advance any argument with reference thereto, rather he did not press any of the grounds raised in the memo of the appeal. However, he has raised a new ground/argument in these appeals that the reference application was not maintainable by the claimant respondents as they have purchased a mere right to sue from the original claimants before the award by the Special Land Acquisition Officer, as submitted by Shri Shri Kant, the learned Counsel for the appellant. The said argument was built up on the basis of a document paper No. 4C, which is a copy of the report submitted by the Special Land Acquisition Officer (Dwitiya) U.P. Avas Evam Vikash Parishad, Kamla Nagar, Agra, u/s 19 of the Land Acquisition Act. At the tail end of the said report under the column No. 10 headed as Special Particulars (Vishesh Vivaran) it has been mentioned that the original Bhoomidhars of the acquired plots after obtaining the permission from Settlement Officer Consolidation have sold 1/4th share in favour of the person who has sought the reference for a sum of Rs. 17, 000/-, by means of sale deed dated 16th of November, 1985 Right to receive compensation along with other rights has been sold for a sum of Rs. 17, 000/- in favour of the person who has sought reference. The contention of the learned Counsel for the appellant is that the said sale by the original land owners is not permissible in law in as much as a mere right to sue has been transferred and such transfer is impermissible u/s 6(e) of the Transfer of Property Act. Strong reliance particularly on paragraph 18 of the Agra Development Authority Vs. State of U.P. and Others, by the learned Counsel for the appellants.

5. The case was initially heard on 22nd of September, 2003 and the following order was passed:

Shri Sri Kant, the learned Counsel for the appellant at the very outset submitted that he is pressing the appeal on one point namely that the claimant respondents were not entitled to make any reference application before the Reference Court. Elaborating it, it was submitted that the claimant respondents purchased only a mere right to sue and not an actionable claim. Page 44 of the paper book was referred in support of his submission which is a copy of the report wherein under column 10 it is mentioned that the claimant respondents purchased 1/4th share from Ram Lal in the disputed property by means of the sale deed dated 16th of

November, 1995 for a sum of Rs. 17, 000/- only while under the award a sum of Rs. 87, 828/- has been awarded. Evidently the said point was not raised either by the Reference Court or in the memo of the appeal. Smt. Sunita Agrawal, the learned Counsel for the respondents submitted that she has been taken by surprise and needs time to examine the case from the said angle.

As jointly prayed list on 3rd of October, 2006.

6. It was taken up on 3rd of October 2006 on which date the arguments were concluded.

7. In contra, the learned Counsel for the respondents submitted that the aforesaid argument besides being meritless, cannot be permitted to be raised in the present appeal for the first time at the time of its hearing. In other words, the said objection was not raised either before the Special Land Acquisition Officer or before the Reference Court and therefore, should not be permitted to be at this far end of the litigation. On merits reliance has been placed upon the following three cases:

(i) Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others,

(ii) U.P. Avas Evam Vikash Parishad v. Smt Kanak and Ors. 1999 ALJ 153.

(iii) Dawson v. Great Northern and City Rail. Co. (1905) 1 K.B. 260 : (1904 -7) All England law Reports Reprint.

8. I have given careful consideration to the aforesaid submissions of the learned Counsel for the parties. At the very outset it may be noted that the appellants are disputing the legality and validity of the sale deed executed by the original land owner in their favour. The copy of the said sale deed which is a primary document has not been produced by the parties either before this Court or before the Reference Court, as admitted by the learned Counsel for the appellants. In absence of original or certified copy of the sale deed, the argument that only a mere right to sue was transferred under the said sale deed cannot be accepted or entertained. However, the learned Counsel for the appellant submitted that since the point raised by him goes to the very root of the matter and the sale deed is the basis of the respondents' claim, its nonfiling before the Reference Court or before this Court is inconsequential. It is difficult to accept the said argument. Without looking the document in question namely sale deed it is difficult to draw inference that merely a right to sue was transferred in favour of the claimant respondents, who are transferee from the original land owner.

9. The report of the Special Land Acquisition Officer submitted u/s 19 of the Land Acquisition Act cannot be read in evidence with reference to the nature of the right transferred under the sale deed in favour of the claimant respondents. The sale deed being the primary evidence should have been produced by the party who is interested to challenge its legality or validity.

10. Apart from the above, the problem can be looked from the another angle also. The U.P. Avas Evam Vikash Parishad, the present appellant, had the opportunity not to accept the sale deed in question at the initial stage of the litigation. The present appellant having accepted the said sale deed as genuine and a legal document transferring the rights, title and interest of the original land holder in favour of the claimant respondent, the appellant cannot be permitted to turn around and urge that such transaction is void and is liable to be ignored on the basis of report of its one of the officers. From the said report it is clear beyond doubt that a sum of Rs. 87, 828/- has been paid to the transferee namely claimant respondents in pursuance of the award, on the basis of the sale deed in question dated 16th of November 1985. A party cannot be permitted to take contradictory and different stand qua a document at different stages of litigation.

11. Even otherwise I do not find any merit in the submission of the learned Counsel that what was transferred was mere a right to sue, for the reasons more than one. No doubt the Division Bench judgment relied upon by the appellant in the case of *Agra Development Authority v. State of U.P.* (supra) supports the contention of the appellant, but on deeper probing the facts are distinguishable. In the said case, the compensation awarded by the Special Land Acquisition Officer under the Land Acquisition Act was duly paid to the owner who subsequently transferred their right after filing the reference application in favour of the respondents therein. Moreover as is apparent from paragraph 23 of the report a specific issue was framed to the effect "whether the transferees of the original claimants, are entitled to the compensation in place of the original claimant? If so to what extent?" Meaning thereby in the aforesaid ruling, the acquiring authority namely Agra Development Authority was disputing the transfer by the original claimants from its very inception on the ground that the and claimants have transferred their rights to sue only, after receiving the amount awarded by the Special Land Acquisition Officer. But in the case in hand, the facts are distinct. The transfer in question was made even before the award of sum by the Special Land Acquisition Officer. As demonstrated above, no such issue challenging the entitlement of the transferee (claimant respondents) was raised before the Reference Court. No such ground has been raised in the memo of the appeal.

12. The Division Bench has placed reliance upon a judgment of the Calcutta High Court in *Basanta Kumar Das Vs. Nagendra Nath Pal*, and quoted a passage from it. A bare perusal of the passage quoted from the judgment of the Calcutta High Court it is clear that assignment in that case was by a person who was out of the possession of the immovable property and was to the "effect that assignee would have right to sue without conveying any interest in the property, the assignee would not be entitled to maintain any suit for the recovery of the property.

13. The above quoted portion of the judgment of the Calcutta High Court makes the controversy involved in the present case distinguishably. Further reliance has

been placed on another judgment of the Calcutta High Court and of this Court wherein it has been held that a claim for unliquidated damages for breach of contract is not an actionable claim within the Section 3 of the Transfer of Property Act, so also an action for damages in tort is not assignable. Ultimately in paragraph - 18 of the report, which has been strongly relied upon it has been held as follows:

18. Thus, the above decisions show that a distinction has been drawn between a mere right to sue and an actionable claim. To give an example, if A files a suit against B claiming certain property or certain money then if A executes a deed in favour of C transferring all his right in respect of the litigation before the suit is decided such a conveyance would be invalid being hit by Section 6(e) of the Transfer of Property Act. However, if the suit of A against B is decreed, and after the decree, but before its execution. A transfers all his rights under the decree to C this is conveyance would not be hit by Section 6(e) vide *Dhanapala Chettiar Vs. Krishna Chettiar*, represented by his next friend *Subramania Chettiar and Others*, etc.

14. In the aforesaid judgment, as pointed out by Smt. Sunita Agrawal, the learned Counsel for the respondents, the earlier Division Bench judgment of this Court in the case of *U.P. Avas Evam Vikas Parishad v. Smt. Kanak and Ors.* 1999 ALJ 153 (supra) which in its turn has relied upon a judgment of the Apex Court in the case of *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, have not been noted or considered. It appears that the aforesaid two judgments which were otherwise binding on the Division bench were not brought to the notice of the Division Bench who has delivered the judgment in the case of *Agra Development Authority* (supra).

15. The Apex Court in the case of *Khorshed Shapoor v. Assistant Collector. Estate Duty* (supra), in para 10 has observed with reference to the provisions of the Estate Duty Act that,

...but the right to receive compensation at market value on the dates of the relevant notifications unquestionably accrued to the deceased which was property and it would be such property that would pass on the death of the deceased. That such right is property is well settled and if necessary reference may be made to a decision of this Court in *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa*, a case under the Wealth Tax Act, 1957 where it has been clearly held that the right to receive compensation in respect of the Zamindari estate which was acquired by the Government under the Bihar Land Reforms Act, 1950, even though the date of payment was deferred, was property and constituted an asset for the purpose of that taxing statute. In other words, since the lands were lost to the estate of the deceased before the relevant date, namely, the date of death, it would be the right to receive compensation under the Land Acquisition Act that will have to be evaluated under the Estate Duty Act. Counsel for the appellant did not dispute this position but he contended that no sooner the Collector (the Special Deputy Collector herein) made his awards

determining the amounts of compensation payable to the claimants u/s 11 of the Land Acquisition Act, the right to receive compensation must be regarded as having merged in the awards, the determination having been made by a statutory public official and what the claimants would be left with thereafter was merely a right to agitate the correctness of such determination and this right to claim further compensation being merely a right to litigate was no asset or property and further that such right would become asset or property only after the Civil Court finally adjudicated upon such claim. The High Court, while negating this contention, has held that the "right to receive extra compensation" was not a separate or different right independent of "the right to receive compensation".

16. It has observed thus:

The right to receive compensation for the lands acquired by the Government, at their market value at the date of the acquisition is one and indivisible right. There is no right to "receive compensation" and a separate right to receive "extra compensation". The only right is to receive the compensation for the lands acquired by the Government, which is the fair market value on the date of acquisition.

17. It has repelled the argument that there are two separate rights - One a right to receive compensation and other a right to receive extra or further compensation and held that under the Land Acquisition Act, the claimant has only one right, which is to receive compensation for the land at their market value on the date of relevant notification and it is this right which is quantified by the Collector u/s 11 and by the Civil Court u/s 26 of the Land Acquisition Act. The award made by the Collector u/s 11 is nothing more than an offer of the compensation made by the Government to the claimants whose property is acquired. It has relied upon an earlier judgment of the Privy Council in *Ezra v. Secretary of State for India* ILR (1905) Cal 605 which has been followed by the Apex Court subsequently in number of cases such as *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, and recently in the case of *Prakash Mehra Vs. K.L. Malhotra*, It is apt to quote the following observation of the Apex Court from the aforesaid decision of the *Khorshed Shapoor* (supra):

...The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in Civil Court. That is why when a claimant dies in a pending reference his heirs are brought on record and are permitted to prosecute the reference....

18. A Division Bench of this Court in *U.P. Avas Evam Vikash Parishad v. Canak* (supra) has considered the controversy involved in hand in depth and has made a survey of all decisions directly touching the point as also the relevant provisions of the Land Acquisition Act. It has repelled the contention of the acquiring body that such transfer is a mere right to sue. Its conclusion is

recorded in para 31 of the report which is reproduced below:

In view of the discussions made above we hold that the sale deeds whereby the respondent-claimants once have acquired property rights in the land acquired and the right to receive compensation, did not envisage transfer of mere right to sue, transfers of property in the acquired land are not of champertous nature, hit by the provisions of Section 6 of the Transfer of Property Act and Section 23 of the Indian Contract Act.

19. From the above discussion it is clear that right to receive compensation is not a mere right to sue but is an actionable claim which can be transferred, as held by the Supreme Court in the case of Khorshed Shapoor (*supra*).

20. Besides above right to property has been recognized as a constitutional right by Article 300-A of the Constitution of India inserted by the Constitution (44th Amendment) Act, 1978 w.e.f. 20th of June, 1979 wherein it has been provided for that no person shall be deprived of his property saved by the authority of law. This article also supports the view, as canvassed by the claimant respondents who are transferee from the original land owner. Such transferee shall stand in the shoes of the transferor to receive compensation with a right to file a reference application for enhancement of the compensation if the compensation awarded by the Land Acquisition Officer is not as per correct market value prevalent on the date of the relevant notifications.

21. The Apex Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, has held while interpreting word "property" with reference to Article 19(1) of the Constitution that it has been used in a wider connotation and includes money. The citizens have a right to hold money subject to law only.

22. In a slightly different context the Apex Court in *Jagdish Singh Vs. Natthu Singh*, has considered the Section 21 of the Specific Relief Act with reference to a situation when the subject matter of suit for specific performance of the contract to sell has been acquired by the State Government under the Land Acquisition Act. It has been held that under the Indian Law of Contract, for no fault of the plaintiff contract for performance becomes impossible; in this situation Section 21 enables award of compensation in lieu and substitution of specific performance. This decision to some extent also supports the contention of the respondents that right to receive compensation is not a mere right to sue but is right to hold property. The effect of the acquisition of the subject matter of the suit is that instead of getting immovable property, the plaintiff will get compensation in lieu and substitution of specific performance. In other words, the plaintiff gets the compensation in terms of money which itself is a property.

23. No other point was pressed by the learned Counsel for the appellant.

24. In view of the above discussion, the aforesaid contention raised by the appellants has no force and is liable to be rejected. There is no merit in the

appeal. All the appeals are dismissed with costs.