

**(1996) 04 AHC CK 0065**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 703 of 1996

Vijai Gautam

APPELLANT

Vs

District Judge, Bulandshahr and Others

RESPONDENT

**Date of Decision :** 11-04-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 18, 23(IA), 4(1), 53

**Citation :** (1996) 04 AHC CK 0065

**Hon'ble Judges :** B.M.Lal, J and R.K.Mahajan, J

**Final Decision :** Disposed Of

## Judgement

R.K. Mahajan, J.

1. This interesting writ petition has been filed by the petitioner seeking a writ in the nature of mandamus directing the respondent No. 1 to decide the execution Case No. 201 of 1995, Vijai Gautam and Others. v. State of Uttar Pradesh and Others or in the alternative, the respondent Nos. 2 to 5 be, directed to pay compensation to the petitioner as awarded by the District Judge, Bulandshahr by his order dated 2121994.

2. The petitioner's grievance is that the land of plot No. 247 area 6911 bighas situate in village Haldona, Pergana. Dadari, Tahsil Sikandrabad, District Bulandshahr was acquired by the State of Uttar Pradesh under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as Act) for the purpose of industrial plan development of Greater NOIDA The District Judge, Bulandshahr passed an award on 2121994 awarding compensation at the rate of Rs. 39.50 per sq. yard contained in Annexure 1 to the writ petition.

3. The contention of the petitioner is that since he did not accept the award of the District Judge, Bulandshahr on the ground that he was entitled for more compensation, so he refused to accept the offer of the respondents 2 to 5 and consequently the amount of compensation due to the petitioner as awarded by order dated 2121994 has been withheld by the respondents 2 to 5. It is

contended by the petitioner that he filed an application for execution of the award dated 2121994 passed by the District Judge, Bulandshahr but no amount has been paid and in such situation, he seeks a mandamus, as mentioned above.

4. This Court summoned the responsible officers of the respondents on so many days and ultimately a supplementary affidavit was filed by Sri Rajesh Kumar Singhal Special Land Acquisition Officer, Bulandshahr. It is revealed from the facts that the notification under Section 4(i) of the Land Acquisition Act was issued on 1731989 and the possession of the land was taken on 31101990. The acquiring body, i.e. the Greater NOIDA Development Authority) deposited the estimated cost of the acquisition in P.L.A. account of the District Magistrate which was to be paid to the claimant as per the award given by the Collector, Bulandshahr under Section 11 of the Land Acquisition Act. It appears that the claimantpetitioner moved an application under Section IS of the Land Acquisition Act which was decided by the learned District Judge, Bulandshahr by his order dated 2121994. The compensation was enhanced to the tune of Rs. 6,15,711.03 and on the aforesaid amount the interest and solatium, an amount of Rs. 15,84,751.50 was paid to the petitioner on 1611996, after filing of the above writ petition and to obey the order of this Court by way of diverting the amount which way lying in the P.L.A. account. Later on, an application has been filed by the petitioner to withdraw the amount.

5. It is pointed out that the grievance of the petitioner has been met out but the petitioner made hue and cry why the amount has not been deposited soon. It cannot be immediately compelled to pay the money when liability of interest is there.

6. We would like to make the legal position clear in order to order to discourage such type of litigation in future. Firstly, the writ petition is not maintainable as there is alternative remedy under Section 53 of the Land Acquisition Act which provides as under;

"53. Code of Civil Procedure to apply to proceeding before Court. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 shall apply to ail proceedings before the Court under this Act."

7. It is well settled principle of law that where effective alternative remedy has been provided, the discretion of writ jurisdiction would not be exercised at all. We may also make it clear that if there is extreme inaction or apathy on the part of the Government not to pay the money and so many years have elapsed and the civil court is also helpless spectator, in that eventuality, in a rare or rarest cases, this Court may consider to issue writ of mandamus.

8. The next question arises as to whether the Government can file an appeal under Section 54 of the Act. The Government has remedy to go into appeal. The amount was lying in P.L.A account. Reference would be made to provisions of Section 31 of the Land Acquisition Act. Section 31 is being quoted as under:

"31. Payment of compensation or deposit of same in Court.(1) On making an award under S. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court which a reference under Section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

9. Section 34 of the Land Acquisition act provides as under :

"34. Payment of interest. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with such interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

10. The Legislature has made a provision for the payment of interest if the amount is not paid and possession is taken. It has taken care to safeguard the interests of the person whose land has been taken. The Legislature has also taken care of the affected party by way of the provision of subsection (1A) of Section 23 of the Act. The same is quoted with the advantage as under I,

(1A) In addition to the marketvalue of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period of commencing on and from the date of publication of the notification under Section 4, subsection (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

The acquiring authority has also been given a right to file an appeal. However, it will advisable to the Government to deposit the amount to avoid interest.

The land has been acquired in accordance with the law and there is full protection to the petitioner regarding the compensation and interest. In rare of rarest case, this Court can interfere but not byepassing the remedy available under Section 53 of the Land Acquisition Act. In case we byepass the executing court in execution of award, the entire work of the execution court would be diverted to High Court and there will be a flood of litigation.

11. In Billa Linga Reddy v. The Revenue Divisional Officer and Others., reported in AIR 1996 A.P. 3, it was held as under :

"The right to acquire a person's property under the Land Acquisition Act is coupled with a duty to pay compensation and it is implied in the said duty that the said compensation payable should be paid as expeditiously as possible. If there is either failure to pay compensation or if there is an abnormal delay in payment of compensation, there will be violation of fundamental right, which was hither to available under Article 31 and constitutional guarantee, which is now availably under Art. 300A and whenever such a violation is pointed out, a constitutional court, cannot be a silent spectator and has to step into issue a writ to set the things right and to remedy the situation so that the constitutional obligation of the Government is duly discharged. No fetters can be placed on the power of the High Court to invoke extraordinary jurisdiction under Art. 226. The mere fact that remedy is available by way of execution petition under the provisions of C. P. C., shall not prevent a constitutional court if a situation of this nature arises to exercise the powers of writ jurisdiction."

12. The writ petition is, in these terms, disposed of and we propose to award Rs. 10,000 as costs for filing frivolous applications as well as invoking the jurisdiction of this Court and also making the officer to travel from NOIDA to this place off and on when there was no inordinate delay in the payment and the execution petition was pending before the District Judge, Bulandshahr.