

Pradeep Kumar and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-13-2004

Reported in : 2004(2)AWC1273; (2004)2UPLBEC1142

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 3 and 30

Appeal No. : C.M.W.P. No. 5135 of 2004

Appellant : Pradeep Kumar and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Arvind Srivastava, Adv. and ;S.C.

Advocate for Pet/Ap. : H.N. Shukla and ;R.R. Shukla, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Katju, J.

1. This writ petition has been filed for quashing the impugned order dated 27.1.2004 Annexure-20 to the writ petition by which the representation of the petitioner has been rejected,

2. The petitioner No. 1 claims to be the owner of plot No. 12 of Khata No. 92 while petitioner Nos. 2 to 5 claim to be the owner of plot No. 12 of Khata No. 93.

3. It is alleged in paragraph 4 of the petition that petitioner No. 1 had applied and had got registered his plot as a Nursery over the land belonging to him. True copy of the certificate dated 7.12.2000 which is valid from 1.1.2002 to 31.12.2003, is Annexure-1 to the writ petition. Similarly the petitioner Nos. 2 to 5 have been granted certificate by the District Garden Officer, Gautam Budh Nagar valid from 1.1.2001 till 31.12.2003 vide Annexure-2 to the writ petition. It is alleged that the petitioners have set up a Nursery in the land in question.

4. In paragraph 10 of the petition it is admitted that the State Government has acquired the land in question under the Land Acquisition Act. True copy of the Notification under Section 4 read with Section 17 of the Land Acquisition Act dated 2.5.2003 is Annexure-8 to the writ petition. This Notification states that the land in question is needed for a public purpose namely for planned Industrial Development in district Gautam Budh Nagar through New Okhla Industrial Development Authority (NOIDA).

5. The petitioner has alleged in paragraph 11 of the writ petition that they are not challenging the Notification under Section 4 of the Land Acquisition Act. They are only seeking exemption of the land from acquisition since it is recorded as abadi and is having a Nursery on the same. True copies of the applications of the petitioner in this connection are Annexures-9 and 10 to the petition. True copy of the Notification under Section 6 of the Land Acquisition Act is Annexure-11 to the writ petition.

6. The petitioners filed Writ Petition No. 21464 of 2003 in this Court which was disposed of by the order dated 30.5.2003. The order of this Court dated 30.5.2003 has been quoted in the impugned order dated 27.1.2004.

7. Having heard learned counsel for the petitioner we find no merit in this petition.

8. A perusal of the order dated 27.1.2004 shows that finding has been recorded therein that no abadi or Nursery is recorded over the land in dispute and it cannot

be accepted that there was any abadi or Nursery on the said land before the Notification under Section 4/7 or Section 6 were issued. These findings are based on the relevant Khasra entries, and are findings of fact.

9. The land in question is required for planned Industrial Development for NOIDA which is clearly a public purpose.

10. In the impugned order it is also mentioned that there is nothing to show that after the Notification for Land Acquisition any prayer was made for exemption of the land from acquisition.

11. In the impugned order reference has been made to the decision of this Court in *Surendra and Anr. v. State of U.P.*, 2000 (2) AWC 1202, in which it was held that abadi land can also be acquired.

12. The impugned order mentions that the policy of the NOIDA was that in respect of land near abadi 10% of the acquired land shall be allotted to those who were traditional farmers of the acquired land and residents of the village before NOIDA was created. The applicants have not given any material for the satisfaction of the authority that they were doing farming on the land in question before the forming of NOIDA. It was also found that there was no abadi or Nursery on the land in question before acquisition. Hence it will not be possible to exempt the land in question from acquisition. These are findings of fact and we cannot interfere in writ jurisdiction.

13. In Writ Petition No. 29031 of 2003. *Amar Singh v. State of U. P.*, decided on 11.7.2003, it has been held by a Division Bench of this Court that abadi land can be acquired, as it is 'land' within the meaning of Section 3(a) of the Land Acquisition Act. It has been held therein that to exempt or not to exempt the land is in the sole discretion of the State Government. Interference by this Court in this connection can disrupt the entire scheme for acquisition, and is hence not proper.

14. In *Amar Singh's case (supra)*, the entire case law on the questions involved in this petition has been considered in great detail. Hence following the decision in *Amar Singh's case (supra)* this petition is dismissed.

