

(2009) 12 AHC CK 0297
In the Allahabad High Court

U.P. Awas Evam Vikas Parishad

APPELLANT

Vs

ADM (Land Acquisition) and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 254

Land Acquisition Act, 1894 — Section 11, 18, 19, 20, 21

Citation : (2010) 3 AWC 3027

Hon'ble Judges : Rajesh Chandra, J; P.C. Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.C. Verma, J.—Since common question of facts and law is involved in all these writ petitions, therefore with the consent of learned Counsel for the parties the matter is being decided by a common judgment and the facts of Civil Misc. Writ Petition No. 2157 of 1999 are being taken for judgement.

2. The facts of the present case as pleaded in the writ petition are that the State Government vide Notification dated 4.8.73 acquired land for the purposes of construction of Panki Thermal Power Station in village Mirzapur, district Kanpur Nagar. Thereafter the Special Land Acquisition Officer, Kanpur Nagar declared the award on 31.12.1975 and against that award no objection/appeal was filed by the respondent No. 3.

3. A Notification dated 8.2.1980 and 28.2.82 was issued by the petitioners for acquiring the land situated in village Masawanpur and village Mirzapur district Kanpur Nagar u/s 28 and 32 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 for the purpose of Housing Scheme. The petitioners acquired the land measuring 622.03 acre. The petitioners issued a notice dated 11.9.80 to the Panki Thermal Power Station, Kanpur Nagar u/s 38 of the Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam, 1965 by which 223 bighas and 6 biswas land was vested in the Board according to Rules and Regulations of the Parishad Adhiniyam.

4. Against the aforesaid award dated 31.12.1975 some tenure holders filed reference u/s 18 of the Land Acquisition Act and the same were decided by means of order dated 9.8.1984 and 28.8.1987 respectively by the learned Additional District Judge, Kanpur Nagar. Against that order appeal was preferred before this Court which is pending.

5. Thereafter one Mohan Lal filed the reference before the District Judge, Kanpur Nagar regarding the Khasra No. 955 situated at village Masawanpur and the same was decided on 11.12.1991 without petitioners being party to it. The petitioners have no concern with the Khasra No. 955 and the said Khasra was out of the scheme of the Parishad. However, Khasra No. 955 was included in the land which was acquired for the purposes of the Panki Thermal Power Station, Kanpur Nagar. After the decision dated 11.12.91 in the aforesaid reference of Mohan Lal the respondent No. 3 Haji Nabi Ullah moved an application u/s 28-A of the Land Acquisition Act for re-determination of the amount of compensation before the Addl. District Magistrate (Land Acquisition) Kanpur Nagar on 30.3.92. Thereupon the petitioners filed detailed objections specifically stating that the award dated 21.12.1975 was passed by the Special Land Acquisition Officer, Kanpur Nagar in favour of the respondent No. 3 on the basis of the exemplars of the sale deed and other relevant record and the compensation was accepted by the respondent No. 3 without any protest and against the aforesaid award the respondent No. 3 has not filed any objection for the enhancement of the compensation. The petitioners have also specifically stated in their objection that the application u/s 28-A of the Land Acquisition Act for re-determination of compensation was moved by the respondent No. 3 on the basis of the reference proceedings decided on dated 11.12.91 regarding Khasra No. 955 and the petitioners have no concern with the said land and thus the application u/s 28-A of the Land Acquisition Act moved by the respondent No. 3 was time barred and was not maintainable. The ADM Land Acquisition, Kanpur Nagar, however allowed the application u/s 28-A of the Land Acquisition Act. Hence, this writ petition.

6. Learned Counsel for the petitioner submitted that the impugned order passed by the respondent No. 1 dated 31.7.1998 (Annexure-1 to the writ petition) was ex parte order passed behind the back of the petitioners without giving opportunity of hearing to the petitioners and when this fact came into the notice of the petitioners on 26.8.98 they immediately on 28.8.98 itself moved an application before the respondent No. 1 for recalling the order dated 31.7.98 but the same was dismissed on 14.10.1998.

7. It is further pleaded by learned Counsel for the petitioners that Section 28-A of Land Acquisition Act 1894 was introduced in the year 1984 for the first time in the Land Acquisition Act and in the aforesaid section the limitation for moving the application u/s 28-A of the Land Acquisition Act before the court is three months from the date of award and the respondent No. 3 has moved the application u/s 28-A of the Land Acquisition Act after three months of the award and thus the application is time barred and is liable to be quashed.

8. In the counter affidavit it has been stated that application u/s 28-A of the Land Acquisition Act was filed within time, full opportunity was given to the petitioner and the application was decided after meeting out all the objections raised by the petitioner during the pendency of the said application before the respondent No. 1. It is wrong to allege that the said application was decided ex parte and any application for recalling the said order was warranted under the circumstances of the case. It is stated that the application u/s 28-A of the Land Acquisition Act can be filed by only those claimants who have not applied for Reference against the award made by the Collector and those Reference cases which were not made basis of application u/s 28-A of the Land Acquisition Act could not be taken into consideration at all.

9. It is further submitted that it is absolutely wrong to allege that the respondent No. 3 moved application on 11.6.92 rather the said application was moved on 30.3.92 and the said controversy was finally decided by judgment of this Court in Writ Petition No. 37295 of 1996 decided on 26.11.96. It is false to allege that the order dated 31.7.1998 was ex parte order or was passed behind the back of the petitioner or without giving any hearing to him rather the said order/judgement was passed in full knowledge of the petitioner and after hearing him with full and complete opportunity.

10. Heard Sri Shri Kant learned Counsel for the petitioner and Sri V.K.S. Chaudhary Senior learned Counsel for the respondents.

11. On the aforesaid pleaded facts the following questions emerges to be answered:

a) Whether Section 28-A as inserted by the Land Acquisition Amendment Act, 1984 applies to the Land Acquisitions made by Avas Vikas Evam Vikas Parishad under the Avas Vikas Parishad Adhiniyam?

12. Section 28-A was inserted by the Act No. 68 of 1984 for the following object and reasons

Considering that the right of reference to the civil court u/s 18 of the Act is not usually, taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court u/s 18 of the Act.

13. Section 28-A of the Act No. 68 of 1984 reads as under:

Section 28-A. 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.

2. The Collector shall, on receipt of an application under Sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and made an award determining the amount of compensation payable to the applicants.

3. Any person who has not accepted the award under Sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Section 18 - 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

14. From the perusal of Section 28-A of the Act alongwith the object and reasons under which the section was inserted it is absolutely clear that 28-A of the Act is a beneficial legislation in the matter of payment of compensation. This section gives an opportunity to those inarticulate poor peoples who are aggrieved parties and whose land is covered under the same Notification to seek re-determination of compensation based on final and last award made in respect of the same Notification u/s 18 of the Land Acquisition Act etc.

15. Section 55 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as an Adhiniyam) adopts the Land Acquisition Act, 1894 as has been amended by Act No. 68 of 1984 and by which Section 28-A has been inserted.

16. The question as to whether the adoption of L.A. Act by way of Section 55 is by way of reference or by way of incorporation has been referred to a Constitution Bench for its answer by Hon^{ble} the Supreme Court in case of Girnar Traders Vs. State of Maharashtra and Others, . In the same judgment it has been observed thus: "however, beneficial amendment of payment of compensation under the Amendment provisions of the Act was made applicable and owner of the land was held to be entitled to beneficial compensation. It appears that it was so held to save the Act from the voice of arbitrary and hostile discrimination."

17. We proceed to examine the provisions of Section 55 of the Adhiniyam which reads as under:

55. Power to acquire land - (1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. 1 of 189), as amended in its application to Uttar Pradesh which for this purpose shall be subject to the modifications specified in the Schedule to this Act.

(2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of land under the Land Acquisition Act, 1894 (Act No. 1 of 1894).

18. The clause "as amended in its application to Uttar Pradesh" used in Section 55 of U.P. Awas Evam Vikas Parishad Adhiniyam cannot be taken as synonym to the words "as amended by State of Uttar Pradesh". Use of the words "as amended in its application to Uttar Pradesh" suggest that whenever an amendment is made in the Land Acquisition Act either by the Central Legislature or the State Legislature, in its application to Uttar Pradesh, the amendment shall automatically apply to the acquisitions made under U.P. Awas Evam Vikas Parishad Adhiniyam. It aims at avoidance of discrimination so that the land owners whose land has been acquired by the State Government under the Land Acquisition Act and those whose land has been acquired under the Adhiniyam get equal treatment. That is to say, they may get compensation equally. Thus this clause seeks to achieve equality enshrined under Article 14 of the Constitution of India. It is settled principle of interpretation that the construction should be adopted which lean in favour of constitutionality of statute and not vice-versa. In absence of this clause, the adoption of Land Acquisition Act, 1894 by Section 55 after its amendment by Land Acquisition Amendment Act, 1984 will be violative of Article 14 of the Constitution of India.

19. In the case of U.P. Awas Evam Vikas Parishad Vs. Jainul Islam and Another, Hon"ble the Supreme Court held as under:

The principle laid down by this Court in The State of Madhya Pradesh Vs. G.C. Mandawar, that Article 14 cannot be invoked when the alleged discrimination is on account of laws made by two different legislatures has no application in the present case because under the L.A. Act as well as under the provisions of the Adhiniyam the acquisition is to be made by the same authority, viz., the State Government of Uttar Pradesh, and discrimination arises on account of action taken by the same authority.

20. In the same case in paragraph 31 of the report Hon"ble the Supreme Court has held as under:

we are, therefore, of the opinion that on a proper construction of Section 55 of the Adhiniyam it must be held that while incorporating the provisions of the L.A.

Act in the Adhiniyam the intention of the Legislature was that amendments in the L.A. Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the Adhiniyam. This means that the amendments introduced in the L.A. Act by the 1984 Act relating to determination and payment of compensation , viz., Section 23(1-A) and Section 23 (2) and 28 as amended by the 1984 Act would be applicable to acquisitions for the purposes of the Adhiniyam u/s 55 of the Adhiniyam.

21. In the same case in paragraph 32 of the report it has been held as under:

In view of the construction placed by us on the provisions of Section 55 of the Adhiniyam that the provisions of the L.A. Act, as amended by the 1984 Act relating to determination and payment of compensation, would be applicable to acquisition of land for the purposes of the Adhiniyam , it is not necessary to deal with the submission that if the provisions of the 1984 Act are held to be not applicable in the matter of acquisition of land for the purposes of the Adhiniyam the provisions of the L.A. Act, as applicable under the Adhiniyam, would be void on the ground of repugnance under Article 254 of the Constitution.

22. The second contention of learned Counsel for the petitioners is that the application is time barred as the same was filed beyond three months from the date of award. The learned Collector has recorded a finding of fact that the award dated 11.12.91 was the basis of moving of an application and the application was moved on 30.3.92 (in the Annexure-1 to the writ petition it has been wrongly typed as 30.1.92) and 34 days were taken in obtaining the certified copy of the award of the Addl.District Judge dated 11.12.9.

23. The proviso to 28-A of the Land Acquisition Act, 1894 provides 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." In view of the Proviso the application was within time.

24. Having regard to the aims and object of the Act read with the provisions of 28-A of the Act it is clear that the 28-A is to re-determine and payment of compensation in view of the law laid down by Hon"ble the Supreme Court in Jainul Islam"s case (supra) and in view of the construction of Clause "as amended in its application to Uttar Pradesh" we answer the question that 28-A of the Act will apply in the case of land acquisitions made under the U.P. Awas Evam Vikas Parishad Adhiniyam. Therefore, determination of compensation in the impugned cases u/s 28A of the Act in favour of the petitioners is valid.

25. For the reasons recorded above the writ petitions lacks merit and are dismissed accordingly.