

(1989) 05 AHC CK 0053

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No's. 9008 of 1983 and 15518 of 1984

Khacheru Singh

APPELLANT

Vs

Development Authority
and Others

RESPONDENT

Date of Decision: May 11, 1989

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 18, 3A, 4, 4(1), 6
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 21, 8(3)
- Uttar Pradesh Urban Planning and Development Act, 1973 - Section 14, 15, 17(1), 17(1A), 17(4)

Citation: (1989) 2 AWC 1376

Hon'ble Judges: R.K. Gulati, J; K.C. Agarwal, J

Bench: Division Bench

Advocate: Banarsi Das, for the Appellant; Virendra Singh and Rishi Ram and S.C., for the Respondent

Final Decision: Dismissed

Judgement

R.K. Gulati, J.

These two connected writ petitions under Article 226 of the Constitution have been filed by one Khacheru Singh.

2. The Petitioner asserts to be the owner of an Abadi plot bearing No. 32/2 in village Mubarakpur Mustkim (Naya Gaon) district Moradabad, having an area of 2.54 acres (10279.38 Sq. metres). Admittedly, the said plot came within the purview of Urban Land (Ceiling and Regulation) Act, 1976 (For short "the Ceiling Act"). An area of 8,279.38 Sq. metres was declared as surplus land out of the said plot as a result of a draft statement served on the Petitioner u/s 8(3) of the said Act. It is claimed that besides filing of objections to the draft statement, a declaration was also filed u/s 21 of the said Act, to the

effect that excess land would be used for constructions of 40 dwelling units for the members of the weaker section of society, and for permission for utilising that land in that connection. The Petitioner asserts that in November, 1978, in deference to the wishes of the members of the weaker section of his village, to which he also belongs, he formed a housing society known as "Bhimrao Ambedkar Housing Society", whose object was to construct dwelling units for the weaker section of the residents of Petitioner's village and 40 members were enrolled in accordance with Rule 11 framed u/s 21 of the Ceiling Act. It is claimed that in furtherance of G.O. No. 3680/A-49-11 U.P./76 dated 25-1-1976 containing directions regarding constructions contemplated u/s 21 of the Ceiling Act, a Controlling Authority was established with the Commissioner of the Division as its Chairman and on 19th April, 1979 the Petitioner submitted an application together with approved site plan by the Town Planner for constructing dwelling units as aforesaid before the Commissioner as Vice-Chairman of Controlling Authority. It is asserted that in the meeting of the Controlling Authority held on 27-9-1979 it was decided to form a Sub-Committee as mentioned in paragraph 9(b) of the Writ Petition for disposal of the declaration/application u/s 21 of the Act. It is alleged that before the matter could progress further, all the applications pending u/s 21 of the Ceiling Act, stood transferred to the Moradabad Development Authority (hereinafter referred to as the "M.D.A.") which had been created meanwhile for Moradabad under the provisions of the U.P. Urban Planning and Development Act, 1973. According to the Petitioner, pending his application u/s 21 and objections u/s 8(3) of the Ceiling Act the M.D.A. held an opening ceremony function on 19th June, 1983 in connection with constructions of M.I.G. and L.I.G. flats by it over the land of the Petitioner declared surplus under the Ceiling Act.

3. Being aggrieved, the Petitioner has approached this Court through writ petition No. 9008 of 1983 seeking a writ of mandamus restraining the M.D.A. from interfering with the peaceful possession of the Petitioner over the disputed land and for direction to grant the Petitioner's application u/s 21 of the Ceiling Act. The allegations of mala fides have also been made against one Sri Kalka Prasad, the then Vice-Chairman of M.D.A. Moradabad.

4. In the counter affidavit the Respondents have brought out that the Writ Petition was filed on incomplete facts suppressing vital and material facts. The case disclosed in the counter affidavit is that an area of 1.92 acres, i.e. 7770.24 Sq. metres from the Petitioner's plot along with the land of others aggregating to 22.84 acres, was acquired for the purpose of Moradabad Development Authority vide notification issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") The possession of the land was taken on 27-11-1982 which was completely vacant land and there were no constructions thereon. The declaration/application u/s 21 was rejected on 11th March, 1982 and no such application was pending when the writ petition was filed or when the possession of the land was taken. The application moved before the Commissioner, Bareilly Division, Bareilly, together with the site plan had also been rejected by the M.D.A. since the plan submitted was not in accordance with Section 14 read with Section 15 of the U.P. Urban Planning and Development Act, 1973.

5. After the filing of the counter affidavit the Petitioner sought amendment of the writ petition and has challenged the validity of the notifications issued under Sections 4 and 6 of the Act.
6. From the facts set out in the counter affidavit, it is evident that the reliefs claimed in the writ petition as initially filed, were misconceived. The very premises on which reliefs were sought, were non-existent and in these circumstances, the Petitioner is not entitled to any relief as claimed in the writ petition originally filed.
7. This brings us to the challenge of the Petitioner to the notifications of acquisition under Sections 4 and 6 of the Act.
8. Section 17(1) of the U.P. Urban Planning and Development Act empowers the State Government to acquire under the provisions of the Land Acquisition Act, any land, as may, in its opinion is required for the purpose of development or any other purpose.
9. A notification dated 17th September, 1982 u/s 4 of the Act for acquisition of the Petitioner's land along with land of others was published in U.P. Gazette. The provisions of Section 17 (1) and (I-A) of the Act were made available as also the provisions of Section 17(4). The provisions for filing objections u/s 3-A of the Act were dispensed with. The notification stated that the land was needed for a public purpose, namely for housing scheme in village Mubarakpur Mustkim, Tehsil and District Moradabad, by the Moradabad Development Authority under a planned development scheme. The area of the land sought to be acquired was 22.84 acres, the details whereof were set out in the Schedule attached to the said notification. The notification u/s 4 was followed by another notification dated 21-9-1982 u/s 6 of the Act which in substance was similar to the notification u/s 4 and required the Collector, Moradabad may take possession of the land within fifteen days from the publication of the notice mentioned in Section 9(1) even though no award has been made till then.
10. It is pertinent to mention that the validity of the two notifications impugned in this writ petition were considered and upheld by a Division Bench of this Court vide its order date 31-1-1989, in which one of us (Hon"ble K.C. Agarwal, J.) was a Member, in Civil Misc. Writ Petition No. 3323 of 1985, B.N. Sinha and another v. State of U.P. and Ors. and two other connected writ petitions. The petitions were filed by some of those whose land was also acquired like that of the Petitioner by the notifications under challenge.
11. The learned Counsel for the Petitioner urged that the notifications issued under Sections 4 and 6 of the Act were bad as the same were made without understanding the provisions and the effect of Section 21 of the Ceiling Act, inasmuch as, the excess vacant land held by the Petitioner was offered by him for utilising the same for construction of residential accommodations for weaker section of the society, a statutorily recognised public purpose (as it was put before us) which was better and more important than the

construction of M.I.G. and 1 I.G. flats by the M.D.A. under a Housing Scheme. Further, the acquisition of the disputed land was motivated to make illegal profits and to benefit certain persons of affluent class of the society at the instance of the then Vice-Chairman of M.D.A. Sri Kalka Prasad.

12. Having considered the above submissions carefully, we find no substance in them.

13. We may first advert to the submission relating to mala fides. Now when a party seeks to attack the acquisition on the grounds of mala fides and arbitrariness a heavy burden lies upon the party to establish its claim. It requires tangible evidence and mere assertion of mala fide is not enough nor can it carry the case. The allegations against Sri Kalka Prasad and the accusation of profiting the affluents have not at all been substantiated nor any material to that effect, whatsoever, has been brought on record by the Petitioner. On the contrary, in the counter affidavit enough material has been placed for a finding that the allegations about the mala fides etc. are frivolous and without any substance. While denying the allegations of the Petitioner as absolutely wrong, it is stated in the counter affidavit that no money was collected for constructions from any person whether rich or poor by Sri Kalka Prasad (who was transferred in routine course), or by the Moradabad Development Authority. The applications for registration for allotment of plots and houses to be constructed by the M.D.A. were invited after making wide publicity in newspapers and issuing handbills etc. as a result whereof, 5000 applications were received and the entire money was received through nationalised banks in Moradabad. The Moradabad Development Authority had applied for a loan for constructions from the Housing and Development Corporation, New Delhi and a loan of Rs. 75 19 lacs was sanctioned. Several lacs have already been spent since June, 1983 when the constructions started. It is also averred that the sale price of a flat including cost of 56 sq. metres of land in the case of M.I.G. flats and 38 sq. metres of land in the case of L.I.G. flats for economically weaker sections was Rs. 20,000/- and 12,000/- respectively, which included cost of construction and the development of site as well, the plans and the housing scheme and the sanction of the State Government and approval of the Housing and Development Corporation of New Delhi.

14. In view of the averments and material placed on record in the counter affidavit, we have no hesitation in rejecting the submission regarding mala fides and arbitrariness advanced on behalf of the Petitioner.

15. "Now coming to the other part of the contention, as pointed out by this Court in the case of B.N. Sinha (supra) the lands under the impugned notifications were acquired for a planned development which in itself is a public purpose and that by now is settled as a result of several decisions both of the Supreme Court and our own court--See [Aflatoon and Others Vs. Lt. Governor of Delhi and Others](#), . The contention that the scheme for construction of dwelling units for the weaker sections was comparatively a better "public purpose" does not appeal to us. From the wide range among the "public purposes" before the State Government which one is more urgent or comparatively better having

regard to a given situation and other considerations, it is for the State Government to decide. Once a decision to acquire land for "public purpose" is taken and so long it is a "public purpose", the Court cannot canvass the purpose of acquisition unless prima facie, there is a strong ground for holding that the acquisition of holding was mala fide or colourable exercise of power by the concerned authority.

16. A somewhat similar submission, though strictly not in the same fashion as it was urged before us, was advanced before this Court in *Kendriya Karmchari Evam Mitra Sahkari Avas Samiti Ltd. v. State of U.P.* 1988 UP LB EC 645. In that case one of the Petitioners was a cooperative housing society established for construction of houses for its members comprising mostly of Government employees. For achieving its objective the Society had acquired from various agriculturalists several parcels of land aggregating about 53 acres. It had also applied to the GDA for the sanction of its building plans. However, the land was acquired for GDA by the State Government for housing scheme u/s 4 and 6 of the Act. The only difference was that the Society was to construct houses for the Middle Income Group, whereas the housing scheme of the GDA approved by the State Government was meant to cater the needs of the rich, non-resident Indians. The notices under Sections 4 and 6 were challenged on the ground that the purpose disclosed for acquisition of the land was not a "public purpose" at all. Repelling the contention a Division Bench of this Court observed as under:

In our opinion, the mere fact that the Petitioners Housing Societies also planned to construct residential houses for their members, could not by itself without more, take away the power either of GDA to develop the area in question in a planned way by undertaking a comprehensive Housing Scheme or affect the exercise of sovereign powers of the State to acquire land for a public purpose under the Land Acquisition Act. The right of Cooperative Housing Societies to construct houses for its members is subject to the Land Acquisition Act and the U.P. Urban Planning and Development Act and other similar statutes operating in that area and not in derogation thereof. It is exercisable only if the Government itself does not chose to. acquire the land for a public purpose even if the public purpose happens to be similar in nature. Such a right is also exercisable only within the frame work of U.P. Urban Planning and Development Act. Further whereas each co-operative housing society would be concerned solely with the welfare of its members, the concerns of the development authority are much wider such as developing in a planned way whole townships comprising residential buildings the benefit of which would be available to the community at large.

17. In [R.L. Arora Vs. State of Uttar Pradesh and Others](#), , it was held by majority that the requirement of law is that land should be required for a public purpose. The intention of the previous owner, whatever it may be, does not enter into the acquisition at all, so far as the validity of the acquisition is concerned, provided the acquisition is for a public purpose. Once the Government decides that the acquisition is needed for a public purpose, the validity of the notification and the subsequent action thereafter cannot be challenged on the ground that the previous owner himself intended to use the land for

some public purpose. There being a definite purpose behind the acquisition, the acquisition would be justified under the Act irrespective of the intention of the previous owner of the land to use it for some other public purpose.

18. The problem of providing Housing accommodation in these days has become a matter of national urgency and is an acute problem because of enormous growth in population. The land in question was acquired as is evident from the notifications, issued under the Land Acquisition Act, for Housing Scheme under a Planned Urban Development Scheme for the residents of the village Mubarakpur and the city of Moradabad. We are unable to say that the Government acted illegally when it sought to acquire the land for the purpose stated in the notification issued for acquisition, in preference to the Petitioner's proposal to construct the dwelling units on the land in dispute for weaker section of Society. The satisfaction being that of the Government to choose its public purpose and. there being nothing to show that the choice of the State Government was motivated by extraneous or irrelevant consideration or it exercised its power mala fide in acquiring the plot of the Petitioner the contentions raised on behalf of the Petitioner cannot be sustained and it is accordingly rejected.

19. It was next contended that notices of acquisition were bad as they had not been published in two daily newspapers circulating in the area and the Collector had not caused any public notice at convenient place in the locality nor any individual notice was sent to the Petitioner. There is no substance in this contention. No individual notice is required to be served under Sections 4 and 6 of the Act. About the publication of notices in the daily news paper and publicity in the locality there are no averments in the writ petition. This plea was raised for the first time orally during the course of argument. The plea raised is purely a question of fact and cannot be entertained without there being proper pleadings. Moreover in the other set of writ petitions challenging the impugned notices which were decided by the other Bench, no such ground was urged presumably the required publication and publicity of notices were made in accordance with law. Accordingly we reject this submission also.

20. Learned Counsel for the Petitioner then urged that the Petitioner has not been given any compensation in respect of the area of land acquired from him. The remedy of the Petitioner for non-payment of compensation, if true, lies before the Collector/Special Land Acquisition Officer. The Petitioner will be awarded the market value of the land as compensation by the Collector or Special Land Acquisition Officer concerned. If he is dissatisfied with the award he may ask for a reference to the District Judge u/s 18 of the Act. If still aggrieved, he can file the appeal to this Court and finally to the highest Court, namely, the Supreme Court, regarding the amount of compensation. At the present nothing is required to be done by this Court in these proceedings.

21. The possession of the disputed land was taken as far back on 27th November, 1982. During the hearing it transpired that over 700 houses have already been constructed and the possession has been delivered to the allottees and the said houses are being used

for their residence, with the taking of the possession of land by the Government the title of the land acquired completely vested in the State. In these circumstances the Petitioner is not entitled to question the validity of the acquisition notices. The only entitlement is for compensation, about which we have already noticed earlier.

22. In view of what has been stated above, we find no merit in the writ petition No. 9008 of 1983 and accordingly it is dismissed. All the interim orders are discharged.

23. Now we may take up the other writ petition i.e. Writ Petition No. 15518 of 1984.

24. It may be observed that after the rejection of declaration u/s 21 of the Ceiling Act by the Competent Authority vide its order dated 11th March, 1982 it appears the Petitioner filed an application for review against that order. The review was also rejected by the competent authority vide order dated 2-12-1983 which was confirmed in appeal by the District Judge, Moradabad. These two orders are challenged in this writ petition.

25. The relevant authorities found that the declaration u/s 21 filed by the Petitioner was beyond time. That apart, the declaration was also rejected on merits, on the finding that mere declaration of an intention that excess vacant land would be utilised for construction of dwelling units for weaker section of the society was not sufficient and the applicant was further required to show that his plan for construction was in accordance with the scheme approved by the Prescribed Authority. As the declaration filed by the Petitioner was not accompanied by any plan or scheme approved by the Moradabad Development Authority, the same was rejected.

26. Learned Counsel for the Petitioner was unable to persuade us that the grounds on which the declaration u/s 21 was rejected were not germane to the issue and the concerned authorities committed any legal error in rejecting the declaration of the Petitioner. The only plea raised was that pending consideration of declaration u/s 21 of the Ceiling Act, no acquisition under the Land Acquisition Act was possible. This submission is without any merit, as there is no such prohibition under the Land Acquisition Act and none was brought to our notice. It is true that the land in dispute could have been acquired under the Ceiling Act itself, but that is no ground for holding that the acquisition of the disputed land under the Land Acquisition Act was invalid.

27. No other point was urged before us.

28. Accordingly, the second writ petition is also without any merits and the same is dismissed.

29. In the result, both the writ petitions are dismissed. There shall be no orders as to costs.