

(2010) 08 AHC CK 0452

Allahabad High Court

Case No: None

Ajit Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 10, 2010

Acts Referred:

- Land Acquisition Act, 1894 - Section 30, 6
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10(2), 5

Hon'ble Judges: Sunil Ambwani, J; K.N. Pandey, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. We have heard Shri K.N. Tripathi, Sr. Advocate assisted by Shri Amit Khemka and Shri Sujeet Kumar for the petitioners. Shri S.G. Hasnain, Addl. Advocate General appears for the State respondents. Shri Rahul Sahai has appeared on behalf of New Okhala Industrial Development Authority (Noida).

2. By this writ petition the petitioners have prayed for following reliefs:

A. Issue a writ order or direction in the nature of certiorari quashing the proceedings of the case No. 2 of 2007 pending before the respondent No. 4.

B. Issue a writ order or direction in the nature of mandamus directing the respondent No. 5 to release the entire land of the petitioners from acquisition under the Land Acquisition Act.

C. Issue a writ order or direction in the nature of mandamus directing the respondent NO. 2 that in case the respondents still wish to acquire the land under the Land Acquisition Act, they must make the payment of the compensation to the petitioners at the rates prevailing and fixed by the State Government by the acquisition of land for the area in which the property of the petitioners is situated i.e. Rs. 1000/- per Sq. Mtr.

D. Issue a writ order or direction in the nature of mandamus directing the respondents to take stern action against the erring officials of the State Government who have deliberately delayed the payment of due compensation to the petitioners with malafide intentions.

E. Issue a writ order or direction in the nature of mandamus directing the respondents to record the names of the petitioners in the revenue records.

F. Issue any other suitable writ, order or direction as this Hon"ble Court deem fit and proper in the facts and circumstances of the case.

F. Awards cost of the petition in favour of the petitioners.

3. During the course of argument Shri K.N. Tripathi very fairly stated that he cannot possibly press relief "B" for releasing the entire land from acquisition under the Land Acquisition Act. He prays for quashing the proceedings in Case No. 2 of 2007 under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (in short the Ceiling Act) and for payment of compensation for acquisition of Khata No. 60, area 35 bigha 15 biswa and 5 biswansi land, and Khasra No. 219 area 2.759 hect., on the rate prevailing and fixed by the State Government of the area in which property is situate at the rate of Rs. 1000/- per sq. mtr. and in the alternative the compensation as worked out by the Special Land Acquisition Officer in the award along with 9% interest for the first year and 15% interest for the subsequent years until the amount is paid.

4. The controversy raised in the writ petition regarding proceedings under the Ceiling Act was settled by this Court in the judgment dated 24.7.1997 in Writ Petition No. 17508 of 1986, and the subsequent judgment rendered by one of us (Hon. Sunil Ambwani, J.) dated 12.4.2007 in Writ Petition No. 42166 of 2006. An application for modification of the judgment, and to issue direction for payment of compensation, was rejected as no such prayer was made for payment of compensation in Writ Petition No. 42166 of 2006.

5. The essential facts of the case have been given in detail in the judgment dated 12.4.2007 in Writ Petition No. 42166 of 2006, which may be quoted, for reference in this writ petition, as below:

By this writ petition the petitioners, recorded as tenure holders of khata No. 60 measuring 35 Bighas 15 Biswa and 5 Biswansis situate in village Rohilapur have prayed for writ of certiorari for quashing the order dated 20.5.2006 passed by First Additional District Judge, Gautam Budh Nagar in LAR Case No. 23/03 and have further prayed not to give effect to the said order.

The Noida acquired land measuring 31 bigha and odd vide notification u/s 6 of the Land Acquisition Act, 1894 dated 17.6.2003, of which the possession was taken on 22.8.2003. It is contended that instead of giving an award, a scheme by the State Government to decide the compensation on the basis of agreement was provided

and that compensation to the tune of Rs. 1,08,53,394 was agreed upon to be paid to each of the petitioner with a total amount of Rs. 3 crores 24 lacs and odd. A cheque was given to the petitioner but then the bank was advised not to encash the cheque and the petitioners were informed that the dispute whether the land was required as surplus under the U.P. Imposition of Ceiling of Land Holding Act, was pending, hence the payment of compensation was not permissible.

It is contended that the petitioners were owners of the land both on village Chak Salarpur and village Rohilapur. Whereas village Rohilapur is still in District Ghaziabad now District Gautam Budh Nagar; on 15.9.1983 the Chak Salarpur vested in the State of Haryana. The petitioners relied upon U.P. (Alteration of Boundaries) Act, 1979 published vide gazette notifications dated 12.6.1979 and 14.9.1983 to establish the vesting in the State of Haryana.

The Prescribed Authority appointed under the Imposition of Ceiling of Land Holding Act, 1961 (the Ceiling Act) declared the land of the petitioners to be surplus. An appeal filed before the Addl. Commissioner, which was dismissed. In writ petition No. 17508 of 1986 this Court by its judgment dated 24.7.1997 quashed the orders and remanded the matter for determination the excess land situated in Chak Salarpur, which according to the petitioner had by then become part of Haryana. The relevant portion of the judgment dated 24.7.1997 is quoted as below:

The Learned Standing Counsel has urged that the judgment which was filed before the prescribed authority was in respect of the land situated in Village-chak Salarpur, but when that judgment was not between the parties in the present case, therefore, it has no binding effect on the parties of this case. Moreover, it was to be considered is to what was the date of notification and which property have been transferred to the Hariyana Province. As these things are not clear, therefore, the prescribed authority was right in giving the impugned notice to the petitioners u/s 10(2) of the Act. It has been further urged by the Learned Standing Counsel that the prescribed authority was bound to comply with the directions given by the appellate court while remanding the case and as the appellate authority has not given any direction to the prescribed authority to decision the point of jurisdiction there is no with judgment of prescribed authority.

After hearing Learned Counsel for the parties I am of the view that the applicability of the act is the question to be determined in this case and it is a fit case in which the question of jurisdiction should be decided after taking into account the judgment filed by the petitioner and even other judgment and evidence which may be sufficient to decide the territorial jurisdiction.

I, accordingly, quash the orders dated 10.7.1985 of the prescribed authority as well as the order dated 10.7.1986 of appellate court and remand the case to the prescribed authority to look into the matter a fresh after giving an opportunity to the parties to produce evidence on the point as to whether the property in question

is situated in U.P. or it has been transferred to the Haryana Province and then proceed in accordance with law.

With these observations, the writ petition is allowed. The case is sent back to the prescribed authority to decide it afresh in the light of the observations made in the body of the judgment.

Before the Prescribed Authority could decide the matter and declare the land as surplus, the land at village Rohilapur was acquired by the State Government. At the time of payment of compensation, it was brought to the knowledge of the Collector that the matter with regard to declaration of surplus land in the hands of the petitioner in ceiling proceedings was taken up to the High Court and the matter was remanded to the Prescribed Authority. The Collector was of the opinion that the petitioner possessed surplus land, which had to be taken out from the land at village Rohilpur and was thus not entitled to the compensation and in the circumstances the Collector made reference u/s 30 of the Land Acquisition Act to the District Judge Gautam Budh Nagar.

The reference was transferred to the Court of First Addl. District Judge, Gautam Budh Nagar. The Court framed 7 issues namely:

- (i) Whether the respondents Ajit Singh and other have land in surplus to the prescribed land under the Ceiling Act?
- (ii) Whether the reference is maintainable?
- (iii) Whether the amount to which the respondents are entitled after the possession was handed over and after 15 days and whether they are entitled to interest and at what rates?
- (iv) Whether the rights of the State Government can be declared in this reference?
- (v) Relief, if any?
- (vi) Whether the land in village Chaksalarpur, District Dadri was transferred to State of Haryana? and if yes then whether the provisions of Section 27(4) of the Haryana and U.P. Alteration of Boundaries Act, 1979, the provisions of U.P. Land Revenue Act will be applicable to such land and its effect?
- (vii) Whether the transfers bequest or partition made by defendants from out of the land declared as surplus u/s 5(b) of the U.P. Imposition of Ceiling on Land Holding Act, 1960 are void, and its effect?

The District Judge after quoting extensively from the judgment of this Court on ceiling matters, recorded his findings on the issues and concluded that the defendants are not entitled to compensation of the land of village Rohilapur District Gautam Budh Nagar area (35-15-5) and thus the compensation determined in his favour shall be deposited with the State Government.

6. This Court relied upon the judgments of the Supreme Court in [Dr. G.H. Grant Vs. State of Bihar, Neelagangabai and another Vs. State of Karnataka and others, Sharda Devi Vs. State of Bihar and Another](#), and the opinion of the third Judge to which a reference was made after a difference of opinion was recorded in Mohd. Shaheed Khan v. State of U.P. 1996 AWC 1224, and decided the writ petition by the judgment dated 12.4.2007, with following directions:

Coming to the present case, the proceedings under the Ceiling Act did not become final. The matter was not decided by the Prescribed Authority after remand by this Court and that there was no determination and declaration of excess land and the area from which the land has to be taken. The land held by the petitioner as tenure holder or any part thereof did not vest in the State Government under the Ceiling Act of 1960. The petitioner continued to be recorded as tenure holder. The land at village Rohilapur was subjected to acquisition and possession was taken u/s 17. The Noida deposited the compensation with the District Magistrate.

In these circumstances, taking into account the law laid down in Sharda Devi's case the Collector could not have made reference u/s 30 of the Land Acquisition Act to the Court. The reference itself was bad in law.

The writ petition is consequently allowed. It is held that the Collector could not made reference u/s 30 of the Land Acquisition Act to the District Judge. The order of the First Addl. District Judge, Gautam Budh Nagar in LAR No. 23 of 2003 dated 20.5.2006 is quashed. It will be open to the State Government to seek remedies in accordance with law and in accordance with para 37 of the judgment of Sharda Devi's case.

7. It is admitted that no appeal was filed and thus the judgment dated 12.4.2007 has become final.

8. Now once again a show cause notice has been given u/s 10(2) of the Imposition of Ceiling on Land Holding Act, 1960 with "Aakar Patra-4" on 12.7.2007.

9. The notice refers to both the judgment, and takes the same position that the petitioners have surplus land, than permissible under the Ceiling Act, and that since the petitioner has not given details under Form-1, with reference to Section 9 and has not given the details of the members of his family, his declaration is incomplete. The notice has enclosed the statement under Sub-section (1) of Section 10 dated 8th June, 1973.

10. The petitioner has given reply to the notice stating that he has been sufficiently harassed and that compensation deposited for acquisition of the land for Noida has not been paid for one reason or another. He has objected to the continuing harassment on the same ground on which the respondents have lost the proceedings in the High Court and the judgments dated 24.7.1997 and 12.4.2007 have become final.

11. It is not disputed that Khata No. 60 Rakaba 4/1-0-0, 64/6-7-15, 70/2-11-10, 71/3-4-0, 72ma/2-3-15, 74/1-7-0, 82 ma/1-13-10, 85/2-0-5, 87/2-6-0, 88/2-10-5, 89/4-17-10, 102/5-0-5, 5-0-5, 103/0-13-10 total 35-15-5 bigha was acquired by notifications u/s 4/17 dated 4.7.2003 and the notification u/s 6/17 dated 19.7.2003 and possession was taken on 22.8.2003. The amount under the settlement agreement was deposited on 29.10.2006. On 1st September, 2006 the cheques were issued, which were stopped for payment.

12. Shri K.N. Tripathi, Learned Counsel appearing for the petitioners submits that the amount worked out under the settlement in terms of the Karar Niyamawali, 1997 has been deposited. In para 6 of the counter affidavit of Shri Suresh Kumar Misra it is stated that after examining the revenue record it was found that ceiling proceedings were pending and thus payment of compensation was stopped and Karar Niyamawali/ agreement was cancelled. In para 24 it is stated that under Karar Niyamawali, 1997 it is specifically provided that even after payment of compensation, if the authority later on come to know that there is some dispute, the land can be released.

13. Learned Standing Counsel states that once the agreement has been cancelled on the ground that ceiling proceedings were still pending, the petitioner is not entitled to receive the amount.

14. We are of the opinion that after the judgments of this Court dated 24.7.1997 and 12.4.2007 the stand taken by the petitioner to cancel the agreement for payment of compensation on the ground that ceiling proceedings were pending, was wholly illegal, arbitrary and unjustified. Since no other ground has been taken for cancellation of the agreement and the issues raised in this writ petition have already been settled in the aforesaid judgment and that this Court need not reiterate the same legal position and decide the matter.

15. We do not find any justification to direct the State Government to pay compensation at the current market rate or at Rs. 1000/- per sq. mtr. The amount of compensation has been worked out between the State and the petitioners in the settlement. It is not denied that the settlement was signed between parties, who were competent to enter into the contract and that cheques were also issued. The payments were stopped giving rise to the Writ Petition No. 42166 of 2006. The petitioners are, therefore, entitled to interest on the amount settled and for which cheques were issued to the interest on the same rate as it is provided to be paid under the Land Acquisition Act on the compensation awarded i.e. at the rate of 15% per annum from the date of issuance of cheques to the date the amount is actually paid to the petitioners.

16. The writ petition is allowed. The cancellation of the settlement agreement for payment of compensation is set aside. The amount settled to be paid as compensation under the agreement shall be paid to the petitioners along with 15%

interest from the date of issuance of cheques to the date the amount is actually received by the petitioners, within a period of six weeks from the date of production of the certified copy of this order before the respondents.