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(2010) 05 AHC CK 0340

Allahabad High Court

Case No: C.M.W.P. No"s. 31153 and 35269 of 2009

Madhu Colonizers Pvt. Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: May 27, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2011) 4 AWC 3708

Hon'ble Judges: Sunil Ambwani, J; Kashi Nath Pandey, J

Bench: Division Bench

Advocate: S.M.A. Kazmi, Ashish Agrawal, Tahira Kazmi, Shiv Nath Singh and Satyam Singh, for the Appellant; Krishna Mohan, C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.
Heard Shri S.M. A. Kazmi, senior advocate assisted by Shri Ashish Agrawal and Tahira Kazmi, for Petitioners in Writ Petition No. 31193 of 2009, and Shri Navin Sinha, senior advocate assisted by Shri Krishna Mohan for Petitioners in Writ Petition No. 35269 of 2009. Learned standing counsel appears for State Respondents. Shri B.B. Paul appears for Allahabad Development Authority. Shri R.M. Pandey represents Nagar Nigam, Allahabad.

2. The Petitioners are aggrieved by the orders of the District Magistrate, Allahabad dated 25.3.2009, by which he has cancelled the lease of State land of Nazul Plot No. 33 Civil Station, Allahabad, and the order dated 10.6.2009, by which the application of M/s. Madhu Colonizers Pvt. Ltd. for conversion of lease rights into free hold of 4186 sq. metres of land out of 11,436.17 square metres of nazul plot No. 33 Civil Station, Allahabad, as a nominee of the lessee under the policy of the State Government, was rejected

3. It is submitted by Learned Counsels appearing for the Petitioners that the only reason, for which lease deed valid uptb 24.11.2018, with its last renewal on 25.6.1995, was cancelled by the District Magistrate, Allahabad, is that the High Court has, in a writ petition filed in public interest, passed an order on 8.5.2006 directing the District Magistrate and the Allahabad Development Authority to reserve and to acquire the nazul plot No. 33 Civil Station, for multistorey parking.

4. Jt is submitted that the High Court has passed the following orders in Writ Petition No. 2547 of 2005 on 8.5.2006:

(d) Acquisition of land in Civil Lines Market Area to provide for exclusive use to Park Vehicles

We are informed by Shri C.B. Yadav, Chief Standing counsel that steps have been taken in this direction to acquire land. After taking into account the surroundings of the land adjoining Central Bank of India, Civil Station 19, we find that this is not suitable site for the purpose. Acquisition proceedings in this respect, if taken be dropped. We, however, direct that steps be taken for acquiring following sites:

(I) 23, Civil Station-Land behind Palace Cinema.

(ii) 33, Civil Station-measuring 23998 sq. yard-behind Sri Dhar Chintamani Ghosh Trust.

As directed earlier, A.D.A. and the concerned authorities should first contact the owner''s of the above properties for settling matter through negotiations/ settlement.

5. The questions of law, as to whether the High Court under Article 226 of the Constitution of India, or even in a public interest litigation can issue directions to acquire the land, were referred by Hon''ble the Chief Justice to a F.ull Bench of the three Judges by his order dated 19th September, 2006. The questions posed before the Full Bench read as follows:

(1) Whether a Coordinate Bench while hearing a Public Interest Litigation can issue directions without impleading the affected party which has the effect of taking away the impact of the final decision in favour of such party by a Bench of the same strength.

(2) Whether the directions dated 14.7.2006 and 31.7.2006 of the Division Bench in the Public Interest Litigation (Writ Petition No. 2547 of 2005) run counter to and impede the implementation of the final decision dated 25.5.1998 in Writ Petition No. 32950 of 1994 and the decision dated 24.8.2005 in Writ Petition No. 20379 of 2003 keeping in view the fact that the order dated 5.11.2002 had not been quashed.

(3) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a mandamus to the State Authorities for acquiring land in suo motu exercise of its powers in a Public Interest Litigation.

(4) Whether in such a situation if there are 2 conflicting orders, judicial discipline demanded a reference to a larger Bench instead of treating the impact of final judgments of this Court to be obiter.

6. The Full Bench, after considering the scope and jurisdiction of the powers of issuing writs under Article 226 of the Constitution of India, held that the land acquisition is not a purely ministerial act to be performed by the executive and, therefore, a writ of mandamus cannot ordinarily be issued by the Court in exercise of its powers under Article 226 of the Constitution of India, whether suo motu or otherwise, whether in public interest litigation or otherwise, directing acquisition of land under the provisions of Land Acquisition Act, 1894. The answer to the questions posed before the Full Bench are quoted:

To sum up, a land acquisition is not a purely ministerial act to be performed by the executive and, therefore, no mandamus can be issued by the Court in exercise of its powers under Article 226 of the Constitution of India, whether suo motu or otherwise, whether in public interest litigation or otherwise directing acquisition of land under the provisions of Land Acquisition Act, 1894. It would, however, be open to the Court in exercise of that power to invite the attention of the executive to any public purpose and the need for land for meeting that public purpose and to require the executive to take a decision, even a reasoned decision, with regard to the same in accordance with the statutory provisions, perhaps even within a reasonable time-frame. However, the power of the Court under Article 226 of the Constitution of India must necessarily stop at that. Therefore, if the decision taken by the executive is capable of challenge and, there exist appropriate legal grounds for such challenge, it may also be open to the Court to quash the decision and to require reconsideration. But no direction in the nature of mandamus whether interim or final can be issued by the Court under Article 226 of the Constitution of India to the executive to necessarily acquire a particular area of a particular piece of land for a particular public purpose. The question No. 3 is answered accordingly.

All the questions having been answered as above, the matter may be placed before the appropriate single Judge for further consideration.

7. It is submitted by Shri S.M. A. Kazmi and Shri Navin Sinha that in view of the decision of the Full Bench, the directions given by the High Court in Writ Petition No. 2547 of 2005, are not binding upon the State Government and that the State is not obliged under a writ of mandamus to acquire the land, The Petitioners were not parties in Writ Petition No. 2547 of 2005, and thus even the observations of the Court in its order, are not of any value and could not be used against their interest. They submit that the District Magistrate, did not contact the Petitioners or gave any notice for negotiation or settlement. The Petitioners were not aware of any proceedings drawn against them before making the impugned orders.

8. In the present case, the lease deed of nazul plot No. 33 Civil Station, Allahabad for the area 11436.17 square metres was renewed in favour of Chintamani Ghose Trust, on 25.6.1995, for a period upto 24.11.2018. The Trust has entered into an agreement of sale, with transfer of possession of 4186 square metres of land in favour of M/s. Madhu Colonizers Pvt. Ltd. A nomination was made by the Trust in favour of M/s. Madhu Colonizers Pvt. Ltd. for conversion of the lease rights into freehold. The District Magistrate, in exercise of his powers vested in him by the State of U.P., under influence of the directions of the Court, cancelled the lease and rejected the application of M/s. Madhu Colonizers Pvt. Ltd.

9. Shri B.B. Paul, Learned Counsel appearing for the Allahabad Development Authority submits that the authority is bound by the orders passed by the High Court and the consequential orders passed by the District Magistrate.

10. Learned standing counsel, on the other hand, submits that though the District Magistrate had cancelled the lease, and rejected the application of M/s. Madhu Colonizers Pvt. Ltd., he has acted bona fide, under the directions of the High Court to acquire the land. He submits that even if the Full Bench has held that the orders of the High Court are not binding, it is open to the District Magistrate to consider whether the land of the nazul plot is to be utilized for public purpose. The District Magistrate has powers to re-enter the land by cancelling the lease and giving proportionate compensation of the balance lease period and cost of constructions on the land, to the lessee. The standing counsel further submits that the major portion of the plot is in possession of U.P. Sales Tax Department as tenant. The agreement of sale with transfer of possession, as claimed by the Petitioners is in violation of Clause 3 (3) of the lease deed and that in view of Government order dated 14.10.2004 the land in possession or occupation of a Government department cannot be converted into freehold.

11. We find that the only reason given, on which the District Magistrate has cancelled the lease, without issuing notice to the lessee, and also cancelled the application for conversion of lease rights into freehold, on a part of land, on the nomination, is the direction of the High Court to acquire the land. It has been reiterated by the Full Bench, recognising the settled principles of law that the High Court under Article 226 of the Constitution of India does not ordinarily issue directions to acquire the land. The High Court can in appropriate cases in public interest draw the attention of the State to any public purpose and the need of acquisition or remedy for such purpose. The District Magistrate did not apply his independent mind to decide that the land is required foi multi-storey parking or for any other public purpose.

12. We further find that before deciding to cancel the lease and to reenter the land for public purpose a notice was required to be given under the terms of Clauses 3C and 4 of the lease to the lessor.

13. Both the writ petitions are consequently allowed. The orders dated 25.3.2009 and 10.6.2009 of the District Magistrate, Allahabad are set aside. The District Magistrate will consider the application of M/s. Madhu Colonizers Pvt. Ltd. afresh for conversion of lease rights into free hold rights on the nomination of the lessee, in accordance with the law and the prevailing policy of the State Government, without being influenced by the directions given by the High Court on 8.5.2006, in Writ Petition No. 2547 of 2005.