

(2004) 02 AHC CK 0186

Allahabad High Court

Case No: C.M.W.P. No. 5702 of 2004

Nalini and Associates and
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 16, 2004

Acts Referred:

- Land Acquisition Act, 1894 - Section 3, 48

Citation: (2004) 3 AWC 2075

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: U.N. Sharma, for the Appellant; Anurag Khanna and S.C., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Katju and R.S. Tripathi, JJ.

Heard learned counsel for the parties.

2. The petitioners claim to be bhumidhar of the plots in question, which was stated to be agricultural land in the report of respondent No. 3, NOIDA. Land Acquisition proceedings were held under the Land Acquisition Act, and the petitioners" prayed for exempting the land on the ground that it was abadi. That representation was rejected by the impugned order dated 12.11.2003. Petitioners are challenging the impugned order dated 12.11.2003 passed by the Chief Executive Officer, NOIDA rejecting their representation. Copy of the impugned order dated 12.11.2003 is Annexure-1 to the writ petition.

3. Annexure-1 to the writ petition shows that the land was acquired on 18.3.1984. Now this petition has been filed in the year 2004 praying for a direction to the Chairman, Board of Revenue to decide the petitioners" representation.

4. In our opinion this is nothing but dilatory tactics. No doubt in some petitions such directions have been given. However, in Writ Petition No. 29031 of 2003, Amar Singh and Ors. v. State of U.P. and Ors., decided on 11.7.2003 a Division Bench of this Court held that it is obvious that directions in some decisions that petitioners' application for exemption be decided do not lay down any precedent, and hence are not binding on us. This Court should not embarrass the Government by issuing directions to it to consider and decide the application u/s 48, as such directions are often misconstrued and only lead to further delay in implementation of the acquisition scheme for planned development.

5. In actual practice experience shows that whenever such direction is given, and the State Government rejects the exemption application without giving reasons, another writ petition is usually immediately filed alleging that the order is arbitrary, as no reason has been given. On the other hand, if reasons are given by the State Government in rejecting the exemption application then again a writ petition is usually filed and the matter contested upto the Supreme Court alleging that the reasons were arbitrary or misconceived and once again the matter drags on for years on end, thus frustrating the scheme for several years.

6. This Court should exercise self restraint and not issue directions for deciding the exemption application. It is well settled, that abadi land can also be acquired under the Land Acquisition Act as abadi land is also "land" within the definition of Section 3(a) of the Act vide Amar Singh's case (supra). The entire matter has been considered in great detail in Amar Singh v. State (supra), and hence it is not necessary to reiterate the views expressed in that decision, as we fully agree with the same.

7. In [Om Pal Singh Vs. State of U.P. and Others](#), and in [Manveer Singh and Another Vs. State of U.P. and Others](#), the same view has been taken that abadi land can also be acquired. In our opinion to grant exemption from the acquisition proceedings is a purely administrative function and it is not for this Court to interfere in such administrative matters. Whether to grant exemption from acquisition proceedings or not would require consideration of various factors and that is for the administrative authorities to decide. In such matters the entire scheme of acquisition may be jeopardized or disrupted if the Court starts interfering in acquisition proceedings which are often meant to develop an area in a planned manner.

8. We may mention that when some land is acquired for planned development a scheme is originally prepared by the concerned authority providing for levelling the land, making internal roads, providing for sewerage, water supply, electricity, etc. All this gets disrupted when the Court starts issuing directions to consider exemption applications and in the meantime grants stay of dispossession.

9. No doubt in some decisions directions have been given by the Court to decide the petitioner's application for exemption but in our opinion a mere direction without laying down any principle of law is not a precedent. A case is an authority for the principle of law it lays down vide [Goodyear India Ltd., Gedore \(India\) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another](#), ; [Committee of Management, Lal Bahadur Shastri Smarak Degree College, Maharaiganj and another Vs. Gorakhpur University and another](#), ; [Union of India \(UOI\) and Others Vs. Dhanwanti Devi and Others](#), ; [Amar Nath Om Prakash and Others Vs. State of Punjab and Others](#), , etc. A mere direction in a judgment without laying down any principle of law is not a binding precedent vide [Delhi Administration \(Now N.C.T. of Delhi\) Vs. Manohar Lal](#), . It is only the statement of law laid down in a decision which is binding vide [Municipal Committee, Amritsar Vs. Hazara Singh](#), .

10. In view of the above we are of the opinion that directions issued by the Court in some decisions to decide the petitioner's application for exemption are not precedents and hence not binding on us. This Court should not embarrass the administrative authorities by issuing such directions.

11. Moreover, in this case the petitioner's exemption application has already been considered in great detail by NOIDA vide impugned order dated 12.11.2003. The findings recorded in the impugned order are that possession has been taken by NOIDA on 18.3.1994. The land in question is situate at the centre of Sector 48 which has been used by NOIDA for development schemes. The petitioner has nothing to do with the land in dispute. The petitioner is not an agriculturist in the village, and before acquisition the land was recorded in the revenue records in the name of the agriculturist. These are findings of fact and we cannot interfere with them in writ jurisdiction.

12. For the reasons given above, this writ petition is dismissed. Interim orders, if any, are vacated.