
(2009) 10 AHC CK 0037

In the Allahabad High Court

Case No : C.M.W.P. No's. 19218 and 19220 of 2000

U.P. Awas Evam Vikas Parishad and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 28A, 4, 4(1)

Limitation Act, 1963 — Section 5

Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1965 — Section 28, 29, 3, 30, 31

Citation : (2010) 5 AWC 4439 : (2009) 122 FLR 717

Hon'ble Judges : Sunil Ambwani, J; Ran Vijay Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Ambwani and Ran Vijay Singh, JJ.—Heard Sri Shree Kant, learned Counsel for the petitioner. Learned standing counsel appears for State respondents. Shri L. P. Singh appears for the private respondents.

2. The U.P. Awas Evam Vikas Parishad was established u/s 3 of the U.P. Awas Avam Vikas Parishad Adhiniyam, 1965 (in short the Adhiniyam) as a body corporate with a right to acquire, hold and dispose of property for the purposes of development of housing activity in the State of Uttar Pradesh. Section 28 of the Adhiniyam authorises the board to prepare a notice after framing a housing or improvement scheme with all its details to be published in the official Gazette inviting objections u/s 30 of the Adhiniyam. The scheme may be abandoned, modified and sanctioned u/s 31 and commences u/s 32 of the Adhiniyam. Section 55 of the Adhiniyam gives power to the board to acquire any land or any interest therein after following the procedure provided under Sections 28 to 37 of the Adhiniyam. Sections 28 and 32 are pari materia to Sections 4 and 6 of the Land Acquisition Act, 1894 (the Act). Section 55 provides that any land or any interest therein required by the board for any of the purposes of this Act may be required under the provisions of the Land Acquisition Act, 1894, as amended in

its application to Uttar Pradesh, which for this purpose shall be subject to the modifications specified in the Schedule to the Adhiniyam.

3. By these two writ petitions the U.P. Awas Evam Vikas Parishad (in short the Parishad) has prayed for setting aside the order of the Additional District Magistrate (Land Acquisition), Kanpur Nagar dated 21.12.1999 u/s 28A of the Land Acquisition Act. The Additional District Magistrate (Land Acquisition) had allowed the application u/s 28A of the Act dated 24.3.1992 filed by Shri Jagat Narain and others in Writ Petition No. 19218 of 2000, in Suit Nos. 18 and 20/1992-93 between Jagat Narain and Ors. v. U.P. Awas Evam Vikas Parishad and Ors. increasing the compensation to be paid to the claimants in accordance with the rates on which an Award dated 11.12.1991 was given by the Additional District Magistrate (IX), Kanpur Nagar in Case No. 212/70/83, Mohan Lal and Ors. v. State of U.P. u/s 18 of the Act.

4. All the claimants in the two cases separately claimed that their land was acquired vide notifications under Sections 4 and 6 published on 4.8.1973 and 5.9.1975, for the purposes of Electricity Board, Panki Thermal Power Station, Panki, Kanpur in respect of which the award was passed by the Additional District Magistrate (IX), Kanpur Nagar on 11.12.1991. The claimants did not file any reference u/s 18 and thus they are entitled to enhancement of the compensation in terms of the award dated 11.12.1991.

5. The Additional District Magistrate (Land Acquisition), Kanpur Nagar issued notices to the Parishad; Electricity Board, Panki Thermal Power Station Panki, Kanpur and Nagar Nigam, Kanpur Nagar. Several opportunities were given to their counsel to argue after they had filed their written statement. On 30.7.1999, the counsels for the board and electricity board sought adjournment. They were given a last opportunity to argue the matter on 14.12.1999. The counsel for the board did not appear on the date on the ground of his illness. All the counsels were therefore required to file their written arguments.

6. The Electricity Board, Panki Thermal Power Station Panki submitted written arguments stating that an award was published by the Special Land Acquisition Officer on 31.12.1975 and after which the possession of the land was transferred to the power station on 29.12.1975. The Thermal Power Station transferred some of the land u/s 38(1) of the Adhiniyam to the Parishad on 11.9.1989 and the possession was handed over. A part of plot No. 955 area 13 bis was is in possession of Nagar Nigam and is used for composed plant.

7. The counsel for the Parishad raised preliminary objections to the maintainability of the claim u/s 28A of the Act. He submitted that the reference is barred by limitation inasmuch as the land was acquired and the possession was taken in December, 1975. A part of the land was transferred to the Parishad u/s 28(1) of the Adhiniyam on 11.9.1989. The Parishad was not issued any notice and that the claim u/s 28A is in respect of an award given after seven years of the reference u/s 18 of the Act. It would increase the burden of payment

of interest by the Parishad. He relied upon a pending writ petition filed as *Vidhi Chandra v. State of U.P.* in which the question of applicability of Section 28A in such cases is still subjudice. The Additional District Magistrate (Land Acquisition) rejected the objections and held that the reference is maintainable in accordance with the judgment in *Mohan Lal v. State* and that since the case u/s 28A of the Land Acquisition Act has been instituted on 24.3.1992 within one year of the decision of the reference on 11.12.1991, the case is liable to be allowed. The compensation was increased on the same ratio as it was increased in the reference u/s 18 of the Land Acquisition Act. The claimants were made entitled to rates at Rs. 45 per square yard and 30% solatium and interest. Shri Jagat Narain was made entitled to Rs. 88,778.65 after adjusting the amount paid to him for an area of 1531.25 square yards, and Rs. 2,381.62 for 2 biswas land in plot No. 955 in possession of Nagar Nigam. Similarly Sudhakar son of Raj Narain was made entitled to Rs. 88,778.64 after adjusting the amount already paid to him for 1531.25 square yards in possession of the Parishad and Rs. 2,381.62 after adjusting the amount already paid to him for 2 biswas land in plot No. 955 in possession of Nagar Nigam.

8. Sri Shree Kant, learned Counsel for Parishad submits that respondent Nos. 5, 6 and 7 in Writ Petition No. 19218 of . 2000 and respondent Nos. 5 and 6 in Writ Petition No. 19200 of 2000 moved applications u/s 28A of the Land Acquisition Act on the basis of the order dated 11.12.1999, passed by IXth Additional District Judge, Kanpur Nagar in *Mohan Lal v. State of U.P.* in the year 1999. The application was barred by limitation prescribed u/s 28A of the Act, which provides that if the claimant has not made application to the Collector u/s 18 of the Act they may file for enhancement of the compensation and for redetermination on the basis of the award of the Court within three months from the date of order. The Parishad was not made party in the order dated 11.12.1991, passed by the IXth Additional District Judge, Kanpur Nagar in *Mohan Lal v. State of U.P.* and Ors. and that the order was not binding upon the Parishad. The plot No. 955 was acquired by Panki Thermal Power Station, Kanpur Nagar and was transferred to Mechanical Composed Plant. It has no concern with the Parishad. In the written statement of the Executive Engineer, Nirman Khand-17 Awass Evam Vikas Parishad, Kanpur filed in the proceedings u/s 28A, it was clearly stated that khasra No. 955 village Mohsinpur was acquired by the State Government for Panki Thermal Power Station and was later on handed over to Nagar Nigam. The remaining land was given to the Parishad for which the Parishad had paid the consideration to Panki Thermal Power Corporation. The Parishad had no concern with the proceedings for acquisition of the land. The application u/s 28A has been filed almost after 24 years of the acquisition of the land. It was further stated in the written statement that the provisions of Section 28A are not applicable to the land acquired for the Parishad under the U.P. Awass Evam Vikas Parishad Adhiniyam. The Parishad has developed and allotted the land and is not in a position to bear additional cost of the acquisition.

9. Sri Shree Kant has relied upon the judgment in *Nanak and Ors. v. State of U.P.*

and Ors. 1996 AWC 1237, in which a Division Bench of this Court, interpreting the provisions of Section 28A held in paragraph 12 as follows:

12. Thus, it is clear from the above, that the provision of Section 28A is applicable only in a case of "Little Indians" who because of their poverty and ignorance cannot afford to file the reference u/s 18 of the Act and if an application under the said provision is filed by a person of that class, the same cannot be decided unless the Court's award on the basis of which the said application has been filed does not attain the finality. However, the provisions of Section 28A are not intended to be windfall for every landholder whose land had been acquired under the same land acquisition proceedings.

10. In State of Andhra Pradesh and Another Vs. Marri Venkaiah and Others, the Supreme Court held that the limitation of three months in filing the application for re-determination of compensation u/s 28A of the Act begins to run from the date of award and not from the date of knowledge of the award. Section 28A of the Act is a beneficial provision. It must be availed within the stipulated time to avoid uncertainty and to give finality to award. Where the applications are filed after five years, the applicants either had opportunity of knowing the award or were expected to make efforts of knowing about it and hence a presumption of knowledge of the award will arise.

11. Shri L. P. Singh appearing for private respondents defends the order on the ground that the reference in Mohan Lal and another in Case No. 212/70/83 was decided by Additional District Judge (IX) Kanpur Nagar on 11.12.1991. The private respondents-claimants did not prefer any application u/s 18 of the Land Acquisition Act for enhancement of the compensation and thus their application u/s 28A on 24.3.1992 within three months of the enhancement of the compensation by the Additional District Judge (IX), Kanpur Nagar in respect of the same land was maintainable in law. The claimants or the persons interested in land covered by the same notification under Sub-section (1) of Section 4 and were also aggrieved by the award of the Collector. They are not concerned whether the land was thereafter transferred by the Panki Thermal Power Station to Parishad or Nagar Nigam. The claimants had arrayed all the three statutory bodies as party respondents to their applications u/s 28A of the Land Acquisition Act. Shri L.P. Singh further submits that the date of knowledge of application by the Parishad would not take away the benefit provided by Section 28A of the Act to the claimants. The entire share of the claimants in the land was acquired and thus they are entitled to the special benefit given by the Act.

12. Section 28A of the Land Acquisition Act provides as follows:

28A. Redetermination of the amount of compensation on the basis of the award of the Court.- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4 Sub-section (1) and who are also aggrieved by the award of the

Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

13. In this case the land was acquired by the State Government by issuing notifications under Sections 4 and 6 of the Act dated 4.8.1973 and 5.9.1975 respectively for Panki Thermal Power Station, U.P. Electricity Power Panki, Kanpur Nagar. The award was made by the Special Land Acquisition Officer on 31.12.1975. Shri Mohan Lal and another were not satisfied with the award and preferred a reference in L.A. Case No. 242 of 1983. The reference remained pending for nine years and was ultimately allowed by the Additional District Judge (IX), Kanpur Nagar on 11.12.1991 enhancing compensation of the land from Rs. 2,307.69 per bigha and solatium at 15%. The market value of trees and constructions was also assessed. The solatium was awarded at 15% and interest at 6% per annum. The award was enhanced in the reference to Rs. 45 per square yard, with a further entitlement of 30% solatium on the total compensation and the interest at 12% from 4.8.1973 to 27.12.1973, thereafter @ 9% per annum from 30.12.1973 to 29.12.1974 and thereafter @ 15% per annum from 30.12.1974 till the payment is made. The claimants respondents filed application u/s 28A of the Act on 24.3.1992 within three months of the enhancement of the compensation in the reference u/s 18. The application impleading the U.P. State Electricity Board; the U.P. Awas Evam Vikas Parishad and Jal Nigam, within the limitation provided u/s 28A of the Act. The notices were issued on 25.5.1999 to all the three statutory bodies. The date of knowledge by the acquiring body is not relevant for the purpose of Section 28A of the Act.

14. The application u/s 28A of the Act filed by Shri Jagat Narain and Indra Narain dated 24.3.1992 on which notices were issued by the Addl. District Magistrate (Land Acquisition), Kanpur on 25.5.1999 shows in para 10 (a) that Case No. 204/70 of 1987, Vidhi Chandra and Ors. v. State of U.P. was decided by VIth Addl. District Judge, Kanpur Nagar vide its judgment dated 31st March, 1991, thereby enhancing the market value of the land under reference to Rs. 45 per sq. yard. In sub-para (b) it is stated that case No. 242/70 of 1983, Mohan Lal and Ors. v. State of U.P. was decided by the IXth Addl. District Judge, Kanpur Nagar vide judgment dated 11th December, 1991 with Rs. 45 per sq. yard as compensation, 30% solatium and interest. The certified copy of the judgment and order was filed on record against which no appeal was pending. The application is dated 5 of 1999. There are no averments as to when the applicants

Shri Jagat Narain and Shri Indra Narain acquired knowledge of the enhancement of the compensation, and in the circumstances the first of the enhancement u/s 18 of the acquisition dated 31st March, 1991 has to be counted for limitation of 3 months u/s 28A of the Act in accordance with which the application u/s 28A was barely barred by limitation.

15. In Writ Petition No. 19218 of 2000, Shri Sudhakar Vajpayee, Prabhakar Vajpayee and Diwakar Vajpayee, all sons of Shri Raj Narain Vajpayee arrayed as respondent Nos. 5, 6 and 7 have also made similar averments in para 11 (a) regarding Case No. 204/70 of 1987, Vidhi Chandra and Ors. decided on 31st March, 1991 and in sub-para (b) regarding Case No. 242/70 of 1983, Mohan Lal and Ors. v. State of U.P. decided on 11th December, 1991. There is no averment as to when the applicants first came to know about the enhancement u/s 18. In para 13 it is stated that the application u/s 28A is within time, whereas the application bears 13.5.1999 as the date on which it was filed.

16. The application u/s 28A of the Act can be filed within three months from the date of the award of the Court u/s 18 of the Act. The application has to be filed before the Land Acquisition Officer and thus Limitation Act, 1963 does not apply to the proceedings. In Sakuru Vs. Tanaji, the Supreme Court held that the provisions of the Limitation Act, 1963 applies only to the proceedings in Courts and not to appeals and applications before bodies other than Courts. The application of Section 5 of the Limitation Act signifies a Court in stricto sensu and so in proceedings u/s 28A before the Collector the Limitation Act does not apply. Further, the application u/s 28A is not required to be accompanied by a certified copy of the award, so that the party may claim the time for obtaining the certified copy to be excluded. The application u/s 28A cannot be rejected on the ground that a certified copy of the order has not been produced. The applicant, therefore, will not get the benefit of the time in obtaining the copy of the award, as the basis for filing or condonation of delay or calculation of the period for filing the application.

17. In the present case, the application u/s 28A of the Act was clearly beyond the period of three months from the date of enhancement of the award at Rs. 45 per sq. yard by VIth Addl. District Judge, Kanpur Nagar by order dated 31st March, 1991 in Case No. 204/70 of 1987, Vidhi Chandra and Ors. v. State of U.P. The date of the application is not clear but the earliest date given in the notice issued by the Addl. District Magistrate (Land Acquisition), Kanpur Nagar is 24.3.1991 is also clearly beyond the period of three months.

18. Both the writ petitions are allowed. The impugned order dated 21.12.1999, passed by the Addl. Collector (Land Acquisition), Kanpur Nagar dated 21.12.1999 in Case No. 18 of 1992-93, Jagat Narain and Anr. v. U.P. Awas Vikas Parishad and Ors. in Writ Petition No. 19220 of 2000 and the order of the same date in Case No. 20 of 1992-93 between Sudhakar Vajpayee and 26 Ors. v. U.P. Awas Evam Vikas Parishad and Ors. in Writ Petition No. 19218 of 2000 are set aside. There shall be no order as to costs.