

(2023) 11 AHC CK 0004

Allahabad High Court

Case No: Writ - C No. - 60108 Of 2008

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APPELLANT

Vs

Collector Sant Ravi Das Nagar And
Others

RESPONDENT

Date of Decision: Nov. 6, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226, 300A
- Land Acquisition Act, 1894 - Section 23, 23(1A)

Hon'ble Judges: Salil Kumar Rai, J; Arun Kumar Singh Deshwal, J

Bench: Division Bench

Advocate: N.D. Shukla

Final Decision: Allowed

Judgement

Salil Kumar Rai, J

The petitioner is the Bhumidhar of Plot No. 437 (area 0-3-0) and Plot No. 438 (area 0-7-5) situated in Village Lakhanpur alias Abhayapur, Tehsil Bhadohi, District Sant Ravidas Nagar. The total area of the aforesaid plots is 10 bis 5 dhur (0-10-5). The said fact is supported by the Khatauni of the plots annexed as Annexure No. 1 to the writ petition. In 1998, the State Public Works Department, Gyanpur, District Sant Ravidas Nagar, Bhadohi took possession of the aforesaid plots for construction of Morwa Bridge on Bhadohi - Varanasi Road without acquiring the plots and without following the procedure prescribed in the Land Acquisition Act, 1894 (hereinafter referred to as, 'Act, 1894') or in any other relevant statute. No compensation was paid to the petitioner for the aforesaid plots despite repeated representations by the petitioner to the State Government and its officers. The petitioner filed C.M. Writ Petition No. 17681 of 2002 in

this Court which was disposed of by order dated 29.4.2002 directing the Collector / District Magistrate, Sant Ravidas Nagar to decide the representation submitted by the petitioner for payment of compensation. In response to the order dated 29.4.2002, the Special Land Acquisition Officer, Sant Ravidas Nagar, District Bhadohi, vide order dated 11.8.2003, summoned a report from the Tehsildar, Sant Ravidas Nagar, Bhadohi and the Executive Engineer, State Public Works Department. A report dated 5.9.2003 was submitted before the Special Land Acquisition Officer noting that Morwa Bridge and road had been constructed by the Public Works Department over the whole of Plot Nos. 437 and 438. Consequently, the total area of Plot Nos. 437 and 438, of which the petitioner was the Bhumidhar, was in possession of the Public Works Department and the petitioner stood dispossessed from the plots. Subsequently, the Special Land Acquisition Officer vide his letter dated 16.9.2003 requested the Executive Engineer, State Public Works Department to pay compensation to the petitioner. An order dated 5.11.2003 was also passed by the Collector holding the Public Works Department responsible to pay compensation to the petitioner.

2. However, despite the aforesaid orders and letters written by different officers, the petitioner was not paid any compensation. Hence, the present petition was filed praying for a mandamus directing the respondent no. 3, i.e., the Executive Engineer, Public Works Department (P.W.D.) to pay compensation to the petitioner for the plots at the present market rate along with solatium, interest at the rate of 12% and additional interest and also for payment of special damages to the petitioner for not paying compensation to her till date.

3. On 28.11.2008, the following order was passed by the Court :-

“Despite the orders of this Court dated 20.11.2008 the learned standing counsel is not in a position to explain as to why compensation in terms of the order dated 5.11.2003 passed by the District Magistrate has not been paid to the petitioner who is a poor widow.

In the given circumstances we have no alternative but to direct the respondent No. 3 to be present before this Court along with the admitted amount of compensation to be paid to the petitioner and to explain why it has not been paid to her on the next date fixed.

List it on 12.12.2008.”

4. Subsequently, the case was again taken up on 12.12.2008 when the Executive Engineer, P.W.D. who was personally present in the Court pleaded his inability to pay compensation to the petitioner because there was no sanction by the State Government. The Court on 12.12.2008 passed the following order :-

"Heard learned counsel for the petitioner and Sri C.K. Rai, learned Standing Counsel for the State of U.P.

Petitioner's land was acquired without taking recourse to the provisions of Land Acquisition Act as a result where of petitioner approached to this court by filing writ petition wherein direction was issued pursuant to which District Magistrate, Sant Ravi Das Nagar (Bhadohi) has passed a detailed order on 5th November, 2003 wherein claim of petitioner was recorded and further direction was given to the Public Works Department to make payment of compensation to the petitioner to the extent of the land stated to have been occupied by the P.W.D.

When nothing was done petitioner filed this petition in which on 28.11.2008 following order was passed-

"Despite the orders of this Court dated 20.11.2008 the learned Standing Counsel is not in a position to explain as to why the compensation in terms of the order dated 5.11.2003 passed by the District Magistrate has not been paid to the petitioner who is a poor widow.

In the given circumstances we have no alternative but to direct the respondent No. 3 to be present before this Court along with the admitted amount of compensation to be paid to the petitioner and to explain why it has not been paid to her on the next date fixed."

On communication of this order Shri F. Bhan Rao, Executive Engineer, P.W.D. Gyan Pur, Sant Ravi Das Nagar (Bhadohi) is present before this court.

Sri C.K. Rai, learned Standing Counsel on the basis of the instructions so received has urged that demand was made from the State Government to release all the permitted dues way back in the year 2004 and copy of the said letter dated 31st June, 2004 has been placed before this court. There after there appears to have been done nothing in order to ensure payment to the petitioner. It is only after the order was passed on 28.11.2008 on the basis of the instructions so received from Sri Rao, Executive Engineer, P.W.D. who is present in the court learned Standing Counsel Sri Rai submits that it is not possible to make payment to the petitioner in view of there being no sanction by the State Government.

We are surprised to hear the statement being made before this court in as much as five years have passed after the order passed by the District Magistrate, i.e., dated 5th November, 2003. Petitioner who appears to be a poor widow is being harassed for the last five years by the authority.

In view of the aforesaid, we direct the petitioner to implead Principal Secretary, P.W.D. as respondent no. 4 in this petition during course of the day.

In the circumstances, indicated above, we have no alternative but to summon the respondent no. 4 before this court on 18th December, 2008 on which date the said respondent alongwith Executive Engineer, P.W.D. and the Collector, Sant Ravi Das Nagar (Bhadohi) shall be present in the court.

Let a copy of this order be provided to Sri C.K. Rai, learned Standing Counsel who has attended the matter free of charge, by tomorrow who is to ensure compliance of this order."

5. Subsequently, a counter affidavit was filed on behalf of the State respondents in which it has been stated that the Collector, Sant Ravidas Nagar has calculated the compensation amount as Rs.5,24,672/-. The said amount includes the market value of the plots calculated on the basis of circle rate of Rs.32,812/- per biswa, 30% solatium and 20% other charges. The total market value of the land was determined as Rs.3,36,328.12/-. A cheque of Rs.2,00,000/- was produced by the Special Land Acquisition Officer in the Court for payment to the petitioner. It was stated that sanction from the State Government was necessary for payment of balance amount as P.W.D. did not have sufficient amount to pay the balance. This Court after taking note of the aforesaid facts and the statement, passed an order dated 18.12.2008:-

"Heard learned counsel for the petitioner and Sri Chandra Kesh Rai, learned Standing Counsel.

An affidavit has been filed by Mr. F. Khan Rao, Executive Engineer, who is present in Court along with Sri Kapil Dev Principal Secretary, Public Works Department, Lucknow, and Smt. Dipika Duggal, District Collector.

It is unfortunate that the Secretary of the Public Works Department, is stating before the Court that Public Works Department did not have enough amount in its coffers to make the payment as proposed by the District Collector and a draft of only Rs.2 Lacs has been presented before the Court.

However, upon instructions from Sri Kapil Dev, Sri C.K. Rai states that the proposed entire amount shall be disbursed to the petitioner within 15 days from today.

List the matter on 9.1.2009.

In case the entire balance amount as proposed by the Collector is disbursed to the petitioner by the said date fixed, then in that event the said Officer need not be present in Court on the date fixed.

A draft of Rs.2 Lacs has been handed over to the learned counsel for the petitioner, who shall issue appropriate receipt to the learned Standing Counsel

for the same.”

6. Subsequently, again a counter affidavit dated 13.04.2009 was filed by the State respondents. In Paragraph 6 of the counter affidavit, it has been stated that Rs.1,28,000/- was paid to the petitioner on 7.1.2009. The said fact has been stated in paragraph no. 6 of the counter affidavit filed by the Standing Counsel.

7. When this petition was heard on 17.5.2023, the Standing Counsel handed over the calculation chart indicating as to how the amount of Rs.5,24,671.88/- was obtained. The amount of Rs.5,24,671.30/- includes the solatium and 20% other charges but does not include the interest stipulated under Section 23 (1-A) of the Act, 1894 and other charges which the petitioner would have been entitled if the plots had been acquired under the Act, 1894. The said calculation chart is a part of the record of the case. Till date, the petitioner has been paid only Rs.3,28,000/- which is less than even the market value of the plots calculated on the basis of circle rate and shown in the calculation chart.

8. It was argued by the counsel for the petitioner that admittedly, the petitioner was owner of the plots and the respondents have taken possession of the same without taking recourse to the provisions of Act, 1894. It was argued that the respondents have taken possession of the plots illegally and deprived the petitioner of her property without authority of law in violation of Article 300-A of the Constitution. It was argued by the counsel for the petitioner that she was entitled to compensation calculated on the market rate of the plots and in accordance with Section 23 of the Act, 1894 and also for damages for having been illegally deprived from possession of her plots and also the cost of the writ petition.

9. Contesting the claim of the petitioner, the Standing Counsel has argued that no proceedings for acquisition of the plots of the petitioner were taken and, therefore, the petitioner cannot be paid compensation in accordance with Section 23 of the Act, 1894 and the cost price of the land has already been paid to the petitioner in as much as Rs.2,00,000/- was paid to the petitioner on 18.12.2008 and subsequently, a cheque of Rs. 1,28,000/- (Cheque No.A00979811) dated 31.12.2008 has also been given to the petitioner. It was argued that in view of the aforesaid, the petitioner has already been paid the cost price of the land and the petition is, therefore, liable to be dismissed.

10. We have considered the submissions of the counsel for the parties and also perused the records.

11. It is the admitted case of the parties that the petitioner was the Bhumidhar with transferable rights of Plot Nos. 437 and 438 (total area 10 biswa 5 dhur). It is also apparent that the petitioner was dispossessed from the plots in 1988. It is also the admitted case of the State Government that no proceedings under any relevant statute were taken to acquire the plots of the petitioner and to pay compensation to her in

accordance with the said statute. It is also the admitted case of the State Government that constructions, including Morwa Bridge and Road, have been made over the plots by the P.W.D. and no area in the said plot is at present vacant. It is also apparent from the records that the petitioner has still not been paid even the market value of the plots as shown in the calculation chart.

12. Evidently, the petitioner has been deprived of her property rights without following the procedure prescribed in law and without paying any compensation to her. The issue before this Court is the remedy to which the petitioner is entitled.

13. Article 300-A of the Constitution provides that no person shall be deprived of his property save by authority of law. In *Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.* 2013 (1) SCC 353, the Supreme Court observed that 'even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen mostly certainly tantamounts to deprivation and such deprivation can take place only in accordance with "law" as the said word has specifically been used in Article 300-A of the Constitution.' The deprivation cannot be done by way of executive fiat or order or administrative caprice but can be only by resorting to procedure prescribed by the statute. It was further observed by the Supreme Court that right to property is not only a constitutional or a statutory right but also a human right and in a welfare State, the statutory authorities are bound to pay adequate compensation to persons whose property have been acquired by the appropriate Government. It was further observed by the Supreme Court that in a democratic polity, governed by Rule of Law, the State cannot be allowed to deprive a citizen of his property without authority of law.

14. The aforesaid view was also reiterated by the Supreme Court in its judgment reported in *Vidya Devi vs. State of Himachal Pradesh & Ors.* 2020 (2) SCC 569. In *Vidya Devi (supra)*, the Supreme Court held that the obligation of the State to pay compensation for dispossessing a citizen from his property can be inferred from Article 300-A of the Constitution of India. The relevant observations of the Supreme Court in *Vidya Devi (supra)* are reproduced below :-

"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right

under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, wherein this Court held that:

“6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.” (emphasis supplied)

12.4. In N. Padmamma v. S. Ramakrishna Reddy, this Court held that:

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.” (emphasis supplied)”

15. In light of the aforesaid judgments of the Supreme Court, it is held that the petitioner is entitled to compensation calculated in accordance with law and not only the cost price of the plots, i.e., its market value. The stand of the State respondents that the petitioner is not entitled to any compensation as she has already been paid the market value of the plots stands rejected. The stand of the State smacks of arbitrariness and is not a stand expected from a democratic State governed by Rule of Law but resembles the conduct of criminals and land mafia who illegally grab the land of ordinary citizens of this country and then coerce the citizen to accept the price fixed by the land grabber.

16. In 1988, when the State respondents took possession of the plots of the petitioner, the powers of the appropriate Government to acquire property of any citizen, the procedure to be followed while acquiring the property of any citizen, and the determination of compensation was regulated by the Land Acquisition Act, 1894. In case, the plots of the petitioner had been acquired in accordance with the procedure prescribed in the Act, 1894, the petitioner would have been entitled to compensation for the said plots calculated in accordance with Section 23 of the Act, 1894. The Act, 1894 has now been repealed and the power of the appropriate Government to acquire land and the modalities of payment of compensation are now regulated by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It would not be feasible, in the circumstances of the case, to direct the State respondents to pay compensation to the petitioner calculated in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as the State took possession of the land of the petitioner in 1988. The case of the petitioner has to be considered under the Act,

1894. In Delhi Airtech Services Pvt. Ltd. & Anr. vs. State of U.P. & Anr. (2022) SCC OnLine SC 1408, where the land loser had not been paid compensation and consequently the acquisition proceedings had lapsed, the Supreme Court directed that compensation payable to the land loser be calculated after determining the market value of the land on the date the award, regarding other lands acquired by the appropriate Government, had been passed and by applying the yardstick under the Act, 1894. The Supreme Court further observed that statutory benefits would be calculated from the date of the original notification. The observations of the Supreme Court in Paragraph 25 of the aforesaid judgment is reproduced below :-

“25. On weighing all aspects of the matter, we deem it appropriate that it will serve the ends of justice to direct the respondents to determine the market value insofar as the appellant’s land is concerned by reckoning the relevant date as 09.06.2008 (i.e. the date on which the award was ultimately passed), by applying the yardstick under Act, 1894. It is made clear that only the market value be determined as on that date but for awarding the statutory benefits, it shall be calculated from the date of the original notification since admittedly the appellant has been dispossessed on 04.02.2003 pursuant to the notification dated 17.04.2002. Further, from the date on which the fresh award is passed pursuant to this judgment, the appellant would get the cause of action for seeking reference if dissatisfied with the quantum of compensation awarded. It is made clear that the determination of compensation, in this case, shall not give rise to any right in favour of any other land loser whose land was acquired under the same notification, to seek for re-determination of compensation where the same has already attained finality.”

17. In the present case also, we consider it just and equitable to take a similar approach as adopted by the Supreme Court in Delhi Airtech Services (supra). In the present case, the State has already determined the market value of the land and has paid part of the market value, but other statutory benefits as provided under the Act, 1894 have not been paid to the petitioner. The petitioner is also entitled to the statutory benefits under the Act, 1894. The Collector, District Sant Ravidas Nagar, Bhadohi is directed to determine the compensation of the land of the petitioner on the basis of factors enumerated in Section 23 of the Land Acquisition Act, 1894 and on the market value of the plots as stated in the calculation chart. It is clarified that the statutory benefits payable to the petitioner shall be calculated from 1988, i.e., the date on which the petitioner was dispossessed from the plots. The statutory benefits include interest to the petitioner under Section 23(1)(A) of the Act, 1894.

18. The petitioner is also entitled to cost of the petition. The petitioner, who is a widow, has not only been harassed and forced by the State Authorities to unnecessarily approach this Court in its equitable jurisdiction under Article 226 of the Constitution of

India but during the proceedings, the approach of the State Authorities has been inhuman as would be evident from their stand that the petitioner was not entitled to any compensation because she had already been paid the market value of her plot. The cost of the writ petition is quantified as Rs.5,00,000/- (Five Lacs).

19. The cost of the writ petition shall be paid to the petitioner within one month from today. The compensation payable to the petitioner calculated in accordance with Section 23 of the Act, 1894 and the interest under Section 23(1-A) shall be computed within two months from today and the total amount quantified, including the balance of the market value determined by the Collector, shall be payable within one month from the date the same is computed. The due amount shall, in any case, be paid by 12th of February, 2024.

20. With the aforesaid directions and observations, the writ petition is allowed.

21. A copy of this order shall be sent to the Collector, District Sant Ravidas Nagar, Bhadohi by the Registrar (Compliance) within three days.