

Sushil Kumar and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-18-1998

Reported in : 1999(1)AWC764

Judge : B.K. Dikshit and ;O.P. Jain, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 4 (1), 6, 9, 9 (1), 11, 11A, 17 and 17 (1) and (2)

Appeal No. : C.M.W.P. No. 20241 of 1998

Appellant : Sushil Kumar and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;B.D. Mandhyan, Adv.

Advocate for Pet/Ap. : Pramod Kumar Jain, Adv.

Judgement :

B. Dikshit and O.P. Jain, JJ.

1. By this writ petition the petitioners have prayed for declaring that the proceedings for acquisition of plot Nos. 2256, 2256/1. 2257, 2259, 2264, 2266, 2269, 2270 and 2272 of village Mawana. Pargana and Tehsil Hastinapur, district Meerut initiated in pursuance of notification under Section 4 of Land Acquisition

Act dated 30.9.1998 stood lapsed under Section 11 of the Act. The challenge is on the ground that the award was not made within a period of two years from the date of issue of notification under Section 6 of Land Acquisition Act (in short 'Act'). The petitioners have also prayed for issue of writ of mandamus to restrain the respondents from taking over possession of the disputed plots.

2. The facts relevant for the purpose of resolving present controversy are that a notification for acquiring disputed land was issued under Section 4 of the Act on 30.9.1989. The acquisition was notified for construction of new market yard of Krishi Utpadan Mandi Samiti, Mawana, district Meerut (in short 'Mandi Samiti') under planned development scheme. The notification under Section 6 of the Act was issued on 24.9.1990 before any notice could be served on petitioners under Section 9. The 'Mandi Samiti, feeling aggrieved by the estimated value of land, filed Writ Petition No. 339 of 1992, as compensation was to be paid by it. An interim order was passed in that petition on 12.10.1992 whereby the Special Land Acquisition Officer was restrained from making award under Section 11 of the Act. Subsequently, the writ petition of 'Mandi Samiti' was dismissed as withdrawn on 3.3.1998. It is admitted case of the parties that during pendency of that writ petition, a notice under Section 9(3) of the Act was issued indicating therein, that after expiry of 15 days the possession shall be taken over. According to 'Mandi Samiti.' the possession was taken over on 2.6.1998, which has been disputed by petitioners. The petitioners claim that they are still in possession. It is not in dispute that the amount of 80. per cent of estimated value of land sought to be acquired, which was to be paid to petitioners at the time of delivery of possession, was deposited by 'Mandi Samiti' on 4.6.1998. A supplementary counter-affidavit has been filed by 'Mandi Samiti' in which it has been stated that the award under Section 11 has been made on 22.8.1998. As the petitioners considered that they are going to be dispossessed contrary to law, they filed this petition.

3. The learned counsel for petitioners argued that as award under Section 11 was not made within a period of two years from the date of issue of notification under Section 6 of the Act, the entire proceedings for the acquisition of land in question' lapsed. The case set up in the counter-affidavit by the 'Mandi Samiti' and by Additional District Magistrate (Land Acquisition), Meerut is that the possession was

taken over on 2.6.1998. The learned counsel for petitioners argued that the delivery of possession set up by 'Mandi Samiti' was not in accordance with law and, therefore, the rights of petitions did not come to an end on the basis of alleged delivery of possession. He contended that as 'Dakhalnama' (Certificate of delivery of possession) relied upon has not been signed by two witnesses, the said delivery of possession has not legal sanctity.

4. Counsel for 'Mandi Samiti', Sri B. D. Mandhyan, Advocate, opposed the argument and contended that as notice under Section 9 of the Act was issued before the expiry of period of two years, the land stood vested in 'Mandi Samiti' and, therefore, the acquisition proceeding did not lapse under Section 11A merely because award was not given within a period of two years from the date of issue of notification under Section 6. In alternative he contended that as it was a case of urgency and Section 17(1) of the Act has been invoked in acquiring the land, therefore also. Section 11A is not attracted. He relied upon certain Supreme Court cases in support of his contention, which will be dealt with at proper place. Lastly, he argued that even if the proceedings for acquisition lapsed still as the 'Mandi Samiti' has been delivered possession and award has been made under Section 11 of the Act on 22.8.1998, the writ petition is liable to be dismissed. The contention is that rights of tenure-holders stood vested in the 'Mandi Samiti' as soon as possession was taken over and no relief can be given to petitioners in this petition. Similar arguments have been advanced by learned standing counsel on behalf of State.

5. The first question which arises for consideration is as to whether notification issued under Section 4(1) lapsed in view of Section 11A as the award was not made within prescribed period of two years from the date of issue of notification under Section 6 of the Act. The 'Mandi Samiti' was dissatisfied with the estimated value of property under acquisition and preferred Writ Petition No. 339 of 1992 as the compensation was to be paid by it. The declaration of award was stayed in said writ petition on 12.10.1992. The writ petition was finally dismissed as withdrawn on 3.3.1998. On admitted facts, after excluding the period during which writ petition was pending, the period of two years for making award expired on 26.4.1998 but neither award was made nor estimated amount of compensation

was deposited by 'Mandi Samiti' by that date. As neither award was made before 26.4.1998 nor compensation was deposited, the 'Mandi Samiti' was neither entitled to take possession on 22.8.1998 nor retention of such possession can be allowed under law.

6. The learned counsel for 'Mandi Samiti' has contended that Section 11A did not come into play as it was a case of urgency where possession was to be taken over under Section 17(1) within 15 days from the date of giving of public notice under Section 9(1) of the Act. He argued that notice under Section 9(3) was served on petitioners on 3.10.1998 and after 15 days of the service of notice, the land vested in State. He relied on the decision of a Division Bench in Civil Miscellaneous Writ Petition No. 23997 of 1996, A. P. Sareen and others v. State of U. P. and others, district Chaziabad, decided on 9.12.1996. in which it has been held that after expiry of statutory period of 15 days from the date of service of notice under Section 9, the land vests in State Government free from all encumbrances in view of Section 17(1) though no award is made. The judgment of this Court in A. P. Sareen's case has been subject-matter of consideration by Supreme Court of India in appeal. This Court relied on the case of Ghaziabad Development Authority v. Jan Kalyan Samiti. Sheopuri, Ghaziabad and others, JT 1996 (1) SC 568, while deciding A. P. Sateen's case. The Apex Court did not approve of it and held that the ratio of the case of Ghaziabad Development Authority (supra) that possession of land shall be deemed to have been taken over by the State under Section 17(2) had no application to A. P. Screen's case (See A. P. Sareen v. State of U. P., (1997) 9 SCC 359. Bare reading of Section 11 with Section 16 makes it clear that the land vests In State only after taking over of possession by State and not before that See Satendra Prasad Jain and others v. State of U. P. and others, JT 1993 (5) SC 385.

7. The next argument advanced by learned counsel for 'Mandi Samiti' which arises for consideration is. whether after taking over of possession, the land vests in Mandi Samiti and therefore, even If award was not given within two years of the declaration under Section 6 yet 'Mandl Samiti' cannot be asked to restore back possession. The argument is that the possession was delivered to 'Mandi Samiti' on 22.8.1998 in exercise of power under Section 7(1) and, therefore, despite

Section 11A being there, the acquisition proceedings have come to an end and petitioners are entitled for compensation alone under the Act but no relief can be given to petitioners in this petition. The learned counsel for petitioners has relied on the case of Satendra Prasad Jain (supra) and Awadh Bihari Yadav and others v. State of Bihar and others, (1995) 6 SCC 31. The two cases are distinguishable. Had possession been taken over before expiry of said period of two years, then Section 17(1) would have applied and there could be no illegality as possession would have been taken on the strength of declaration made under Section 6, before it could lapse. In that case Section 11A would not have attracted to make the declaration inoperative. But, in this case, as the possession was not taken over before expiry of two years, therefore, Section 11A is attracted. The effect of it is that acquisition proceeding lapsed by operation of law and the notifications under Sections 4(1) and 6 of the Act became non-existing. Under these circumstances, if the 'Mandi Samiti' is still allowed to retain possession then the true owners will stand deprived of their land without authority of law and the retention of possession by 'Mandi Samiti' will be contrary to law.

8. This takes us to last contention of learned counsel for opposite parties. The learned counsel argued that as possession has already been taken over by 'Mandi Samiti', this Court may not interfere in exercise of its discretionary jurisdiction. In disposing of such an argument, equities are to be balanced. To non-suit petitioner on equitable ground, it was for 'Mandi Samiti' to have placed relevant material in support of its case on equitable principle so that possession be not restored to petitioners. It has not been indicated in counter-affidavit or supplementary counter-affidavit if 'Mandi Samiti' has done anything over the land in question. It is also not the case of 'Mandi Samiti' that it has expended money by doing something for achieving the object for which land was required. There is nothing on the record to indicate that any activity for establishing 'Mandi' has started over the land in dispute after delivery of possession. When land is lying vacant and as no activity for establishing Mandi has started after delivery of possession, there can be no valid reason to refuse delivery of possession to petitioner, specially in view of the fact that 'Mandi Samiti' has claimed taking over of possession on 2.6.1998 while writ petition was moved soon thereafter on 6.6.1998 and an interim order of status quo passed on 9.6.1998 remained operative during pendency of petition. No

activity by 'Mandi Samiti, is possible in such circumstances.

9. The learned counsel for petitioner has pointed out another good reason for restoring back possession. The learned counsel for petitioners argued that even if the delivery of possession relied upon by the 'Mandi Samiti' is accepted, then this Court may not take notice of it as the 'Dakhalnama' has not been executed in accordance with law. According to him, the law requires it to be signed by two witnesses, which legal requirement was not complied as it has not been signed by even a single witness and, therefore, even the delivery of possession set up by petitioner is no delivery of possession in eye of law. We have examined 'Dakhalnama', a copy of which has been filed by 'Mandi Samiti'. It does not bear signature of any witness before whom said possession could be said to have been delivered. It is normal mode in executing document while delivering possession under law and, therefore, even 'Dakhalnama' in question cannot be considered to have been executed in accordance with law. In any case, if the State Government still considers that acquisition of same land is essential for construction of 'Mandi'. it can still acquire it. There is no fetter on its power.

10. For aforesaid reasons, the writ petition succeeds and is allowed, the notification dated 30.9.1989 Issued under Section 4(1) and notification dated 24.9.1990 issued under Section 6 of the Land Acquisition Act (Annexures-1 and 2 to writ petition) in respect of plot Nos. 2256. 2256/1. 2257, 2259. 2264. 2266. 2269. 2270 and 2272 of village Mawana. Pargana and Tehsil Hastinapur. district Meerut are declared to have lapsed on the date of taking over of possession and making of award under Section 11 of Land Acquisition Act and, therefore, the 'Mandi Samiti' was neither entitled to take possession nor it is entitled to retain possession. The above mentioned two notifications, though they lapsed, are being quashed in respect of petitioners land in dispute. It is further declared that petitioners are entitled to obtain and retain possession of land in dispute. It is kept open for State Government to draw fresh acquisition proceedings in respect of land of petitioners in accordance with law, if it still requires. Costs on parties.