

(2011) 12 AHC CK 0054
In the Allahabad High Court
Case No : Writ C No. 73857 of 2011

Vijay Kumar Kasera and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2011) 12 AHC CK 0054

Hon'ble Judges : Sunita Agarwal, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri C.L. Pandey, learned Senior Advocate assisted by Sri Manoj Kumar for the petitioners, Sri Ashwani Kumar Misra appearing for respondent no. 2 and the learned Standing Counsel appearing for respondents no. 1 to 3.

2. By this petition, petitioners have prayed for following reliefs:

(i) issue a writ order or direction in the nature of mandamus commanding the respondents to give possession of the unacquired land of the petitioners belonging to khasra No.325/1 situated at P.O. Chakambarpur Surya Nagar, Ghaziabad 2-9-0 (2 bigha 9 biswa) out of which by notification dated 2.7.1963 1-7-10 (1 bigha-17 biswa-12 biswansi) land was acquired by the authorities.

(ii) issue any other order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case.

(iii) award costs of the petition to the petitioners.

3. Petitioners' case in the writ petition is that petitioners are owner of plot no. 325, out of which land notification was issued under sections 4 and 6 of the Land Acquisition Act. and only one bigha 17 biswa and 12 biswansi was acquired, he submits that rest of the land, namely, 11 Biswa 8 biswansi petitioners are owner and they are entitled to retain ownership of the said land whose possession have

illegally been taken by the respondents. It is submitted by the learned counsel for the petitioners that petitioners have submitted several representations but no one paid any heed to any of the representations.

4. Learned counsel for the respondents submits that petitioners had filed a civil suit being suit no. 555 of 1990 in the court of Civil Judge(Junior Judge), Ghaziabad praying for demolition of constructions and giving possession with regard to area 11 Biswa 8 Biswansi of plot no. 325 which suit was dismissed by the court vide judgment and order dated 29.1.1998. Learned counsel for the respondents submits that in view of the dismissal of the suit, present writ petition which has been filed substantially for the same relief can not be entertained.

5. Sri C.L. Pandey, learned Senior Advocate contended that since only area of 1 Bigha 17 biswa 12 biswansi has been acquired and rest of the land is owned by the petitioners they are entitled to retain possession and illegal possession and constructions by the Development Authority ought to have been removed.

6. Copy of the judgment of the civil court has been annexed as Annexure 7 to the writ petition. A perusal of the judgment indicates that petitioners had filed a suit with the same pleadings that land of only 1 bigha 17 biswa and 12 biswansi of plot no. 325 was acquired by notification dated 2.7.1963 and rest of the land i.e. 11 biswa 8 biswansi is owned by the petitioners. The suit no. 555 of 1990 was filed by the petitioners praying for permanent injunction as well as possession of the suit land after demolishing the constructions made by the Ghaziabad Development Authority. The suit was filed claiming relief with regard to plot no. 325 area 11 biswa 8 biswansi with the case that out of plot no.325 only 1 bigha 17 biswa 12 biswansi was acquired and area of 11 biswa 8 biswansi is left out. It was pleaded in the suit that on the unacquired portion of plot no. 325 which was owned by the plaintiff, the defendants have made constructions which may be demolished and plaintiff be handed back the possession. The civil court after elaborate judgment dismissed the suit. In the civil suit plaintiff came with the relief of possession of unacquired portion of plot no. 325 which plea was dismissed after contest.

7. In this writ petition, the petitioners have come up with substantially same relief praying for mandamus commanding the respondents to give possession of the unacquired land of khasra no. 325 to the petitioners.

8. Learned counsel for the petitioners contended that the civil court had also written the finding that out of plot no. 325 only 1 bigha 17 biswa 12 biswansi had been acquired. There is no dispute that acquisition in plot no. 325 was only of 1 bigha 17 biswa 12 biswansi. The suit was filed by the plaintiff claiming left out area of plot no. 325 i.e. 11 biswa 8 biswansi and the suit of plaintiff for possession of the aforesaid area has been dismissed after contest as observed above. When the civil suit filed by the plaintiff claiming substantially same relief has been dismissed, this writ petition praying for substantially same relief cannot

be entertained. The petitioners are not entitled for the relief as claimed in the writ petition.

9. The writ petition is dismissed.