

(1995) 09 AHC CK 0140

Allahabad High Court

Case No: C.M.W.P. No. 34649 of 1994

Smt. Chanda and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 4, 1995

Acts Referred:

- Land Acquisition Act, 1894 - Section 11A, 4, 48, 6

Hon'ble Judges: Ravi S. Dhavan, J; A.B. Srivastava, J

Bench: Division Bench

Advocate: Vinod Sinha, for the Appellant;

Final Decision: Allowed

Judgement

Ravi S. Dhavan and A.B. Srivastava, JJ.

The four Petitioners had lands at Village Safipur, Paragana Dhankaur, Tehsil Sikandra bad, District Bulandshahr. The Petitioner No. 1 Smt. Chanda had owned Khasra plot No. 67 (11.5.0), Petitioners' No. 2 and 3 were owners of plot No. 14 of 9 1/2 K and the Petitioner No. 4 of Khasra plot No. 66, area 4.3.18. Their land had been acquired for the purpose of constructing the Hindon-Yamuna Dam between Kilometers 11.740 to 12.140 and for the aforesaid scheme; part of the said plots of the Petitioners became the subject matter of acquisition Under the Land Acquisition Act, 1894. Of the scheme of the State Government, i.e., the Hindon- Yamuna Dam and initiating the acquisition proceedings under the, aforesaid, there is no issue on record. The net result of whatever the acquisition proceedings were worth is that in so far as the scheme of the State of U.P. in the Hindon-Yamuna Dam is concerned, the project is complete. The Dam has been constructed and water flows into the reservoirs.

2. The Petitioners have lost their lands and as the Hindon-Yamuna Dam Scheme is complete, possession has been wrested from them. As compensation was not being paid to the Petitioners, they filed the present writ petition.

3. On 26 October, 1994 when notice was issued on the writ petition, having been accepted by the standing counsel on behalf of the five Respondents, there were directions of the court that the Respondents so arrayed will file their counter affidavit, and further produce the Gazette which published the notification's Sections 4 and 6 of the Act, aforesaid, on the next date of listing. In effect, a certiorari has been issued by the High Court to produce the record. None of the Respondents arrayed filed their affidavits. Respondents No. 1, 2 and 3 had it filed through one Satya Prakash Singh, an Additional Tehsildar. He mentions in paragraph 1 of the counter affidavit that he has been deputed to file the counter affidavit on behalf of Respondents" No. 1,2 and 3. These Respondents are: (1) The State of Uttar Pradesh (2) Collector, Bulandshahr, and (3) Special Land Acquisition Officer (Joint Organization), Bulandshahr. Thus, these party Respondents had their version conveyed to the court by a counter affidavit through an Additional Tehsildar.

4. Respondents No. 4 and 5 are the Executive Engineer, Irrigation Construction Work, Region 1, Meerut. These Respondents have not filed a return to the writ petition at all. A faint plea was raised by the standing counsel that they have not had an occasion to file their counter affidavit. On record, this is not correct. Appended to the counter affidavit, as Annexure T, affirmed by Satya Prakash Singh aforesaid, an Additional Tehsildar is an inter-departmental correspondence between the Special Land Acquisition Officer, Bulandshahr, Respondent No. 3, addressed to the Executive Engineer, Irrigation Construction Division, Ghaziabad, Respondent No. 4. The subject of the letter dated 18 February, 1995 is this very writ petition, Le Civil Misc. Writ petition No. 34649 of 1994: Smt. Chanda and Ors. v. State of U.P. and Ors., of which Notice No. 31887 of 1994 had been received at the office of the standing counsel. Thus, at no stage any Respondent can come with a plea that he was either without notice on the petition or was unaware that a writ petition had been filed and was pending at the High Court. Respondents No. 4 and 5 at every given stage knew of this writ petition, upon which notice had specifically been issued to them also, but for reasons best known, evaded to answer it by a counter affidavit. In so far as Respondents No. 1, 2, and 3 are concerned, they should have had the writ petition answered responsibly either through the affidavit of the Collector. Bulandshahr, Respondent No. 2, or the Special Land Acquisition Officer, Respondent No. 3.

5. The only aspect which is now to be examined is whether the purpose of acquisition has in fact been given effect to or not, and if it has not, then, can the Petitioners be restituted to the position as if the land acquisition proceedings were not there? The record reveals that the second alternate is not available to the State of U.P. now.

6. The contention in the counter affidavit is that upon non-receipt of the Gazette u/s 6 within time, the award was not declared, therefore, the proceedings of acquisition have been cancelled. This statement in itself implies that Section 6 was only a follow-up of Section 4 and it is not that the land acquisition proceedings had not

been Initiated but the formality of having it published in the Gazette had not been rendered.

7. This defence would have been all right if the land which has been subjected to acquisition by proceeding Under the Act, aforesaid, was lying in a vacant state and possessed by the State of U.P. so that even If the acquisition proceedings were to be frustrated in the circumstances which have been enumerated In the available counter affidavit, as u/s 11A of the Act aforesaid, the logical consequence of lapsing a proceeding could happen by delivering possession of the land to the Petitioners. In which eventuality, the question of enquiring any matter for compensation would not have arisen.

8. But, in the present case, not only was the possession taken, but the scheme executed. The Petitioners have lost their land. The court will revert to the aspect of cancellation of the proceedings as is suggested in the counter affidavit filed by the Additional Tehsildar. A submission has been made in the counter affidavit to the effect that: "It is not known that In what manner the possession has been taken by the Executive Engineer, Irrigation Construction Division, Ghaziabad and an information in this regard is not available. It is too late in the day to come out with this submission. The proof of the pudding is in eating it. There were land acquisition proceedings for the project known as Hindon Yamuna Dam. The dam is complete. Now it is only academic to go into the exercise to find out whether possession had been taken and if it had, who took it The scheme was executed by the State of Uttar Pradesh for public benefit. In so far as the Petitioners are concerned, their land has been acquired and the development plan has been executed.

9. The Additional Tehsildar in his counter affidavit sumbiis that as land acquisition proceedings have already been cancelled and the award was not declared, there is no question of making any compensation available to the Petitioners. The suggestion in his counter affidavit is that the compensation is not to be paid by Respondents Nos. 2 and 3, Le. The Collector, Bulandshahr and the Special Land Acquisition Officer. But he makes a specific statement, to the effect, that if land has been acquired by the Executive Engineer, then the compensation should, also, be given by him. The malaise of the matter, in fact, is in the counter affidavit which has been filed by a person who does not have the responsibility to file an affidavit on behalf of the State Respondents and tie up the State of Uttar Pradesh with the irresponsible defence which has been taken. The moment the State Respondents make a suggestion that if the land has been acquired by the Executive Engineer thus, the compensation should be paid by him; the presumption is irresistible that there is no issue on the fact that the land has not been acquired. The acquisition was by the State of U.P., Under the Act. The only issue on record is on who has committed the irregularity of not carrying out the formality of the land acquisition proceedings and processing the award?

10. The more this Court examines the counter affidavit; it embroils and involves the State Respondents into a controversy inter se between them. The net result leaves an admission beyond reasonable doubt that there were land acquisition proceedings and the purpose matured into the project, for which acquisition had been made. In of paragraph 7 of the counter affidavit even goes to the extent to say that possession was not given to the Executive Engineer by the Respondents No. 2 and 3 (the Collector, Bulandshahr and the Special Land Acquisition Officer) but possession was taken by the Executive Engineer at his own level. The circle is now complete that there is not an iota of doubt that even possession had been taken from the Petitioners by exercising the sovereign powers to Initiate, construct and complete a public project in the Hindon-Yamuna Dam.

11. As a certiorari aids the examination of the issues in the writ petition, this Court certifies that the procedure as was adopted by all the Respondents between them was callous and irregular. The fact that they could not arrange to have the notifications Under Sections 4 and 6 published within time is not the fault of the Petitioner. When the, aforesaid, Respondents" talk of canceling the land acquisition proceedings, they forgot that there is a difference between the proceedings which lapse u/s 11A and the proceedings which are, in effect, cancelled u/s 48. In fact, "cancel" is an incorrect expression in reference to Section 48. This section only gives a liberty to the Government to withdraw from the acquisition proceeding on one pre-condition that possession of the land should not have been taken. In the present case the dam, a public Project is complete, only because possession has been taken by the State of U. P. Thus, this is neither a case of cancellation of acquisition proceedings nor can the liberty be exercised to withdraw from the acquisition proceeding. With the project, the Hindon-Yamuna Dam, complete, the acquisition proceedings u/s 11A cannot lapse.

12. The balance of the situation which remains is that the State of U.P. is possessed of the land upon which the project is complete, alive and functioning. The logical consequence of the acquisition proceeding have to be carried through by the procedure established by law. The acquisition proceedings Under the Act, aforesaid, were meant to facilitate smoothness on the modalities of transfer of the land of a citizen to the State. The person whose land is acquired sees the actual determination of compensation by a procedure established by law in the present case, the State of U. P. has achieved its purpose in the construction of the dam. Consequently, the State of U.P. is obliged to finalise and deliver compensation to the Petitioners. This is the only aspect left now.

13. Thus, the State of Uttar Pradesh is now obliged to carry over the exercise which has been prescribed u/s 11 of the Act. The Collector, concerned, shall in pursuance of the acquisition proceedings render his award. Consequent upon the Petitioners appearing before the Collector, Blandisher, Respondent No. 2, with a certified copy of this order and stating the nature of their respective interest to the claim, the

Collector, Blandisher shall initiate the exercise for rendering the award within three months of a certified copy of this order being placed before him. Regard being had to the circumstances of this case of the violation of the rule of law and the procedure established by law and the irresponsibility with which the writ petition was answered by the first three Respondents and not answered by others, and a citizen was disposed for a public project which has seen finality, but without redress of consideration for his property, and given an occasion the Respondents have taken a plea to avoid the consideration of compensation, the attitude is one of harassment. For this and for avoiding compensation on a complete project, the costs to be paid by the State of Uttar Pradesh shall be Rupees five thousand.

The petition is allowed with ordinary costs against each Respondent, in addition to, as above.