

(1987) 11 AHC CK 0042

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 8351 of 1986

Mangat Singh and  
Others

APPELLANT

Vs

State of Uttar Pradesh  
and Others

RESPONDENT

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Date of Decision: Nov. 9, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 17(3A)

Citation: AIR 1988 All 140 : (1988) 1 AWC 134 : (1988) RD 118

Hon'ble Judges: Palok Basu, J; A.N. Verma, J

Bench: Division Bench

Advocate: A.K. Banerji, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

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### Judgement

Amarendra Nath Verma, J.

The petitioners are claiming compensation u/s 17(3-A) of the Land Acquisition Act. The assertion is that in respect of the disputed plots the State Government issued notices under Sections 4 and 6 of the Land Acquisition Act. In the said notifications it was also declared that in view of the urgency of the matter the provisions of Section 5A are being dispensed with. It was further directed in accordance with Section 17(1) of the Act that because of the urgency the Collector may, on the expiry of fifteen days from the publication of the notice mentioned in Section 9(1), take possession of the land in dispute needed for the declared public purpose, even though no award had been made. The allegation is that after the aforesaid notices the Collector took possession from the petitioners and indeed some constructions were also started in pursuance thereof. The petitioners were, however, not paid the compensation which was mandatory u/s 17(3-A) of the Act.

2. A counter-affidavit has been filed refuting these allegations. The stand taken in the counter-affidavit is that the amount of compensation was in fact offered to the petitioners but the petitioners themselves did not collect the same on the ground that the same was inadequate. The result was that the whole process was delayed and no award could be made u/s 11 within a period of two years from the date of declaration. Consequently the entire proceedings for the acquisition of the land lapsed.

3. A rejoinder affidavit has been filed reiterating that possession was in fact taken from the petitioners and the name of respondent No. 4 was also mutated in the revenue records consequent thereto.

4. In order to appreciate the contention of the learned Counsel it will be necessary to extract Section 17(3-A) of the Act which reads as follows :

"17 (3-A). Before taking possession of any land under Sub-section ( 1) or Sub-section (2), the Collector shall, without prejudice to the provisions of Sub-section (3),--

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2),

and where the Collector is so prevented, the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as, they apply to the payment of compensation under that section."

5. It is apparent that this provision merely obliges the Government to pay the compensation specified there in before it took the possession. Where, therefore, the Government for some reason did not take possession of the land in spite of a declaration having been made u/s 6 of the Act. there will be no occasion for payment of compensation u/s 17(3-A).

6. This brings us to the basic issue, namely, whether possession was in fact taken by the Government so as to attract the liability contemplated under Sub-section (3A) of Section 17. In paragraph 8 of the counter-affidavit it has been asserted that the petitioners did not accept the amount offered to them u/s 17(3-A). Instead they started claiming a much higher compensation. It was because of their refusal to accept the payment that the proceedings lingered on and could not be finalized. The actual physical possession could not be taken. ! In the circumstances, nor could a settlement be reached, with the result that the matter had to be eventually dropped. This assertion has been repeated in various paragraphs of the counter-affidavit.

7. In view of the very categorical assertions made in the counter-affidavit it cannot be said that there is any breach of the obligation to pay compensation u/s 17(3-A). As mentioned above, this compensation is payable only before the Government

takes possession. Where as here, the stand taken by the Government is that it never took possession, the occasion to pay compensation u/s 17(3-A) cannot be said to have arisen.

8. In the rejoinder-affidavit it has been reiterated that possession was delivered. As found above, according to the version in the counter-affidavit actual physical possession was never taken by the State Government. (At any rate, the fact of possession having been delivered to the Government being seriously in dispute this Court cannot issue a writ of mandamus directing the respondents to pay compensation u/s 17(3-A) of the Act. It is settled law that where there is a serious dispute on an issue of fact a discretionary relief cannot be granted by this Court under Article 226 of the Constitution.

9. Learned counsel for the petitioner, however, submitted that the petitioners were in any case entitled to payment of compensation u/s 48 of the Act which provides for payment of compensation in a case where the Government withdraws from the acquisition of any land of which possession has not been taken. We, however, find that no foundation has been laid by the petitioners for "a claim u/s 48 on the ground that any damage has been suffered by them in consequence of the notices or proceedings already taken for acquisition of the land. Compensation contemplated u/s 48 would be dependent on various factors mentioned in Section 48, such as, withdrawal by the Government from the acquisition proceedings and damage suffered by the owner in consequence of the notices or proceedings taken under the Act. As no foundation has been laid by the petitioners for examining a claim based on Section 48 we are expressing no opinion in respect thereof. If, however, the petitioners lodge a claim before the appropriate authority based on Section 48 of the Act the concerned authority may examine the same and pass appropriate orders in respect thereto.

10. With the observations, the petition is dismissed.