

(1995) 08 AHC CK 0151

Allahabad High Court

Case No: C.M.W.P. No. 12954 of 1995

New Okhla Industrial
Development Authority

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 21, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 18, 26, 31

Citation: (1996) AWC 430 Supp

Hon'ble Judges: R.B. Mehrotra, J

Bench: Single Bench

Advocate: Anil Kumar Yadav and Ashwani Kumar Misra, for the Appellant; S.C. and Pankaj Mithal, M.D. Singh and S.N. Singh, for the Respondent

Final Decision: Dismissed

Judgement

R.B. Mehrotra, J.

The present writ petition has been filed by new Okhla Industrial Development Authority, (for convenience hereinafter referred to as NOIDA), praying for issue of a writ of certiorari quashing the orders passed by the District Judge. Ghaziabad in various execution cases enforcing the orders of the District Judge passed in reference made u/s 18 of the Land Acquisition Act, 1894.

2. The contentions made in the writ petition are:

(1) That the land has been acquired by the State of Uttar Pradesh, as such the liability for paying the compensation is on the State of Uttar Pradesh and the Petitioner cannot be compelled to pay the compensation determined by the District Judge while deciding a reference u/s 18 of the Land Acquisition Act.

(2) That the order of attachment of the Petitioner's account, impugned in the writ petition, whereby the account of the Petitioner has been attached, has been passed without any opportunity or notice to the Petitioner, as such the order is arbitrary and is liable to be set aside on the said ground.

3. In the writ petition, notice was issued to the Respondents by this Court on 18.5.1995 and an interim order has also been passed in favour of the Petitioner staying the execution of the orders passed in Annexures "1" to "8" to the writ petition, referred to above, on the basis of a Division Bench decision of this Court in Civil Misc. Writ Petition No. 3544 of 1988 Ghaziabad Development Authority, Ghaziabad v. Addl. District Judge, Ghaziabad and Ors., decided on 17.5.1988. On notice being issued, Respondent Nos. 9 to 56 have put in appearance and have filed counter-affidavit.

4. I have heard learned Counsel for the Petitioner Sri A. K. Misra and the learned Counsel for the Respondents Sri M. D. Singh, Sri S. N. Singh and Sri Pankaj Mittal at length. The sheet-anchor of the Petitioner's case is a Division Bench decision, referred to earlier wherein this Court has held:

The matter in regard to the payment of compensation and its realisation is, in our opinion, one between the State Government through the Collector on the one hand and the persons who are held entitled to receive compensation on the other. The authority for which the land is acquired cannot hence be proceeded against in the execution of the award.

5. On the basis of the aforesaid decision, the contention of the Petitioner's counsel is that the Division Bench has held that the payment of compensation awarded to the persons whose land has been acquired is on the State Government and the Petitioner for whose benefit the land was acquired cannot be proceeded against for recovery of compensation. In this connection, the learned Counsel for the Petitioner has also submitted that in [U.P. Awas Evam Vikas Parishad Vs. Gyan Devi \(Dead\) by L.Rs. and another, etc. etc.](#), the Hon'ble Supreme Court has held that the authority in whose favour the land is being acquired under the Land Acquisition Act, is only a proper party and not a necessary party in a reference made u/s 18 of the Land Acquisition Act. The contention of the Petitioner's counsel is that since the Petitioner was not a necessary party, the order passed for payment of compensation cannot be enforced against the Petitioner and the Respondents are free to execute the aforesaid order against the State Government.

6. The Division Bench decision, referred to above and relied upon by the Petitioner, is clearly distinguishable in the context of the present case. In the aforesaid decision, a categorical finding has been recorded by the Division Bench that Ghaziabad Development Authority was not a party before the District Judge and "even the execution application was not directed against the Ghaziabad Development Authority." At another place in the judgment, the Division Bench again stressed on

the same point and noticed:

As mentioned above, the decree-holders had not even applied for execution against the Ghaziabad Development Authority.

7. In the present case, it is not in dispute that NOIDA was a party before the concerned District Judge deciding the land acquisition reference u/s 18 of the Land Acquisition Act. It is also not disputed that against the judgment given by the District Judge for enforcement of which the impugned order has been passed, the Petitioners have filed first appeals in this Court which are pending consideration. The Petitioners have not been able to obtain any interim order in the aforesaid first appeals. The Petitioner is already pursuing its equivalent to a decree passed by the civil court and which is executable in accordance with the procedure prescribed under Code of Civil Procedure. The Division Bench decision in the case of Ghaziabad Development Authority (supra) was mainly considering a case where Ghaziabad Development Authority was neither a judgment-debtor nor a party in the reference. in the aforesaid context, the court held that the compensation awarded by the District Judge cannot be recovered from the authority in whose favour acquisition has been made. I am of the view that the aforesaid Division Bench decision is not relevant in the context of the present case. However, with all respects, I say that a reference made u/s 31 of the Land Acquisition Act in the aforesaid Division Bench decision was not relevant in the context of enforcing an award passed u/s 26 of the Land Acquisition Act. The attention of the Division Bench was not drawn towards the provisions of Section 26 of the Land Acquisition Act. However, since I have taken a view that the aforesaid Division Bench decision is distinguishable on the facts of the present case, it is not necessary any further to deal with the aforesaid decision of the Division Bench. in the circumstances of the case, and particularly in view of the fact that the Petitioners have contested the reference proceedings made to the District Judge and have led evidence in the aforesaid proceedings and aggrieved by the award of the District Judge, the Petitioners having themselves filed first appeals in this Court, the Petitioners cannot be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

12. The Petitioners have also placed reliance on a decision of the Supreme Court in [Hissar Imporvement Trust Vs. Smt. Rukmani Devi and another](#), in support of their contention that the liability of payment of compensation is on the Collector and not on the body for whose benefit the land has been acquired. The said decision has no relevance to the controversy involved in the present case. in the said decision, the question was whether the Hissar Improvement Trust is liable to pay interest to the claimant on the ground that the claimant was not paid the compensation amount within the time. The court held that since the Hissar Improvement Trust had already deposited the entire amount of compensation with the Collector, the Improvement Trust cannot be saddled with the liability of the interest for not paying compensation to the claimant within the stipulated time. in the present case, no

such controversy is involved.

13. The Petitioners' counsel has also contended that Section 31 of the Act provides procedure to the contrary for recovering the compensation amount from the State Government. I have already held that Section 31 of the Act has no relevance in the case where the award has been given u/s 26 of the Act.

14. In *Ghanshyam Das Gupta and Ors. v. Anant Kumar Sinha* 1991 ALJ 958, the Hon'ble Supreme Court has held that a writ petition questioning the executability of a decree is not maintainable.

15. In view of the aforesaid decision, the Petitioners cannot be permitted to challenge the aforesaid execution proceedings, particularly in the circumstances of the case, by means of a writ petition in this Court.

16. So far as the second contention is concerned, this contention is both contrary to record and contrary to law. The order impugned in the writ petition itself shows that the Petitioners put in appearance before the executing court and asked for time to deposit the amount awarded by the District Judge in an award given u/s 26 of the Land Acquisition Act. The request of the Petitioners was rejected. This belies the Petitioners' contention that the order was passed without opportunity to them. The objection is also not sustainable on the ground that for executing a decree of a court, a judgment-debtor is not entitled to any further opportunity of show cause or notice. The second objection raised by the Petitioners' counsel is accordingly rejected.

17. For the reasons discussed above, the writ petition is dismissed with costs which I determine Rs. 500 to each of the contesting Respondents. The interim order passed by this Court is vacated forthwith.