

**Mohd. Shaheed Khan Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Mar-27-1996

**Reported in :** AIR1997All20

**Judge :** Binod Kumar Roy,;R.A. Sharma and;N.B. Asthana, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 1(2), 3, 4, 4(1), 5-A, 6, 9(1), 11, 11-A, 16, 17, 17(1) and (4) and 18; Urban Land (Ceiling and Regulation) Act, 1976 - Sections 9, 10 and 10 (1) to (3)

**Appeal No. :** Civil Misc. Writ Petition No. 14967 of 1988

**Appellant :** Mohd. Shaheed Khan

**Respondent :** State of U.P. and Others

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** D.V. Jaiswal, Adv.

**Judgement :**

ORDER

1. The prayer of the petitioner is to command the respondents to pay him compensation of his lands acquired under the provisions of the Land Acquisition Act as per the provisions of Act itself after quashing the order D/- 23-7-1988 passed by Respondent No. 2 Special Land Acquisition Officer (Nagar

Mahapalika), Allahabad (as contained in Annexure-2) by which the Respondent No. 2 has come to a conclusion that as two years period has expired from the date of notification issued under S. 6 of the Act in September, 1986 and the proceedings were not affected by any stay order passed by any Court hence it is not possible to make an award in view of the provisions of S. 11A of the Land Acquisition Act.

2. That writ petition came up for hearing before a Division Bench consisting of one of us (N. B. Asthana, J.) and M. L. Bhat, J. since retired.

3. Bhat, J. after recording his reasons granted following reliefs to the petitioner:--

'(a) By a writ of mandamus respondent No. 2 is directed to determine the compensation of the land in question, which we have specified in the earlier part of this judgment, and make the payment of compensation to the petitioner after the same is determined in accordance with provisions of Land Acquisition Act.

(b) The determination of the compensation for the land in question shall be completed within a period of six months from the date of supply of certified copy of this judgment to the respondent No. 2.'

4. One of us dismissed the writ petition holding that the petitioner was not entitled to compensation under the Land Acquisition Act but was entitled to compensation under the provisions of the Ceiling Act.

5. Thereafter [his writ petition was placed for hearing before R.A. Sharma, J who opined as follows:--

'As the land was acquired under the Act before the publication of the notification under S. 10(3) of the Ceiling Act, the proceedings under the Ceiling Act and the order passed therein stand abrogated. Therefore, compensation has to be paid to the petitioner under the Act.

Petitioner's land was acquired with the help of S. 17(4) and its possession was also taken under S. (1) of S. 17. In such a case S. 11A of the Act is not applicable. Consequently the limitation of two years laid down in the said S. 11A will also not

be attracted. The order dt. 23-7-1988, therefore, has to be quashed.'

6. Thereafter this writ petition has been placed before us. Both learned counsel, very fairly, and in our view correctly, take up a stand before us that in terms of the findings recorded as above this writ petition has to be allowed.

7. For the reasons aforementioned we quash the impugned order dated 23-7-1988 and allow this writ petition directing the respondents to determine the compensation of the lands belonging to the petitioner, which were acquired under the provisions of the Land Acquisition Act, to pay compensation under the provisions of the Act itself.

8. In the peculiar facts circumstances we make no order as to cost.

9. Let necessary writ issue accordingly.

CIVIL MISC. WRIT PETITION NO. 14967 OF 1988

Mohammad Shaheed Khan, Petitioner v. State of Uttar Pradesh and others,  
Respondents.

**R.A. Sharma, J.**

10. There being difference of views between the Hon'ble Judges constituting the Division Bench, this case has been placed before me for opinion. I have heard the teamed counsel for the parties.

11. A Notification under S. 4(1) read with sub-section (4) of S. 17 of the Land Acquisition Act (hereinafter referred to as the Act) was published in the Gazette dt. 6-6-1983 for acquiring certain plots including the plots belonging to the petitioner for the construction of residential colony under a planned development scheme by Development Authority. There after a Notification under S. 6 of the Act was published in the U. P. Gazette dt. 16-6-1983. As the provisions of S. 5A of the Act dispensed with, the later notification also contained directions to the Collector of the district to take possession of the land under sub-section (1) of S. 17 of the Act on expiration of fifteen days from the publication of the notice under sub-

section (1) of Section 9. On 2-4-1985 the Collector has taken possession of the petitioner's land under sub-sec. (1) of S. 17 of the Act. Thereafter award under S. 11 was made by the Land Acquisition Officer; but no compensation was awarded for the petitioner's land on the ground that the said land has come under the purview of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Ceiling Act). Petitioner thereafter made representation before the Land Acquisition Officer for awarding him the compensation under the Act, which was rejected on 23-7-1988 on the ground that a period of two years from the date of publication of declaration under S. 6 of the Act has already expired. Being aggrieved, the petitioner filed a writ petition before this Court praying for writ of mandamus directing the respondents to give award and pay him compensation for his land under the Act. Further prayer for quashing the aforesaid order dt. 23-7-1988 was also made. This writ petition came up for hearing before a Division Bench of this Court. One of the Hon'ble Judges of the Bench allowed the writ petition directing the respondents to determine and pay the compensation for the petitioner's land under the Act. However, the other Hon'ble Judge was of the view that such a relief cannot be granted and accordingly dismissed the writ petition. As mentioned before in view of the difference of views of the learned Judges, this matter has been placed before me for opinion.

12. Under the Act it is open to the Government to acquire the land. Acquisition is complete when the possession of the land is taken by the Government either under S. 16 or under sub-sec. (1) of S. 17 of the Act. From the date on which the possession of the land is taken by the Government the owner is divested of the title to the land so acquired and the Government becomes its owner. Under the Ceiling Act the Government acquires vacant land of a person, which is found in excess of the ceiling limit. S. 3 of the said Act, which prohibits holding of the vacant land in excess of the ceiling limit, is reproduced below :--

'3. Persons not entitled to hold vacant land in excess of the ceiling limit.-- Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under sub-section (2) of Section 1.'

The Ceiling Act contains elaborate procedure for determination of the vacant land in excess of the ceiling limit through quasi judicial process. Owner of the vacant land is required to file a statement under S. 6 on the basis of which the competent authority has to prepare a draft statement as regards the vacant land in excess of the ceiling limit, which is to be served on the person concerned, who has been given the right under S. 8 of the Ceiling Act to file objection against the draft statement and the competent authority after giving a reasonable opportunity of being heard to the objector is required to decide the said objections. After the disposal of the objection a final statement is prepared by the competent authority under S. 9 and such a statement is thereafter required to be served on the person concerned, who has been given the right to file the objection. After service of the statement on the person concerned under S. 9, the competent authority has to take action under S. 10 of the Ceiling Act. Subsections (1) to (3) of S. 10, being relevant for the present case, are reproduced below :--

'10. Acquisition of vacant land in excess of ceiling limit.-- (1) As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that--

(1) such vacant land is to be acquired by the concerned State Government; and

(ii) the claim of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette, of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in (he notification

published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.'

Under sub-section (1) of S. 10, the competent authority after the service of the final statement under S. 9 on the person concerned, is required to cause a notification giving particulars of the excess vacant land held by such person, published for information of the general public inviting the claim from such persons, who may be interested in the vacant land. Thereafter under sub-sec. (2) of the same section the authority decides the claim and pass appropriate order in that connection. Under sub-section (3) of S. 10 the competent authority declares the excess vacant land specifying the date with effect from which the excess vacant land shall be deemed to have been acquired by the Government and 'upon publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.'

Although S. 3 of the Ceiling Act has laid down that no person shall be entitled to hold any vacant land in excess of the ceiling limit; but there is no provision in the said Act for automatic vesting of the excess vacant land in the State. The Ceiling Act has laid down elaborate procedure for adjudication about such land by the competent authority in quasi judicial manner. Till the date specified in the notification published under S. 10(3), the owner of the excess vacant land is not divested of the title to the said land and he continues to be its owner. Government becomes owner of such land only from the date specified in the notification under sub-sec. (3) of S. 10. and it is from such date that the excess vacant land stands vested in the State Government free from all encumbrances.

13. Admitted position is that the Collector took possession of the petitioner's land under S. 17(1) of the Act on 2-4-1985. It is on misdate that the petitioner was divested of his title to the land and the Government became its owner. In *Satendra Prasad Jain v. State of U.P.*, (AIR 1993 SC 2517), while dealing with the effect of taking possession of the land under S. 17(1) of Act, Supreme Court has laid down as under :

'When S. 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under S. 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, S. 11A can have no application to cases of acquisitions under S. 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.'

On 2-4-1985 the Government thus, became the owner of the petitioner's land.' On 29-3-1986 the notification under S. 10(3) of the Ceiling Act was published for acquiring the same land of which the Government has taken possession on 2-4-1985 under the Act and has become its owner. The Government having become the owner of the land on 2-4-1985, it cannot thereafter acquire it again under the Ceiling Act by publication of the declaration under sub-sec. (3) of S. 10. It is a well known principle that the Government cannot acquire its own land. Reference, in this connection, may be made to *State of Jammu & Kashmir v. Sanahullah*, (1980) 3 SCC 272 : (AIR 1980 SC 1349).

14. In *Neelagangabai v. State of Karnataka*, (1990) 3 SCC 617 : (AIR 1990 SC 1321) Supreme Court has laid down that if before the publication of the declaration under the Ceiling Act the land has been acquired under the Land Acquisition Act, the declaration under the Ceiling Act becomes redundant and the owner of the land is entitled to the compensation under the Land Acquisition Act. The relevant extract from the said judgment of the Supreme Court is reproduced below :

'The appellants were the owners of the land in question, In a proceeding under the Urban Land (Ceiling and Regulation) Act, 1976, the appellants were held to be having surplus land, which-by virtue of the provisions of the Act vested in the State Government. However, before the publication of the aforesaid declaration in official gazette, steps for acquisition were taken for meeting the requirements of the respondent-Corporation. The appellants thus escaped the consequences of the declaration made under the Ceiling Act, and became entitled to the compensation payable in accordance with the provisions of the Land Acquisition Act. Steps were accordingly taken for declaration of the compensation, and on an

application by the appellants under Section 18 of the Land Acquisition Act, reference was made to the civil Court.'

But if the land has been acquired in pursuance of the declaration under sub-sec. (3) of S. 10 of the Ceiling Act, no proceedings thereafter under the Act for acquiring the same land can continue. Here reference may be made to the case of *Manne Khan v. State of U. P.*, (AIR 1988 All 289) wherein the land was acquired under the Ceiling Act before it could be acquired under the Land Acquisition Act. This Court accordingly held that :

'In our opinion, non-awarding of compensation for the areas of..... by the Land

Acquisition Officer did not constitute an error in the procedure. Since such land had already been declared surplus under the provisions of Ceiling Act and had become final, the question of making an award in respect thereof did not arise. Compensation for such surplus land would be paid under the provisions of the Ceiling Act.

XX XX XXAs a matter of fact, when the provisions of the Ceiling Act were invoked and land was declared surplus under that Act then the land so declared surplus vested in the State. Consequently, it was not necessary under the Act to acquire such land once again. The proceeding in that respect stood abrogated.'

In *State of U. P. v. The District Judge* (AIR 1984 All 352) also the land was acquired under the Ceiling Act before taking of its possession under the Act. This Court held as under :

'The title of a land notified under Ss. 4 and 6 of the Land Acquisition Act does not extinguish till possession is taken by the authorities under Ss. 16 and 17 of the said Act. The respondent continued to be the owner of the land till the decision of the Competent Authority and the subsequent possession under sub-sec. (3) of S. 10 of the Act.'

Position is thus clear that if under any of the two Acts viz., the Land Acquisition Act or the Ceiling Act, the land has been acquired and its possession has been taken by the State then the proceedings under the other Act cannot be continued

because the State cannot acquire its own land. Therefore, the compensation has to be paid to the owner of the land under the Act under which it was acquired first.

15. Learned counsel for the respondents, however, has placed strong reliance on *State of Gujarat v. Parsottam Das* (AIR 1988 SC 220) in his support. In that case notification under S. 4 of the Act was published on 8-4-1976 and after making inquiries under S. 5A the Government issued a declaration under S. 6 of the Act. In the meanwhile the Ceiling Act came into force with effect from 17-12-1976 and the respondents therein filed their statement before the competent authority under S. 6 of the Ceiling Act. Thereafter the owners of the land filed writ petitions before the High Court contending 'that the acquisition proceedings under the [Land Acquisition Act, 1894](#) should be proceeded with and the acquisition proceedings of the surplus land under the Ceiling law should be dropped.' Their contention was rejected by the Supreme Court by holding as under:

'When the land in question or bulk of them are likely to be acquired under the ceiling law by paying compensation as provided therein, it would not be proper to compel the Government to acquire them under the provisions of the [Land Acquisition Act, 1894](#).'

In the said case land was not acquired under any of the two Acts and in fact proceedings under the Land Acquisition Act were withdrawn and the proceedings under the Ceiling Act continued. Decision of the said case cannot be used as a precedent for deciding the question invoked in the present case.

16. As the land was acquired under the Act before the publication of the notification under S. 10(3) of the Ceiling Act, the proceedings under the Ceiling Act and the order passed therein stand abrogated. Therefore, compensation has to be paid to the petitioner under the Act.

17. Petitioner's land was acquired with the help of S. 17(4) and its possession was taken under sub-section (1) of S. 17. In such a case S. 11A of the Act is not applicable. Consequently the limitation of two years laid down in the said S. 11A will also not be attracted. The order dt. 23-7-1988, therefore, has to be quashed.

18. This writ petition, as such, has to be allowed, directing the respondents therein to determine the compensation of the petitioner's land under the Land Acquisition Act and to pay the same to him. The order dt/ 23-7-1988 has also to be quashed.

19. Let the papers of this writ petition be placed before the appropriate Division Bench for passing the final order/judgment in accordance with law in the writ petition.

20. Place it before a Bench of which Hon'ble N. B. Asthana, J. is a member.

21. Order accordingly.

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