

(2003) 05 AHC CK 0242

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 30433 of 2002

Saurabh Jain and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 12, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 10, 2, 34

Citation: (2003) 5 AWC 4321 : (2003) 2 UPLBEC 1563

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

Bench: Division Bench

Advocate: Ravi Kant and Birendra Singh, for the Appellant; P.K. Singh and S.C., for the Respondent

Final Decision: Allowed

Judgement

M. Katju, J.

This writ petition has been filed for a writ of certiorari to quash the impugned order dated 23.11.2001, Annexure-7 to the writ petition passed by the State Government and the orders dated 11.12.2001 and 15.4.2002 Annexures-8 and 9 to the writ petition passed by the Moradabad Development Authority. The petitioner has also prayed for a mandamus directing the respondents to forthwith return the petitioner possession of the land measuring 8116.65 sq. m. of Plot No. 454 situate in village Harthala Mustahkam, Tahsil and District Moradabad and for reimbursement on account of illegal dispossession.

2. In proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 this land was declared surplus vacant land by the Competent Authority, Moradabad by order dated 29.8.77. Against that order a revision was filed and the State Government by order dated 9.7.98 in exercise power u/s 34 of the Act held that the land in dispute was agricultural land and outside the purview of the Act. Hence, it released the land

in favour of the landholders. True copy of the said order has been annexed as Annexure-4 to the writ petition. Thereafter, the landholders applied for restoration and possession of the land in dispute. The matter was referred to the State Government as the Moradabad Development Authority had taken possession of the land in dispute and had developed a Residential Colony.

3. The State Government held detailed deliberations with the Moradabad Development Authority, which informed that it had developed a Residential Colony viz., Ram Ganga Vihar Colony, and further it had allotted and transferred the flats and houses to the allottees. The Moradabad Development Authority sent a proposal for acquisition of the land in dispute but this was not acceptable to the Government. However, the Moradabad Development Authority proposed to return 3605 sq. mts. of land (out of the total land in dispute 8116 sq. m.) that had still not been transferred. The State Government by order dated 23.11.2001, Annexure-7 to the writ petition directed the Moradabad Development Authority to return 3605 sq.m. of land in dispute. However, the State Government also directed that Development charges and cost of construction standing over this 3605 sq.m. be also charged from the landholders. The State Government did not give any direction regarding the balance 4511 sq.m. out of the total land in dispute measuring 8116 sq.m.

4. On the basis of the aforesaid order of the State Government dated 23.11.2001 the Moradabad Development Authority issued a letter dated 25.4.2002, Annexure-7 to the writ petition demanding Rs. 62,24,534/- as development charges and cost of construction for an area measuring 2312 sq. mts. out of 3605 sq. mts. it had proposed to release. For the balance it stated that a subsequent letter would follow.

5. It is alleged in Paragraph 5 of the writ petition that the respondent authority forcibly and high-handedly occupied the entire area of the land in dispute, although it had no authority to do so. In Paragraph 10 of the writ petition it is alleged that after the order of the State Government dated 9.7.1998, the possession of the Moradabad Development Authority could not be referable to any lawful title and was clearly illegal. The Moradabad Development Authority was duty bound to restore the possession of the land to the petitioner, but illegally did not do so due to which the petitioners are suffering huge loss. In Paragraph 12 of the writ petition it is stated that till date no proceedings for acquisition of the land have been taken and no amount of compensation has been paid to the petitioner. The petitioners made a representation, copy of which is Annexure-5 to the writ petition but to no avail. In Paragraph 17 of the writ petition it is stated that petitioners had not given any assent to pay development charges and hence the order of the State Government dated 23.11.2001 and of the Moradabad Development Authority are illegal. In Paragraph 21 of the writ petition it is stated, that the Moradabad Development Authority is illegally demanding development charges and other amounts. It is alleged that the Moradabad Development Authority and the State Government are instrumentalities of the State and are expected to act in a fair

manner. They are illegally demanding that the petitioners reimburse the cost of construction and to pay external and internal development charges. It is alleged that the entire action of the respondents is arbitrary and violates the Rule of law and fairness and Articles 14, 19 and 21 of the Constitution.

6. A counter-affidavit has been filed on behalf of the Moradabad Development Authority (hereinafter referred to MDA) and we have perused the same. In Paragraph 9 of the same it is stated that the order exempting part of Plot No. 454 from the Ceiling Act was passed in July, 1998 whereas possession of the said land was delivered to the MDA in June, 1989 and at that stage it was surplus land under the Ceiling Act. In the intervening period of about ten years the entire land of Plot No. 454 was included in the Residential Complex Ram Ganga Vihar Phase-II developed by the MDA and many flats and houses were built on the said land and even allotted and transferred to various persons. By the time the order dated 9.7.98 was passed a very small area of land in Plot No. 454 was available with the answering respondents. In Paragraph 12 of the counter-affidavit it is stated, that after the order dated 9.8.98 was passed the MDA was put in fix as by this time the entire area of Plot No. 454 was constituting part of the Ram Ganga Vihar Residential Complex and a number of flats/houses were built on the said land and stood allotted and transferred to various persons. Hence, the MDA sent a proposal to the State Government for acquiring 0.812 hectare of land in Plot No. 454, which was earlier declared surplus. However, the State Government rejected the said proposal. In Paragraph 16 of the same it is stated, that in pursuance of the G.O. dated 23.11.2001, the MDA wrote a letter dated 15.4.2002 and offered to the landowners that the part of land in Plot No. 454 which is lying vacant can be transferred back to the landowners provided they pay the development costs. In Paragraph 17 of the same it is stated that the G.O. dated 23.11.2001 was passed by the State Government on the basis of the written consent/compromise given by the landowners regarding payment of the development charges with respect to the land which may be restored to their possession. In Paragraph 22 of the same it is stated that in pursuance of G.O. dated 23.11.2001 additional land can be given to the petitioners from the land available with the answering respondent in Ram Ganga Vihar Complex. In Paragraph 24 of the same it is stated that the demand of development charges from the petitioners is bonafide and has been made at the instance of the petitioner/landowners who had given written consent in the matter before the State Government before passing of the Government Order dated 23.11.2001.

7. A rejoinder-affidavit has also been filed and we have perused the same. In Paragraph 17 of the same it is denied that the petitioners gave any assent to pay any development charges to respondent No. 2. It is denied that there was any consent/compromise. In Paragraph 9 of the same it is denied that possession over the disputed land was delivered to respondent No. 2 in June, 1989. The possession over an Area of 0.465 acres in Plot No, 454 was delivered to respondent No. 2 on

20.6.1991, and the possession over an area of 2.005 acres, which was illegally declared surplus was never delivered to respondent No. 2. It is stated that till 1999 no construction was raised by the respondent No. 2 over the disputed land, and in fact respondent No. 2 was restrained by interim injunction dated 23.9.1999 in Suit No. 31 of 1999 from raising any constructions.

8. We have carefully perused the affidavits and material on record. It has been alleged in Paragraphs 17 and 31 of the petition that the petitioners never gave their assent for paying development charges. Learned Counsel for the respondents have stated that in the G.O. dated 23.11.2001 (Annexure-7 to the writ petition), it has been stated that the landlords gave their consent for paying development charges. However, we are not inclined to believe this averment in the G.O. dated 23.11.2001, or in Paragraphs 17 and 24 of the counter-affidavit that the petitioners gave their written consent to pay development charges. It may be mentioned that in Paragraph 17 and 24 of the counter-affidavit it has been stated that the petitioners gave written consent to pay development charges. If this was correct then the written consent by the petitioners to pay development charges should have been annexed to the counter-affidavit. The G.O. dated 23.11.2001 merely mentions consent and not written consents, and the said G.O. does not mention the date on which the said consent was allegedly given in these circumstances we are of the opinion that in fact false averments have been made in Paragraphs 17 and 24 of the counter-affidavit that any consent was given by the petitioners/landholders to pay development charges and the said observation in the G.O. dated 23.11.2001 also appears to be incorrect.

9. In our opinion when the revision of the petitions had been allowed on 9.7.98 and the portion of the Plot in question had been exempted from the Ceiling Act, and it had not been acquired under the Land Acquisition Act, the respondents had no alternative except to return the land in question or to pay compensation for the same according to the full market value as held by the Supreme Court in [Government of Andhra Pradesh Vs. H.E.H., The Nizam, Hyderabad](#). It has been admitted by the respondents, that 3605 sq. mts. is still vacant and we direct that it should be returned forthwith to the petitioners without insisting for paying development charges/costs of constructions and other amounts. In our opinion, the demand for development charges etc. was wholly arbitrary, illegal and unjustified. There is no authority of law, under which such development charges and other amounts could be levied or realized.

10. It may be mentioned that when the revision of the petitioners was allowed on 9.7.98 (vide Annexure-4 to the petition), the legal position which results is that the order dated 29.8.77 gets merged into the order dated 9.7.88 (by the doctrine of merger). Hence by a legal fiction we have to deem it as if the order dated 29.8.77 was never passed. In a legal fiction the eyes should not boggle, and we have to carry the fiction to its full extent vide [Gajraj Singh etc. Vs. The State Transport Appellate](#)

[Tribunal and others etc., K. Kamaraja Nadar Vs. Kunju Thevar and Others,](#) and State of Maharashtra v. Lalit Rajshi 2000 (2) SCC 619, etc. The result, therefore, follows that the respondents were illegally in possession of the said property throughout. Hence, they have not only to return possession of the land but also pay compensation for illegal user of the same.

11. The State Government and the MDA are further directed to give possession of the balance area 45111 sq. mts. in the vicinity of the land in dispute having similar qualities and potential as the land in dispute or to pay compensation at full market value for the same as held by the Supreme Court in Government of A.P. v. H. Ex. Nizam Hyderabad 1996 (3) SCC 22 (supra), within two months. In addition, the respondents must pay compensation to the petitioners for illegal user of the land since the date they took possession till today, and this compensation will be determined by the District Judge, Moradabad after hearing parties concerned within six months of production of a certified copy of this order before him and paid to them within three months thereafter.

12. The petition is allowed. No order as to costs.