

(2014) 05 AHC CK 0098

Allahabad High Court

Case No: C.M.W.P. No. 23465 of 2010

Shiva Nand Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 26, 2014

Acts Referred:

- Land Acquisition Act, 1894 - Section 4

Citation: (2014) 6 ADJ 396 : (2014) 105 ALR 329 : (2014) 5 AWC 5189 : (2014) 124 RD 642 : (2014) 3 UPLBEC 2479

Hon'ble Judges: Vineet Saran, J; Naheed Ara Moonis, J

Bench: Division Bench

Advocate: Ashok Kumar Dwivedi, N.C. Rajvanshi and Lal Ji Pandey, Advocate for the Appellant

Final Decision: Allowed

Judgement

Vineet Saran and Naheed Ara Moonis, JJ.

This is a case where it is admitted by the respondents that the land of the petitioners was taken over by the State authorities more than three decades back on 1.3.1978 without resorting to the procedure of acquiring the land under the Land Acquisition Act or by adopting any other procedure prescribed in law. It shows complete highhandedness of the State-authorities in depriving the petitioners, who are villagers, of their land without following the procedure of law. It is not expected of the State authorities to illegally take over the land of any citizen and sit tight over the matter, and it is only after a marathon innings of struggle by the land owners, in chasing their case before the State-authorities and filing writ petition in this Court, that the respondents now come up with the case that during the pendency of this writ petition the consent has been taken from the petitioners in the year 2010 to the effect that they would be agreeable to accept the compensation at the circle rate in

terms of the G.O. dated 29.9.2001. Such agreement had been arrived at only after this Court had passed an order on 4.5.2010 to the effect that the respondents shall ensure payment of compensation to the petitioners for the land which had been taken over by them, or to show cause by the next date. Thereafter on 26.5.2010, 8.7.2010, 3.5.2013 and 14.5.2013 this Court had passed the following orders:

"ORDER DATED: 26.5.2010

On 4.5.2010, this Court had passed the following order:

"The grievance of the petitioners is that though his land has been acquired in 1978 but till date no compensation has been paid.

Learned Standing Counsel has, on having received instructions, stated that with regard to the said issue, a meeting has been called for by the District Magistrate on 13.5.2010, on which date it is likely that the matter regarding compensation would be taken.

In view of the aforesaid circumstances, it is directed that the respondents shall ensure payment of compensation to the petitioner for the land, which has been acquired by them or they may show cause by the next date.

List on 25.5.2010."

The said order has not been complied with.

Learned Standing Counsel states that the Principal Secretary, Ministry of Public Works Department had already sent the proposal for payment of the compensation and the payment of compensation would be made to the petitioners very shortly.

Accordingly, on request of the learned Standing Counsel, list on 8th July, 2010, by which date the respondent No. 1 shall ensure payment of compensation to the petitioners, and also file his personal affidavit explaining the delay in making such payment to the petitioners when the land was acquired in the year 1978.

ORDER DATED : 8.7.2010

In compliance of this Court's order dated 26.5.2010 Sri Ravindra Singh, Principal Secretary, Government of U.P. P.W. D. has filed his affidavit of compliance. In the said affidavit it is not explained as to under what circumstances the payment of Rs. 10 lacs and odd has been made to the petitioners on 23.6.2010 when by communication dated 13.8.2009 (Annexure-10 to the writ petition) the Executive Engineer had requested the Government for a sum of Rs. 62,37,511/- for payment of compensation.

Such affidavit of compliance, which has been filed today, is not satisfactory, inasmuch as it is not explained as to how the figure of Rs. 10 lacs and odd, which has been paid to the petitioner has been arrived at.

Let the Principal Secretary, Government of U.P.. P.W. D file his personal affidavit explaining such difference as to how the compensation has been reduced from Rs. 62 lacs and odd to Rs. 10 lacs and odd. The said officer shall also file his counter-affidavit in reply to the averments made in the writ petition. Such affidavit may be filed within three weeks. The petitioners shall have one week thereafter to file rejoinder affidavit.

List on 11th August, 2010.

ORDER DATED : 3.5.2013

On 8.7.2010, this Court did not accept the compliance of the affidavit filed by Sri Ravindra Singh, Principal Secretary, Government of U.P. P.W. D. in respect of payment of Rs. 10 lacs against the amount of Rs. 62,37,511/- which was to be paid by way of compensation.

In the counter-affidavit, still no explanation is there. If the amount to the tune of Rs. 62,37,511/- pursuant to the acquisition of the petitioner's land is payable to him then why for such a long period he has been paid only an amount of Rs. 10 lacs, although the Executive Engineer had requested the Government for a sum of Rs. 62,37,511/. The matter appears to be very serious.

In respect to non-payment/delay in payment of amount at least after 8.7.2010, the interest payable of that amount will have to be directed to be paid by the concerned Officer from his personal pocket, will also be a question which will be dealt with on the next date.

If satisfactory explanation by the personal affidavit of the Principal Secretary, Government of U.P. P.W. D, who may be holding the post held as on date, is not filed on or before the date fixed, then this Court will have no option but to direct the personal appearance of that Officer, so as to pass appropriate orders.

Let this matter be listed on 14.5.2013.

Certified copy of this order be made available to the learned Standing Counsel without any payment and to the Counsel for the petitioner on payment of usual charges by Tuesday i.e., 7.5.2013.

ORDER DATED : 14.5.2013

Personal affidavit of Dr. Rajneesh Dube, Principal Secretary, has been filed to demonstrate that whatever was agreed by the petitioner was paid.

Annexure No. 4 to the affidavit clearly indicates that the amount payable to the tenure holder has been calculated after adding the interest and solatium also.

After preparing the amount which is in all to the tune of Rs. 62,37,511/- the Executive Engineer appears to have written to the District Magistrate for the sanction of the same what can be the reason on the part of the petitioner to decline

to accept that amount.

Counsel for the petitioner submits that the petitioner accepted the amount at the circle rate but that never mean that he denied the acceptance of the amount of interest and solatium.

Be as it may, affidavit filed by Sri Dube is taken on record. Counsel for the petitioner is permitted to file affidavit in reply and to improve his own case.

As requested, list this matter in the second week of July, 2013."

When this writ petition was filed there was no such compensation offered by the respondent-authorities, and the prayer made in this writ petition was to pay a sum of Rs. 62,35,511/- plus solatium and interest etc. as had been assessed by the Special Land Acquisition Officer vide his calculation chart prepared on 3.8.2009, a copy whereof has been filed as Annexure-9 to the writ petition. It is this compensation which the learned Counsel for the petitioners asserts that the petitioners would be entitled to. In the rejoinder affidavit the specific case of the petitioners is that the consent of the petitioners (which was during the pendency of the writ petition) was taken by force in the circumstances when the son of the petitioner No. 2 died due to kidney problem, and during the cremation of his son he was called upon by the District Magistrate to be present in the meeting. It is thus contended that in such circumstances the consent which was taken from the petitioner No. 2 cannot be said to be free and fair, but by force and pressure exerted on the petitioners by the respondents.

2. We have heard Sri N.C. Rajvanshi, learned Senior Counsel assisted by Sri Lal Ji Pandey, learned Counsel for the petitioners as well as learned Standing Counsel appearing on behalf of the respondents and have perused the record.

3. On the basis of the alleged compromise the compensation to be paid to the petitioners was in terms of the G.O. dated 29.9.2001. The said G.O. speaks of market value and not the circle rate. The Committee constituted under the said G.O. dated 29.9.2001 assessed the compensation amount for the land taken from the petitioners at the circle rate and not the market value. The same was assessed at Rs. 10,91,375/- which was paid to the petitioners by two separate cheques dated 23.6.2010. Even the said amount has now been paid to the petitioners after they were made to run from pillar to post for over three decades, and had to file writ petition and take recourse to other legal measures. Learned Counsel for the petitioners has submitted that the amount determined by the committee constituted under the G.O. dated 29.9.2001 is also not as per the terms of the G.O. The circle rate would be different from market value. The committee has not proceeded to determine the market value but has mis-interpreted the G.O. and determined the compensation payable to the petitioners at the prevailing circle rate.

4. It may be relevant to mention that the compensation of Rs. 62,37,511/- plus solatium and interest etc. claimed by the petitioners on the basis of the report dated 3.8.2009 of the Special Land Acquisition Officer does not appear to be very appropriate as after calculating the current market value, solatium at 30% has been assessed, plus interest from the date of acquisition till the date of the report has also been calculated. In the present case, since the value of the land at the circle rate as on the date of the assessment has been calculated, interest of 30 years would not be payable. As such, the claim of the petitioners to be paid compensation at the rate assessed by the report dated 3.8.2009 of the Special Land Acquisition Officer does not deserve to be granted.

5. Now this Court has to consider as to whether the compensation which has been paid on the basis of the assessment and report of the committee submitted after the filing of this writ petition would be adequate and appropriate.

6. Depriving a citizen of his land, especially at the hands" of the State authorities, is a very serious matter. However necessary or laudable the purpose for acquisition of land may be, yet the State-authorities would be obliged to comply with the provisions of law before depriving any citizen of his land. The present is a case where all procedures have been done away with by the State-authorities and they have admittedly taken over the land of the petitioners without any authority of law, by using their might. Such action of the State-authorities appears to be akin to the method normally resorted to by the land mafias in depriving persons of their land. Such action of the State-authorities shocks the conscience of the Court.

7. In the light of the aforesaid facts, this Court has now to consider as to in what manner the petitioners can be compensated for having been deprived of their valuable land by the respondents, without resorting to any procedure of law.

8. In the case of Bhimandas Ambwani (D) thr. L.Rs. Vs. Delhi Power Company Limited, the Apex Court, while dealing with a case where the land owner had been dispossessed without resorting to any valid procedure for acquisition of land, and where land had already been utilized and the land owner could not be restored back into possession, it was held that the respondents should make an award treating the notification u/s 4 of the Land Acquisition Act as having been issued on the date of judgment, which in that case was 12.2.2013. The present is a similar case where the land of the petitioners has been taken away without following any procedure, and now their consent is said to have been taken on 13.5.2010 (which may be voluntary or under compulsion), and a meeting is held on the same day i.e., 13.5.2010 and the compensation is assessed at the circle rate. Admittedly as per Government Order dated 29.9.2001, the petitioners ought to have been given compensation at the market rate, but the same has been determined at the circle rate, which is not in terms of the Government Order. As per judgment of the Apex Court in the case of Bhimandas Ambwani (supra) and also as per provisions of the Land Acquisition Act, the petitioners would be entitled to solatium at 30% plus

interest.

9. To put a quietus to the litigation so that the agony suffered by the petitioners may be put to rest, the petitioners have agreed to the assessed amount of compensation at circle rate provided they are paid 30% solatium and interest thereupon. Keeping in view that the amount was calculated at the circle rate as on the date of the meeting i.e., 13.5.2010, we hold that the same would be the amount of compensation awarded under the provisions of the Land Acquisition Act. Since the assessed amount of Rs. 10,91,375/- was paid to the petitioners on 23.6.2010, which was immediately after 13.5.2010, the question of payment of interest on the said amount would not arise. We, however, hold that the petitioners would be entitled to an amount of 30% solatium on the assessed amount of Rs. 10,91,375/-. We further hold that on the said amount of solatium the petitioners shall also be entitled to interest at rate of 15% per annum from 13.5.2010 till the date of actual payment. The said amount shall be paid to the petitioners within three months from today failing which the respondents shall be liable to pay interest at 24% per annum from 13.5.2010 till the date of actual payment.

10. Considering the fact that the land of the petitioners was taken over 36 years back, and they were paid compensation only after filing of this writ petition, and before that also the petitioners had to file another writ petition earlier and had to wait for more than three decades, because of which their family members must have suffered substantial loss, we direct that the respondents shall be liable to pay cost, which we assess at Rs. One lac. The said amount of Rs. One lac shall also be paid to the petitioners within the aforesaid period of three months from today. The Principal Secretary, Public Works Department, Government of U.P., shall ensure that the order of this Court is complied with within the specified time.

11. This writ petition stands allowed to the extent as indicated above. The office is directed to supply a copy of this order to the learned Standing Counsel so as to enable him to forward the same to the Principal Secretary, Public Works Department, Government of U.P., Lucknow for necessary compliance.