

Plot Holders Association and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-15-2004

Reported in : 2004(2)AWC1801

Judge : M. Katju and ;K.N. Ojha, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 6 and 17

Appeal No. : C.M.W.P. Nos. 4988, 10531, 37924 and 38178 of 2003

Appellant : Plot Holders Association and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : V.B. Misra and ;Ved Vyas Misra, S.C.

Advocate for Pet/Ap. : Ravi Kant, ;B.D. Mandhyan, ;Satish Mandhyan, ;Manoj Kumar Pandey and ;Deepak Verma, Advs.

Disposition : Petition dismissed

Judgement :

M. Katju, J.

1. These writ petitions are being disposed of by a common judgment.
2. Heard learned counsel for the parties.

3. The Writ. Petition No. 10531 of 2003 has been filed for a writ of certiorari to quash the impugned notifications dated 11.6.1986 and 16.6.1986 issued under Sections 4 and 6 of the Land Acquisition Act as well as the notice dated 9.12.2002 and the possession certificate dated 6.2.2003. The petitioners have prayed that they should not be dispossessed from the land in dispute. True copies of the notification under Sections 4 and 6 are Annexures-1 and 2 to the writ petition.

4. The petitioner No. 1 claims to be an association registered under the Societies Registration Act having 110 members on its roll. It is stated that the object of the Society is to develop the land and promote construction of house and look after their interest. In para 3 of the petition it is alleged that the members of the petitioner Society have purchased pieces of land out of Khasra No. 195 situate in village Mirzapur, Tehsil and District-Ghaziabad between 1960 and 1965 and their names have been mutated in the revenue records on the respective plots purchased by them. It is alleged that 40 sub-divisions have been made out of plot No. 195 which they have purchased. Extract of Khasra for 348-Fasli is Annexure-4 to the petition.

5. Plot No. 195 is a very big plot of area 118 bighas, 7 biswas. It is alleged that members of the petitioner Society have purchased 52 bighas, 3 biswas, 9 biswansis, and 4 kachwansis out of that plot. In the notifications under Sections 4 and 6 it is mentioned that the area of plot No. 195 is 118 bighas, 7 biswas and out of that area 52 bighas one biswa have been acquired. It is alleged in para 6 of the petition that no notice under Section 9 was issued to the members of the petitioner Society, and they knew nothing about the acquisition of their land. No notification was published in the local newspapers.

6. It is alleged that the petitioners' members continued in peaceful possession over the plots and made constructions thereon and are residing therein. In para 10 of the petition it is alleged that the respondent No. 4 has issued notice under Section 9 of the Land Acquisition Act dated 9.12.2002 (vide Annexure-6 to the writ petition). In this notice it has been stated that notifications under Sections 4 and 6 have been issued long time back which were published in the Gazette as well as in the local Newspapers, and that demarcation has been done and those who are

interested in the land may file objection for the purpose of compensation.

7. It is alleged in para 11 of the petition that it has been falsely stated in this letter that there was publication in the Newspapers and local publication as is evident from the letter of the A.D.M. dated 10.8.1999 (vide Annexure-5 to the writ petition). In para 14 it is stated that the possession was allegedly delivered to respondent No. 2, the Ghaziabad Development Authority on 6.2.2003 but no actual possession has been taken, and the petitioners are still in possession.

8. It is alleged in para 15 that 80% compensation under Section 17(3A) has not been given, and no award has been passed. Hence the proceedings have lapsed under Section HA. In para 16 it is alleged that notifications under Sections 4 and 6 are invalid as they were published with a gap of five days whereas the notification under Section 4 should have been published in the Gazette and in two local Newspapers having wide circulation in the area and only thereafter the declaration under Section 6 could have been published. Here both the notifications were published almost simultaneously, which is illegal.

9. It is alleged in para 22 that although notifications under Sections 4 and 6 were issued in June, 1986, the petitioners came to know about them only on 6.2.2003 when the Tehsil staff came to take possession. It is alleged that the petitioners are still in possession of the land in dispute.

10. A counter-affidavit has been filed by the Ghaziabad Development Authority and we have perused the same.

11. In para 4 of the counter-affidavit it is mentioned that there is no such association in the name of the petitioner. The petitioners have not annexed any registration certificate to prove its registration. In para 5 of the same it is stated that no sub-division in Khasra Number and Khatauni has been made. However, at the time of sending of proposal for execution Naksha Nazri of part of the land of Khasra No. 195 was prepared and on this basis demarcation has been made and possession has been handed over to the Ghaziabad Development Authority. Photocopy of the Naksha Nazri of part of the land of Khasra No. 195 having area of 50 bighas one biswa is Annexure-CA-1 to the counter-affidavit.

12. In para 6 of the counter-affidavit it is stated that on the land which has been acquired by the Ghaziabad Development Authority, none of the houses of the petitioners are in existence, and the possession has been handed over to the Ghaziabad Development Authority vide possession memo dated 6.2.2003. Hence the petitioner has no locus standi to file this petition.

13. In para 7 of the counter-affidavit it is stated that in the notification dated 11.6.1986 it is clearly mentioned that the map of the acquired land may be seen in the office of the Collector, Ghaziabad. Hence the averment of the petitioner that demarcation has not been made is false. In para 8 of the same it is stated that notifications under Sections 4 and 6 were published in the dally Newspapers in the local area on 4.7.1986 and 5.7.1986, and the entire acquisition proceedings have been completed and the possession has been handed over to the Ghaziabad Development Authority. It is stated that this writ petition has been filed after 17 years of the said notifications under Sections 4 and 6, and hence is liable to be dismissed on the ground of laches.

14. In para 10 of the counter-affidavit it is stated that the petitioners and other interested persons who are in connivance are only wanting to frustrate the execution proceedings in relation to plot No. 195 in village Mirzapur, Ghaziabad. In para 17 it is stated that the cost of the land, i.e., Rs. 49,08,731.35 has been deposited by the Ghaziabad Development Authority with respondent No. 4 through a Cheque dated 22.10.2002, copy of which is Annexure-4 to the counter-affidavit.

15. In para 9 it is stated that the petitioners have no locus standi to file this petition. The land has been acquired for planned development of Ghaziabad city and actual physical possession has been handed over to the Ghaziabad Development Authority. The writ petition suffers from laches, and it is filed after a lapse of 17 years. No house of the petitioners is situate on the land in question.

16. We have also perused the other connected writ petitions, counter-affidavits and rejoinder-affidavits filed in the same. As regards the notifications under Sections 4 and 6 of the Land Acquisition Act, we are of the opinion that these petitions are highly belated as they have been filed after a lapse of 17 years. Hence we are not inclined to interfere with the said notifications under Sections 4,

6 and 17 of the Land Acquisition Act as the challenge to the same suffers from laches. Writ jurisdiction is discretionary, and we are not inclined to exercise our jurisdiction in such cases.

17. It has been held by the Supreme Court in *Northern India Glass Industries v. Jaswant Singh*, 2003 (1) SCCD 248 : 2002 (5) AWC 3495 (SC) : (2003) 1 SCC 335, that where there is a delay of 17 years in filing the writ petition, the writ petition should not be entertained as it is barred by laches.

18. In the present case the Ghaziabad Development Authority has taken over the possession of the land in dispute and has deposited a sum of Rs. 49,08,731.35 as compensation before the S.L.A.O., Ghaziabad. Demarcation of the plot was done by the revenue authorities in the presence of the officers of the Ghaziabad Development Authority and the possession was handed over to the Ghaziabad Development Authority vide Annexure-1 to the counter-affidavit. A scheme known as Pratap Bihar Scheme, 2003 has been launched and the plots have been allotted on the basis of lottery.

19. The petitioners in Writ Petition No. 10531 of 2003 have purchased the land in plot No. 195 after publication of the notifications under the Land Acquisition Act, and are not the original tenure holders. Hence in our opinion this petition deserves to be dismissed on this ground alone.

20. In *Larsen and Toubro Ltd. v. State of Gujarat*, (1998) 4 SCC 387 and in *State of Tamilnadu v. L. Krishnan*, (1996) 1 SCC 250, it was held that if there is delay in challenging the notifications the writ petition is liable to be dismissed on the ground of laches. Even otherwise we are not inclined to interfere in these cases as the land has been acquired for the public purpose namely a planned development scheme. Writ jurisdiction is discretionary, and we are not inclined to exercise our discretion in such cases.

21. Although we have dismissed these petitions on the ground of laches we may further mention that it has been held in *Ghaziabad Development Authority v. Jan Kalyan Samiti, Sheopuri, Ghaziabad*, (1996) 2 SCC 365, that simultaneously publication of notification under Section 4(1) and declaration under Section 6 is not

illegal when Section 17 has been applied. The Supreme Court has referred to the U. P. amendment made to the Land Acquisition Act, by U. P. Act No. 8 of 1974. It has also been held in that decision that when Section 17 has been invoked the requirement of publication of the notifications in the local Newspapers would not apply.

22. For the reasons given above these petitions are dismissed.

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