(2017) 04 AHC CK 0226

ALLAHABAD HIGH COURT

Case No: 18646 of 2016

RAIS FATIMA		APPELLANT
	Vs	
STATE OF U P THRU PRIN SECY ,HOUSING & URBAN DEV & 4 ORS		RESPONDENT

Date of Decision: April 28, 2017

Acts Referred:

- Constitution of India, Article 14 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions
- Land Acquisition Act, 1894, Section 4, Section 6 - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, Section 167, Section 168A, Section 166 -
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2)

Hon'ble Judges: Amreshwar Pratap Sahi, Sanjay Harkauli

Bench: Division Bench

Advocate: Kshemendra Shukla, Gaurav Mehrotra, Shobhit Mohan Shukla

Final Decision: Disposed Off

Judgement

1. Heard Sri Kshemendra Shukla, learned counsel for the petitioner and Sri Abhinav Narayan Trivedi for the State. Affidavits on behalf of the State are on record.

2. Notices have been accepted by the Lucknow Development Authority and a counter affidavit has been filed on it''s behalf.

3. This dispute relates to acquisition of a parcel of land of Plot No. 301, village Malese Mau, Tehsil and District Lucknow. The land was acquired by the Lucknow Development Authority. There is no dispute on facts that when the acquisition took place vide Notification dated 06.09.2000 followed by a Notification on 16.02.2001 under Sections 4 and 6 respectively of the 1894 Act, the possession was handed over to the Lucknow Development Authority in 2003. The award was made on 21.10.2008.

4. Prior to the declaration of the award, the petitioner had filed Writ Petition No. 9 of 2008 (L/A) that was disposed of on 15.02.2008 with an observation to examine the claim of compensation. The petitioner also filed another writ petition being Writ No. 7927 of 2008 and the same was also dismissed on 05.09.2008 observing that since disputed questions of fact have been raised, therefore the petitioner can file a Civil Suit. The petitioner filed a Civil Suit which was dismissed on the ground that the Civil court had no jurisdiction to entertain any such plea with regard to land acquisition. Aggrieved the petitioner has filed an appeal which is stated to be pending before the learned District Judge, Lucknow being Civil Appeal No. 187 of 2013.

5. In this background of the litigation, what is worth-noting is that the award that was given in respect of the land pertaining to the disputed property takes note of the objections filed by the petitioner and also the fact that the name of the petitioner had been mutated. The aforesaid recital is contained in the findings recorded in respect of ''Khata'' no. 28. It also recites about the allegations of constructions standing over the land in dispute. The request for exemption of the land was rejected. There is a general recital also contained at internal page 3 of the said award about the fact that in the event any land has been acquired by any tenure-holder in violation of Section 168-A of the U.P.Z.A. & L.R. Act 1950, then the said transaction will be deemed to be void and consequently that would vest in the State read with the provisions of Section 166 and 167 of the 1950 Act.

6. After the award was delivered, a communication was made internally between the Additional District Magistrate to the District Government Counsel (Civil), Lucknow on 22nd December, 2011, copy whereof has been filed alongwith the short counter affidavit of the Lucknow Development Authority dated 29.11.2016. The same recites that in so far as the petitioner is concerned, keeping in view the recital contained in the award dated 21.10.2008 that the acquisition of the property by the petitioner was in violation of Section 168-A of the 1950 Act, the petitioner would not be entitled for compensation. However, subsequently, on 7th of November, 2014, a communication has been made by the Additional District Magistrate (Land Acquisition), Lucknow informing the petitioner about the said acquisition and award and also calling upon her to furnish all such documents for completing the formalities for receiving the compensation.

7. It is in this background that the petitioner has filed this writ petition after coming

into force of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 contending that since no compensation was either paid to the petitioner nor was it deposited prior to 01.01.2014, the acquisition will be deemed to have lapsed in terms of Sub Section (2) of Section 24 of the 2013 Act. It is, therefore, contended that the petitioner is entitled to the aforesaid relief keeping in view the background of the case aforesaid, even if the possession had been taken earlier.

8. When the writ petition had been initially filed, this Court had called upon the respondents to inform the Court about the impact of the proceedings that were undertaken by the petitioner by filing of the writ petitions, their dismissals and the dismissal of the Civil Suit, by passing the following order dated 10.08.2016:

> "Heard learned Counsel for the petitioner and Sri Shobit Mohan Shukla for the Lucknow Development Authority.
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> The issue raised in this petition is about the claim of compensation by the petitioner under the provisions of Section 24 (2) of the 2013 Act. There is a peculiar fact about this case that with regard to his claim of compensation after the acquisition, the petitioner had approached this Court and filed two writ petitions. In the second writ petition that was disposed of on 5.9.2008, being writ petition No.7927 (MB) of 2008, the Court observed that since the petitioner is raising disputed questions of fact he can file a Civil Suit. A copy of the said judgment is Annexure - 9 to the writ petition. The suit was filed thereafter, but was dismissed on the ground that if the petitioner is raising disputed questions of fact with regard to the quantum of compensation then he ought to have approached the Collector and the jurisdiction lies with the District Judge to hear upon a Reference being made in this regard. The said Suit was dismissed prior to the enforcement of the 2013 Act on 27.7.2013. The petitioner has therefore filed an appeal questioning the correctness of the said decree of the Civil Court being Appeal No. 187/2013, as stated in paragraph - 18 of the writ petition.
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> The question is as to what would be the impact of these intervening judicial pronouncements. Learned counsel for the petitioner may assist the Court with the aid of any judgments in this regard. List on 19.8.2016."

9. The matter was then heard and the following order was passed on 19.08.2016:

"We have heard the arguments of learned counsel for the parties on the last occasion on 10. 05.2016. Today, learned counsel for the petitioner has invited the attention of this court towards the Judgment and order dated 12th October, 2015 passed by Hon''ble Supreme Court in Civil Appeal No. 8468 of 2015, The Working Friends Cooperative House Building Society Ltd. Versus The State of Punjab & Ors.

In view of the aforesaid position that emerges, let a Counter Affidavit be filed by the respondents within three weeks.

Rejoinder Affidavit, if any, may be filed within one week thereafter.

List after expiry of the aforesaid period. "

10. It is, thereafter, that affidavits have been exchanged between the parties and the State has come up with a case that whatever be the position of the transactions, the undisputed fact is that the sale-deed on the basis whereof title is being claimed by the petitioner, cannot be the basis for claim of compensation as the said sale-deed transaction is void in terms of Section 168- A of the U.P.Z.A. & L.R. Act, 1950. Apart from this, the aforesaid recital is already contained in the award dated 21st of October, 2008 which was never challenged by the petitioner. In such circumstances, relying on the decision in the case of Rajasthan Housing Board Vs. New Pink City Nirman Sahkari Samiti Ltd. [(2015) Volume 7, SCC, page 601] and the judgment of this Court in Writ Petition No. 123 of 2015 (L/A) decided on 24th of September, 2015, the petitioner is not entitled to receive any compensation.

11. The petitioners have also advanced submissions relating to the amendments brought about in the provisions of Section 168-A in 2005, U.P. Act No. 4 of 2010 and U.P. Act No. 17 of 2014 to contend that the aforesaid provision was amended and the same was made applicable for short periods wherein it has been provided that the State stands divested and a person who has obtained a sale-deed of a fragment of a land in violation of Section 168-A, is entitled to get it regularized and the transaction validated.

12. This has been countered by the learned Standing Counsel for the State contending that the petitioner, admittedly, did not apply for any such regularization and, therefore, the argument of divesting the State of it''s claim is not available. Apart from this, it is also urged that such a provision would not come to the aid of

the petitioner for receiving compensation, inasmuch as, as on date also there is no material on record to indicate that the petitioner has otherwise retained title or the title of the petitioner is subsisting under any law for the time being in force.

13. The learned Standing Counsel has further refuted the submissions of the learned counsel for the petitioner who has relied on the judgment of the Supreme Court in the case of U.P. State Industrial Development Corporation Vs. Rishabh Ispat Ltd. and Others reported in [(2007) Volume 2 SCC, page 248] urging that the said decision was based in relation to the provisions of the 1950 Act that were existing prior to 1982. Reference may be had to U.P. Act No: 35 to 1976 and U.P. Act No: 20 of 1982. Even otherwise, the said decision has proceeded on the premise that there was no evidence on record to prove that the tenure-holders had acquired any land in violation of the provisions. It is, therefore, submitted that the said judgment will not come to the aid of the petitioner because in the present case, the sale-deed of the petitioner itself is an evidence that has been taken into consideration to come to the conclusion that fragmentation has taken place and therefore the sale-deed is void.

14. Learned counsel for the petitioner to meet the aforesaid argument of the learned Standing Counsel has urged that if the land which is utilized for ''Abadi'' even if part of an Agricultural holding (Abadi Shamil Jot) then any such fragmented sale would not be hit by the provisions of Section 168-A of the 1950 Act and it is for this reason that the Lucknow Development Authority has accepted the claim of similarly situate to tenure-holders of the same Plot of land and has awarded adjustment and also accommodated them by making allotments. Facts with regard to such a plea have been stated in Paragraphs 9 and 10 of the writ petition and have been further substantiated with the aid of a rejoinder affidavit dated 30.03.2017 filed to the supplementary counter affidavit where the orders passed by the Lucknow Development Authority in favour of one Sri Kaleem extending him such benefit, has been brought on record. It is alleged that such benefits have been extended to Hasrun Nisha, Rehana Khatoon, Najib and Mujeeb as well.

15. Learned counsel for the petitioner, therefore, urges that this action of the Lucknow Development Authority clearly establishes that the petitioner is entitled to such benefits and in case the same is denied, the same would violate Article 14 of the Constitution of India.

16. We have considered all the submissions raised and the first issue is with regard to the status of the sale-deed of the petitioner. It is no doubt, clear from the provisions of Section 168- A read with the provisions of Section 166 and 167 of the 1950 Act that if such a transaction resulting in a fragmentation is arrived at, then the subject matter of transfer shall be with effect from the date of transfer be deemed to have vested in the State Government free from all the encumbrances treating the

transaction to be void. The sale-deed presently involved is of the year 1999. Thus, a combined reading of all the aforesaid three Sections of the 1950 Act leaves no room for doubt that the saledeed which was executed in the year, 1999 in favour of the petitioner was obviously in violation of the aforesaid provisions. The petitioner admittedly did not make any attempt to get it regularized or validated under the amendment of Section 168-A in 2005, 2010 or 2014. The distinction that was sought to be drawn by the learned counsel for the petitioner that it relates to an ''Abadi'' being part of an agricultural holding, is not an exception countenanced in the aforesaid provisions. Secondly, the judgment in the case of U.P. State Industrial Development Corporation (supra) would not be attracted on the facts of the present case inasmuch as in the said case, the transactions were prior to 1982 when the provisions of the 1950 Act were entirely different. Then the enactment required taking of an action by the Collector and it is only thereafter that the transaction could be held to be void or land could be vested in the State. After the amendment in the Act, 1982, the deeming provision has been introduced and in such circumstances, the aforesaid judgment of the Apex Court is clearly distinguishable and applicable. Apart from this, from the ratio of the said case as indicated in Paragraph 10 thereof, it is evident that the Court proceeded on the presumption that there was no evidence on record to prove that the claimants had acquired any land in violation of the statutory provisions and further there was no evidence to substantiate the plea that the claimants were in illegal and unauthorized possession. This finding was based on the fact that the Collector or any other Authority under the 1950 Act had not undertaken any exercise for either evicting the claimants who were in possession and therefore, there was no vesting in favour of the State.

17. As observed here-in-above, the present case is related to a transaction after the amendment in the Act and after the introduction of the deeming provision in the relevant Section. Consequently, the said judgment does not come to the aid of the petitioner.

18. Having found the sale-deed transaction to be not in conformity with the aforesaid provisions what can be further seen in the present case is that in spite of this, the petitioner had been extended an offer to receive compensation by the Special Land Acquisition Officer himself vide letter dated 07.11.2014. Not only this the fact that the Lucknow Development Authority has extended benefits of accommodation to similarly situate tenureholders who had also acquired the property through sale-deeds from the same Plot at par with the petitioner has not been refuted. The order of such extension of benefit has been brought on record that has not been rebutted. In such circumstances, the petitioner''s claim with regard to such accommodation at par with such persons by the Lucknow Development Authority deserves to be considered. However, this is on the part of the Lucknow Development Authority and the same cannot be a ground so as to

treat it to be the petitioner''s entitlement for compensation.

19. In the aforesaid background, if the petitioner is not entitled for compensation, then in that event, the petitioner also cannot raise the plea of Sub Section (2) of Section 24 of the 2013 Act to seek any such benefit thereunder.

20. However, in view of the facts as indicated above that the Lucknow Development Authority had extended benefits to other tenure-holders who are at par with the petitioner, we without accepting the plea of the petitioner with regard to applicability of the Act 2013, leave it open to the Lucknow Development Authority to take any decision in the event the petitioner raises a claim before it on the ground of parity with the others as referred to here-in-above and pass an appropriate order in accordance with law. The Lucknow Development Authority shall endeavour to take an appropriate decision preferably within six months.

21. The writ petition is disposed off with the said directions.