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Deepak Kumar Vs. Collector, Gautam Budha Nagar and ors.

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Court : Allahabad

Decided On : Jan-11-2002

Reported in : 2002(1)AWC614

Judge : G.P. Mathur and ;R.P. Mishra, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4(1), 6, 17, 17(3A), 18 and 31(2)

Appeal No. : C.M.W.P. No. 38161 of 2001

Appellant : Deepak Kumar

Respondent : Collector, Gautam Budha Nagar and ors.

Advocate for Def. : S.C., ;Pradeep Kumar and ;Sidhartha, Advs.

Advocate for Pet/Ap. : Vinod Sinha and ;S.P. Singh, Advs.

Disposition : Writ petition allowed

Judgement :

G.P. Mathur, J.

1. This writ petition under Article 226 of the Constitution has been filed praying that a writ of mandamus be Issued to respondent No. 2 not to make payment of any compensation to respondent No. 3 and to make payment of compensation of the land in dispute to the petitioner as per the compromise dated 12.10.1999 entered

into between the petitioner and respondent No. 3. A further prayer has been made that respondent No. 2 be commanded to decide the representation dated 27.10.2001 and 9.11.2001. filed by the petitioner forthwith in accordance with law.

2. We have heard learned counsel for the petitioner, learned standing counsel for respondent Nos. 1 and 2 and Sri Siddhartha for respondent No. 3.

3. A suit under Section 229B of U.P.Z.A. and L.R. Act was filed by Smt. Anju, respondent No. 4 against Savitri Devi, respondent No. 3, for declaration that she is bhumidhar of the land in dispute which has been acquired subsequently under Land Acquisition Act. The suit was decreed ex parte on 26.4.1996. Thereafter, thepetitioner Deepak Kumar and Smt. Anju (respondent No. 4) exchanged their holdings in accordance with Section 161 of U.P.Z.A. & L.R. Act after permission had been granted by the Assistant Collector on 11.7.1997. The respondent No. 3 moved an application for setting aside the ex parte decree dated 26.4.1996 and also preferred an appeal. A revision was also filed before the Commissioner against an order passed in proceedings for setting aside the ex parte decree. In revision, a compromise was entered into between the petitioner and respondent No. 3, as the petitioner had on account of exchange of holding got the holding of respondent No. 4. Under the compromise, the petitioner agreed to pay Rs. 17.50,000 to respondent No. 3. According to the petitioner, he paid Rs. 2.50.000 to respondent No. 3 by a bank draft, and the balance amount was paid by several cheques. These cheques were dishonoured. The appeal filed against the judgment and decree dated 26.4.1996 was allowed by the Commissioner by the order dated 25.10.1999. By this order, the ex parte decree was set aside and the suit was remanded for a fresh decision. This suit has been dismissed by the trial court on 4.10.2001 on the ground that the land in dispute has already been acquired by the State Government. Against this decree, the petitioner has again preferred an appeal before the Commissioner, which is pending.

4. The land has been acquired by issuing notifications under Sections 4(1) and 6 read with Section 17 of the Land Acquisition Act. Since the urgency provisions under Section 17 have been invoked, the State has to pay eighty percent of the estimated amount of compensation to the person interested, in view of Section

17(3A) of the Land Acquisition Act. A supplementary-affidavit has been filed wherein it is averred that the amount regarding which the dispute has arisen is being paid under Section 17(3A) of the Land Acquisition Act. The present writ petition has been filed praying that a direction may be issued by theAdditional Collector (Land Acquisition) to make payment of the aforesaid amount of compensation to the petitioner, in view of the compromise which had been entered into between the petitioner and respondent No. 3 on 12.10.1999.

5. The facts mentioned above would show that there is a serious dispute of title between the petitioner and respondent No. 3. The petitioner claims that his name had been recorded prior to the issuance of notification under Section 4(1) of the Land Acquisition Act. Sub-clause (b) of Section 17(3A) of the Act provides that the Collector shall make payment of amount of compensation unless he is prevented by someone or more of the contingencies mentioned in Section 31(2). Section 31(2) lays down that if there be any dispute-as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Court, to which a reference under Section 18 would be submitted. In view of this clear provision in the Act, the compensation should not be paid to any of the parties till the reference is decided by the Court.

6. We, therefore, direct that the compensation amount shall not be paid to any party. The Collector may deposit the amount in Court in accordance with sub-clause (2) of Section 31 of the Land Acquisition Act.

7. The writ petition is allowed in the manner indicated above.

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