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Daya Shankar and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-21-1998

Reported in : 1999(1)AWC494

Judge : B. Dikshit and ;N.S. Gupta, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4(1), 5A, 6, 6(3), 9, 9(1), 11, 17(1) and 31(2)

Appeal No. : C.M.W.P. No. 6055 of 1998

Appellant : Daya Shankar and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C., ;R.P. Goyal and ;Manish Goyal, Advs.

Advocate for Pet/Ap. : Ram Prakash Misra, ;Rajeev Misra, ;Amrender Pratap Sahi,; Piyush Mishra, ;Vishnu Pratap, ;R.N. Singh, ;P.K. Singhal, ;Manish Goyal and ;R.P. Goyal, Advs.

Judgement :

B. Dikshit and N.S. Gupta, JJ.

1. This writ petition is directed against acquisition of petitioners' plots under the provisions of Land Acquisition Act (in short 'Act') for the purpose of construction of

building of a college, namely. Smt. Dropadi Devi Kanya Degree College, Khajani, Gorakhpur (in short 'Institution'). As all the parties are represented through counsel and counter-affidavit as well as rejoinder-affidavit stand exchanged, the writ petition is being finally disposed of at the stage of admission in accordance with Rules of the Court.

2. The facts relevant for the purpose of resolving present controversy are that Writ Petition No. 36990 of 1995 was filed by present petitioners with one Jai Narain in respect of land in dispute. The petitioners' case is that the writ petition was filed for the reason thatthe then Chief Minister of Uttar Pradesh came for laying down foundation stone of institution's building due to which they apprehended that their possession will be disturbed without their being any proceeding for requisition or acquisition of the land. The record of that writ petition is before us from which it appears that each petitioner was required to pay separate court fee though the writ petition was filed Jointly. The Court fee was not paid. Subsequently, the petitioners' counsel deleted petitioners' name from array of parties and the writ petition proceeded with Jai Naraln as sole petitioner. That writ petition was ultimately dismissed for default. While that writ petition was pending, the State Government issued notification under Section 4(1) of the Act on 16.8.1996 for acquiring the disputed land, the public purpose as declared being for construction of building of the institution. The notification also mentioned that the proceedings under Section 5A will not be applicable. The notification under Section 6 was issued on 17.4.1977, which was followed by notice under Section 9 of the Act.

3. According to the averments made in counter-affidavit of opposite parties, the petitioners, refused to accept notice issued under Section 9(3) of the Act and, therefore, they returned unserved. Admittedly an award dated 19.7.1997 has been made by Special Land Acquisition Officer, Gorakbpur, a copy of which has been annexed as CA-1 to the supplementary counter-affidavit of M. K. Tewari. Although it is denied by petitioners that possession has been taken over but the contesting opposite parties averred in counter-affidavit that possession was delivered to Institution on 19.7.1997, the day on which the award was made. According to award the objections were invited from persons interested and the compensation in respect of land acquired was estimated at Rs. 4.11.797.66 p. while solatium at

the rate of 30% was estimated at Rs. 1.23.539.30 p. The additional compensation at 12% was estimated as Rs. 31,850.60 p. It isapparent from the award that during the hearing of objection, an application was moved on behalf of institution due to which the compensation amount was reduced to Rs. 2,61.572.56 p. payable to tenure-holders for 2,778 hectare of land. The reason assigned in the award for reducing the compensation is that the land was mis-utilised by tenure-holder and required filling for which compensation was reduced at the rate of Rs. 11 per square meter. Beside that, another 25% price was reduced in view of an exemplar which was taken into consideration. Aggrieved by the reduction of amount in proceeding under Section 9, petitioners have filed this writ petition on 13.2.1998 against the award.

4. There has been some delay on the part of petitioners in filing this petition but as the Impugned order is dated 19.7.1997 while writ petition was filed on 13.2.1998 and the explanation by petitioners is that they did not know about the proceedings, therefore, they could not approach this Court earlier. After perusing the relevant documentary evidence on record, it appears that the possession was taken over by Opposite parties on 19.7.1997. Except making averments in writ petition to the effect that they are still in possession, there is no other evidence on the record to indicate that petitioners are continuing in possession. In absence of any documentary evidence to support the petitioners case that they did not know about the proceedings, we are not inclined to accept petitioner's case about want of knowledge about proceedings. However, there might be some delay on the part of petitioners in approaching this Court but on hearing the case on merits, we are not inclined to dismiss this petition on that ground as we are of opinion that there appears patent illegality in reducing compensation in this case. We, therefore, consider it proper to decide the case on merits.

5. The main question of law, which required determination in this case is as to whether it is open forSpecial Land Acquisition Officer to entertain an objection and reduce amount of compensation proposed to be given by allowing objection of the person for whose benefit the land is acquired, but before taking up said question we would like to dispose of other questions which have not found favour with us.

6. Learned counsel for petitioner contended that the acquisition in this case was not for a public purpose. The contention of learned counsel for petitioners is to be turned down for the reason that Section 6(3) of the Act provides that the declaration shall be conclusive evidence to the effect that the land is needed for public purposes. Otherwise also, acquisition of land for the purpose of constructing building of an educational institution is a public purpose and, therefore, the argument fails.

7. The second argument of counsel for petitioners has been that it was for the construction of a school building which cannot be considered such a public purpose that objections under Section 5A could be dispensed with under law. We are not impressed by the argument. If the State considered it necessary to dispense with the objection under Section 5A of the Act, as the land was required for construction of educational institution's building, it could be dispensed with as the State considered it to be urgent under the circumstances. We are, therefore, of the opinion that notice under Section 5A has not been dispensed with wrongly.

8. Beside what has been observed above in respect of absence of public purpose or dispensing with the notice under Section 5A, it is relevant to mention here that the possession has been delivered to institution on the strength of notification keeping in view Section 17(1) of the Act and, therefore, after delivery of possession, the acquisition proceedings came to end and petitioners cannot be allowed to raise grievance that the acquisition proceedings are bad in law or the acquisition is not for a publicpurpose or Section 5A has been wrongly dispensed with. Once title vested in institution in proceedings under the Act. It cannot be divested on the ground of want of procedural irregularity.

9. There is much force in the argument advanced by learned counsel for petitioners against the reduction of compensation on an application moved on behalf of institution in proceedings under Section 9 of the Act. By a letter dated 26.11.1996 the Collector. Gorakhpur has reported that in the year 1994 the amount of compensation was determined at Rs. 8.07,250.00 but at the time of acquisition of land in the year 1996-97 the compensation determined is Rs. 2.61.572.54. This stands reduced due to reduction of land value. The learned

counsel for appellant has disputed the scope of power of Special Land Acquisition Officer to reduce compensation in proceedings under Section 9 of the Act by Collector at the instance of institution for whose benefit the land has been acquired. We have examined the award dated 19.7.1997 made under Section 11 by Special Land Acquisition Officer (Joint Organisation). Gorakhpur. It appears that under Section 9 of the Act. the value of the land acquired was estimated at Rs. 4.11.066 while solatium on 30% of the said amount as Rs. 1,23,539.30 with additional compensation of Rs. 31,815.16, the total of which worked out to Rs. 5,67,152.56 in the year 1996-97. Now petitioners are aggrieved as the value of land was reduced in proceedings under Section 9 of the Act which has resulted in reduction of compensation. This aspect was pointed out to the learned standing counsel and Sri R. N. Singh, Advocate appearing on behalf of opposite party No. 5 for the institution. While hearing argument, we made it clear to counsel for opposite parties that though plea has not been set up specifically in writ petition but we would like to consider it. They were also asked that case can be adjourned if they wanted to study but they did not prefer adjournment. It was made clear that we may evenquash the award as the reduction of value of land earlier determined could not be prima facie upheld. It, appears illegal to the extent of reduction of amount determined earlier.

10. We heard learned counsel for parties on this aspect. In our opinion, the argument of learned counsel for petitioners has substance in this respect. From perusal of Section 9(1), it is apparent that the Collector invites claims in respect of value of land. The claim and objection co'ild be made only when the estimated value of land is disclosed in notice under Section 9(1). This is necessary as Section 17(1) of the Act will becor..e unworkable if the value of land is not set out in notice given under Section 9. Section 17(1) empowers the Government to take possession of land in cases of urgency after expirty of fifteen days from the date of publication of notice mentioned in Section 9(1). Section 17(3A) lays down a condition precedent for exercise of power under Section 17(1). It provides that the Collector has to 'tender payment of 80% of compensation for such land as is estimated by him to the persons interested entitled there' and 'to pay to them, unless prevented by someone or more or the contingencies mentioned in Section 31, sub-section (2)'. Section 31(2) does not provide for any contingency of

reduction, therefore, this Section also supports the contention that estimated value is to be determined before issuing notice under Section 9 of the Act.

11. While examining the maintainability of an objection under Section 9(1) by the person for whose benefit the land is to be acquired, it is necessary to examine object and purpose to be achieved by enquiry as well as kind of enquiry contemplated under Section 11 of the Act. Section 9 has been enacted for the benefit of claimants so that at the time of payment of compensation, all persons having interest in land under acquisition get due value of their land and if there are co-sharers, etc., then they are given compensation according to their interest in saidland. It permits filing of claim by person having interest in land. It did not contemplate filing of any claim or objection by person for whose benefit land is acquired. There is no indication in the Act to that effect. It has been provided just to determine as to what value be paid to person whose land is being taken away. The section is clear and allows leading to conclusion that unless a person has subsisting interest in land, he cannot take recourse to raising an objection under Section 9 and, therefore, so far present case is concerned, the claim of the institution, for whose benctil land was being acquired, could not be considered. The institution had no interest in the land and, therefore, its objection in respect of value of land was not maintainable. So far Section 11 of the Act is concerned, an award is made under that provision in respect of claim or objection filed under Section 9 and as no objection by institution could be filed under Section 9, therefore, the claim of respondent institution to reduce the estimated value of land was not maintainable. Thus, the Special Land Acquisition. Officer exceeded power conferred on him in entertaining the application/objection of the institution seeking reduction of compensation.

12. It has been pointed out during arguments that some of the petitioners have received compensation without protest and, therefore, they are not entitled for any relief in this case. In case any petitioner has received compensation without protest as awarded by Special Land Acquisition Officer, then he will not be entitled for any benefit under this order.

13. Thus, the award, copy of which is Annexure-CA-1 to the supplementary counter-affidavit dated 7.9.1998 of M. K. Tewari. Is liable to be quashed and compensation which was initially estimated by Land Acquisition Officer is to be maintained.

14. For aforesaid reason, the award dated 19.7.1997 of Special Land Acquisition Officer (Annexure-CA-1 to supplementary counter-affidavit dated 7.9.1998 of M. K. Tewari) is quashed but the petitioners who have withdrawn compensation money as awarded by Special Land Acquisition Officer without protest will not be entitled for benefits under this order. The Special Land Acquisition Officer. Gorakhpur is directed to pass fresh award in the light of aforesaid observations. The writ petition is allowed. Parties are directed to bear their own costs.

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