SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Gaindi Devi and Another Vs. State of U.P. and Others

Gaindi Devi and Another Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/463704

Court : Allahabad

Decided On : Mar-04-1998

Reported in : 1998(1)AWC794

Judge : B.K. Roy and; P.K. Jain, JJ.

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

Appeal No. : C.M.W.P. No. 20062 of 1988

Appellant : Gaindi Devi and Another

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : J.C. Joshi, Adv.

Judgement :

B.K. Boy and P.K. Jain, JJ.

1. The prayer of the petitioners is to quash (i) the Notification issued under Section 4(1) of the Land Acquisition Act bearing No. 1215-III-2(6)/84 dated June 7. 1955 read with Government of India. Ministry of Home Affairs Notification No. 20/1/55-Judl. (1) dated May 14, 1955, published in the Uttar Pradesh Gazette dated 24th

August. 1985, as contained in Annexure-1. (ii) the Notification issued under Section 6 of the Act, bearing No. 2915/III-2(6)-84-CAD, dated July 28. 1986, published in the Uttar Pradesh Extraordinary Gazette dated 28th July, 1986, as contained in Annexure-2, and (iii) the award dated 23.8.1988 passed by the Special Land Acquisition Officer. Nainital in Case No. 49/3 of 1984-85, as contained in Annexure-3.

2. The petitioners assert that the land in question measuring one acre, of plot No. 319 of village Kichha, Pargana Rudrapur, district Nainital was acquired for construction of Telephone Exchange and Staff Quarters whereas theTelephone Exchange and some of the staff quarters had already been constructed on a different land. Paragraphs 2 to 5 of the writ petition read thus :

'2. That a notice under Section 4 of the Land Acquisition Act, 1894 for proposing the acquisition of the said Land for construction of Telephone Exchange and staff quarters was published. The said notice was published in a local newspaper named Uttar Ujala on 28.7.1985 and in another local newspaper named Amar Ujala on 29.7.1985 and in official Gazette on 24.8.1985. So the date of publication of notice under Section 4 was 24.8.1985, the last date of publication. A true photocopy of publication of notice Gazette are being filed herewith and is marked as Annexure-T to this writ petition.

3. That after notification under Section 4 a formal inquiry was conducted under Section 5A of the Land Acquisition Act, 1894.

4. That thereafter a declaration under Section 6 of the Land Acquisition Act, 1894 was published. The said declaration was published in Official Gazette on 28.7.1986 and in a local newspaper named Amar UJala on 23.8.1986 and in another local newspaper named Uttar Ujala on 24.8.1986. So the date of declaration under Section 6 was 24.8.1986, the last date of publication. A photostat copy of publication of declaration in Gazette is being filed herewith and is marked as Annexure-'2' to this writ petition.

5. That thereafter a formal inquiry was conducted and an award was made under Section 11 on 23.8.1988. A certify copy of award is being filed herewith and is

marked as Annexure-'III' to this writ petition.'

3. In the counter-affidavit filed on behalf of respondent Nos. 1 and 2, sworn by the Land Acquisition Amin of the office of the Collector. Nainital, it has been stated, inter alia, that the Notification under Section 4 of the Act was issued on 24.8.1985 ; Notification under Section 6 was published on 28.7.1986, while the award was given on 23.8.1988, the names of the petitioners do not appear in the revenue records ; plot No. 319 was purchased on 26.6.1986 in the name of the petitioner during the pendency of the acquisition proceeding ; it is wrong to say that the Telephone Exchange and some of the staff quarters have already been constructed on different site, rather the Telephone Exchange is in a private building, which was not found sufficient; it is wrong to say that the publication of the Notification under Section 6 was not made within a year from the date of publication of the Notification under Section 4 or that the award under Section 11 was not made within two years inasmuch as the substance of the Notification was issued in the locality and published in two local newspapers 'Amar Ujala' dated 29.7.1985 and 'Uttar Ujala' dated 28.7.1985, which are locally circulated and it is wrong to say that the acquisition proceeding had lapsed and the respondents are not entitled to take possession of the land under the award ; possession, however, has not been taken so far ; and that the writ petition is liable to be dismissed with cost.

4. In the counter-affidavit filed on behalf of respondent No. 3, sworn by S.D.M.. Telecom. Legal, Head Quarters. Haldwani, apart from reiterating the facts stated in the counter-affidavit of respondent Nos. 1 and 2, it has been stated, inter alia, that even today the department is having urgent need of the land in question ; through various letters appended as Annexures-1, 3, 4 and 5 written by the District Magistrate to the State Government as well as Telecom. Department, possession of the land in question was sought to be immediately handed over to the Telecom. Department for the purpose of construction of Telephone Exchange.

5. Rejoinders have been filed by the petitioners to the aforementioned counters stating therein that fresh proposals have been forwarded on 6.10.1995 for construction of Exchange and staff quarters, but this fact has been deliberately

concealed, which shows that the land has become unsuitable and that the entire proceeding has lapsed because of the construction of the new Road Bridge.

6. When earlier a grievance was made by the learned counsel for the petitioners before us that the compensation money has not been deposited till date, we called for a counter. A supplementary counter-affidavit was filed by way of information saying that the Telecom. Department had issued cheques of the State Bank of India, Nainital in the name of the Special Land Acquisition Officer, Nainital and that from the Bank a sum of Rs. 37.500 was withdrawn on 3.3.1986 and Rs. 1,98,283 was withdrawn on 22.8.1988 by the S.L.A.O.

The Submissions :

7. Mr. J. C. Joshi, learned counsel appearing on behalf of the petitioners today contended as follows :

(i) The impugned award dated 23.8.1988 was made beyond two years of the Notification published in the Official Gazette dated 28.7.1986 under Section 6 of the Act, whereas in view of Section 11A of the Act should have been made within a period of two years from the date of publication of the declaration and, accordingly, the entire proceeding for acquisition of the land in question has lapsed.

In support of his contention he placed strong reliance on a Judgment of the Apex Court in Eugenio Misquita and others v. State of Goa and others. JT 1997 (8) SC 317.

(ii) Alternatively he submitted that due to time lag the State becommanded to pay interest on the award to the petitioners.

8. Learned standing counsel Mr. Yadav appearing on behalf of respondent Nos. 1, 2 and 4, on the other hand, contended as follows :

(i) In view of the provisions as contained in Section 6(2) of the Act, every declaration has to be published in the Official Gazette and in two daily newspapers circulating in the locality and, therefore, the two years period has to be reckoned

from the date of such publication,

(ii) To the alternative submission Mr. Yadav contended that the fault squarely lay on the petitioners who moved this Court and prayed for grant of stay of their dispossession, which was allowed by the interim orders and thereby, admittedly, they had continued in possession till today and, therefore, there is no question of grant of any interest on account of any delay, and

(iii) Thus there is no substance in the submissions made by Mr. Joshi and the writ petition be dismissed with cost.

9. Mr. Munna Pandey, the learned counsel appearing on behalf of the Union respondent No. 3, apart from following the submissions made by Sri Yadav, contended that the Department is not at all at any fault since it has already deposited the money which was also withdrawn by the Special Land Acquisition Officer.

Our Findings :

10. In order to resolve the controversy raised by the learned counsel, it isuseful to reproduce Section 6(2) of the Act:

(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality the land of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration, and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which tt is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be Inspected.'

10.1. On a bare perusal of the aforementioned provision, following position in law emerges : (a) Every declaration under Section 6 of the Act has to be published in the Official Gazette as well as in two daily newspapers, (b) The two newspapers

should be in circulation in the locality in which the land is situate, (c) One of the newspapers should be in the regional language, (d) The Collector is required to cause a public notice of the substance of the declaration to be given at convenient places in the said locality, (e) The date of publication of the declaration has to be the last of the dates of the aforementioned publications.

10.2. The following observations made 'by the Apex Court in Eugenio Misquita (supra), relied upon by Mr. Joshi are also relevant:

'5. We would have dealt with the matter elaborately but for the recent judgment of this Court in Krishi Mandi Samiti's case (supra), which is directly on the point answering identical contentions raised before this Court in the said Judgment.'

x x x x '10.....the publication referred to in Section 6(2) of the Act.....is.....for reckoning the limitation prescribed under Section 11A of the Act.This construction is supported by the language employed in Section 6(2) of the Act. In particular, the word 'hereinafter' used in Section 6(2) will amply prove that the last of the series of the publication referred to under Section 6(2) is relevant for the purposes coming thereafter, namely, for making award under Section 11A. The language employed in second proviso to Section 6(1) also supports this construction.'

10.3. According to the petitioners themselves, the last date of declaration under Section 6 of the Act was 24.8.1986 whereas the award under Section 11 was made on 23.8.1988, i.e., to say within two years of 24.8.1986.

10.4. The two daily newspapers 'Amar Ujala' and 'Uttar Ujala' are Hindi newspapers. Hindi is the regional language. The date has to be reckoned from the date of the publication of these two newspapers. The provisions of the statute, namely. Section 6(2) of the Act being crystal clear coupled with the admissions of the petitioners themselves, as contained in Paras 4 and 5 of the writ petition, we are of the view that there is no merit in the contention of Mr. Joshi, which we hereby reject. The decision relied upon steers on the face of Mr. Joshi and repels his contention.

11. We find contentions of Mr. Yadav and Mr. Pandey valid in regard to the alternative prayer made on behalf of the petitioners. No party can derive advantage of his own acts. We find that by making wrong statements, the petitioners have moved this Court.

12. For the reasons aforementioned, this writ petition is dismissed, but in the peculiar facts and circumstances we make no order as to cost.

13. Now there is no impediment in taking possession of the land in question by the respondent Nos. 1, 2 and 4 to be handed over to respondent No. 3 to be utilised for public purpose.

14. The office is directed to hand over a copy of this judgment to the learned standing counsel Sri Yadav, within one week, for its communication to and follow up action by the respondents.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com