

(2011) 01 AHC CK 0121

Allahabad High Court

Case No: WRIT C. No. 3730 of 2011

Bharat Nagar Sahkari Grah
Nirman Samiti

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 21, 2011

Hon'ble Judges: Ferdino Inacio Rebello, C.J; Vineet Saran, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Ferdino Inacio Rebello, C.J.

Challenge to acquisition was the subject matter of an appeal before the Hon"ble Supreme Court in the matter of [Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others](#), The Hon"ble Supreme Court in para 48 observed as under:

48. But this is not the end. Even though the law is in favour of Petitioners but the equity stands in their way since in pursuance of these proceedings the Avas Vikas Parishad entered into possession and constructed housing colonies as there was no interim order in favour of land owners during pendency of the writ petitions in the High Court. Therefore, the individual interest of the land owners is faced with public interest of those large number of middle class persons who must have invested their life"s savings in purchasing these houses and the demolition of houses which are standing over the land and rendering its occupants homeless shall result in incalculable loss and injury. Larger social interest therefore requires this Court to mould the relief in such manner that justice may not suffer. No flaw has been found in the Notifications issued for acquisition of land u/s 4 or publication or declaration u/s 6 of the Act. The infirmity has arisen due to procedural delay. It is well established that delay destroys the remedy but not the right. The Avas Vikas Parishad could have acquired the land by issuing fresh Notification. Therefore the equities can be adjusted by directing that the compensation to the land owner shall be paid by assuming that fresh proceedings for acquisition were taken in the year in

which the declaration was published.

2. It is thus clear that all that the Petitioner is entitled to, is the compensation. Subsequently the judgment and the award was passed in the year 1997 and possession was also taken in the year 1997. In para 48 of the judgment of Hon"ble Supreme Court it is clearly held that possession of the land has been taken. The learned Counsel for the Petitioner disputes the same. Once a finding has been recorded by the Hon"ble Supreme Court, it is not open for this Court to go beyond that finding. If according to the Petitioner that is not a correct finding, it is for it to move the Hon"ble Supreme Court.

3. It is then submitted that negotiations have been going on with the Respondent No. 2 in the matter of giving back the land. It is not possible for this Court to issue any direction, considering the directions of the Hon"ble Supreme Court that all that the Petitioner is entitled to, is the compensation.

4. Apart from that the Hon"ble Supreme Court disposed of the matter in the year 1994. We are in the year 2011. If the Petitioner has not been paid compensation, it can take steps for that purpose. Apart from that, it is not possible for this Court to grant any other relief.

5. With the above observations, petition stands disposed of.