

Agra Development Authority Vs. Special Land Acquisition Officer, Agra and Others

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Court : Allahabad

Decided On : Jan-05-2000

Reported in : 2000(2)AWC1065; (2000)1UPLBEC292

Judge : N.K. Mitra, C.J. and ;S.R. Singh, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4 (1), 5A, 5A(2), 6, 6(1), 11, 11A, 17(1) and (4), 23 and 50(2); Land Acquisition (Amendment) Act, 1984; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 31481 of 1992 with 26 other Writ Petitions

Appellant : Agra Development Authority

Respondent : Special Land Acquisition Officer, Agra and Others

Judgement :

N.K. Mitra, C.J.

1. This bunch of writ petitions arises out of land acquisition proceedings initiated pursuant to Notification dated 30.1.1989 under Section 4(1) and declaration made vide Notification dated 8.2.1992 issued under Section 6 read with Section 17(4) of the Land Acquisition Act. (in short the 'Act'). By means of Notifications aforesaid land admeasuring 734.50 acres situate in four villages Chamrauli.

Basai, Tora and Makhwali was acquired for construction of buildings, plots and commercial centres under the planned development scheme known as Taj Nagri Phase II of Agra Development Authority, in short 'A.D.A.'

2. It appears that a number of writ petitions including Writ Petition No. 5452 of 1990 were filed challenging the acquisition proceedings in respect of lands situate in village Basal and Tora. However, pending such writ petitions the award dated 29.2.1992 was made under Section 11 of the Act. Writ petitions came to be allowed by a Division Bench of this Court vide Judgment and order dated 20.8.1993 thereby quashing the Notification under Section 6 read with Section 17(4) of the Act and directing the Collector to make an enquiry under Section 5A of the Act. Pursuant to the direction given by the Division Bench, enquiry contemplated by Section 5A of the Act was held and a fresh Notification came to be issued under Section 6 of the Act on 16.1.1995. In the meantime Civil Misc. Writ Petition No. 13600 of 1992 came to be Instituted by the A.D.A. whereby seeking a writ of certiorari quashing the award dated 29.2.1992.

3. Civil Misc. Writ Petition No. 489 of 1992, Kanhaiya Kunj Sahkari Awas Samiti Limited v. State of U. P. and others, has been Instituted for exemption of the land belonging to the petitioner society from the acquisition proceedings and Civil Misc. Writ Petition Nos. 23315 of 1992, 23316 of 1992, 38393 of 1993. 41530 of 1993. 26919 of 1996 and 29513 of 1999 have been Instituted for issuance of writ in the nature of mandamus commanding the respondents therein to make payment of compensation to the claimants as per award dated 29.2.1992. Civil Misc. Writ Petition Nos. 2918 of 1995, 3612 of 1995. 3613 of 1995, 3625 of 1995, 3632 of 1995, 3797 of 1995, 3798 of 1995, 3848 of 1995, 4718 of 1995, 4719 of 1995, 5166 of 1995, 5167 of 1995, 5631 of 1995, 6089 of 1995 and 30597 of 1999 have been instituted for issuance of writ in the nature of certiorari quashing the Notification dated 30.1.1989 issued under Section 4(1) read with Section 17(4) of the Act and the Notification dated 16.1.1995 issued under Section 6 of the said Act and Civil Misc. Writ Petition Nos. 2651 of 1995, 3913 of 1995 and 4603 of 1995 have been Instituted for issuance of a writ in the nature of certiorari quashing the Notification dated 16.1.1995 issued under Section 6 of the Act.

4. We propose to first take up first the group of writ petitions in which the acquisition proceeding itself has been questioned. Such writ petitions are Civil Misc. Writ Petition Nos. 2918 of 1995, 3612 of 1995, 3613 of 1995, 3625 of 1995, 3632 of 1995, 3797 of 1995, 3798 of 1995, 3848 of 1995, 4718 of 1995, 4719 of 1995, 5166 of 1995, 5167 of 1995, 5631 of 1995, 6089 of 1995, 30597 of 1999. 2651 of 1995, 3913 of 1995 and 4603 of 1995. It has been submitted for the petitioners that the declaration under Section 6 of the Act made vide notification dated 16.1.1995 was barred by time in view of clause (ii) of the first proviso to Section 6 of the Act which reads as under :

'6. Declaration that land is required for a public purpose.--(1) Subject to the provisions of Part VII of this Act when the appropriate Government is satisfied, after considering the report. If any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1) irrespective of whether one report or different reports has or have been made wherever required under Section 5A, sub-section (2) :

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1).-

(i)

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984. shall be made after the expiry of one year from the date of the publication of the notification.'

Explanation 1 to sub-section (1) of Section 6 of the Act provides that in computing any of the periods referred in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

5. In the instant case notification under Section 4(1) of the Act was made on 30.1.1989 followed by declaration under Section 6 read with Section 17(4) of the Act made vide notification dated 8.2.1990. The first notification under Section 6 was thus well within the statutory period of one year but the said notification dated 8.2.1990 was quashed by the High Court vide Judgment and order dated 20.8.1993 rendered in Writ Petition No. 5452 of 1990 connected with a number of other writ petitions. The subsequent declaration came to be made on 16.1.1995 after the expiry of more than one year even from the date of the Judgment. Clause (ii) of the first proviso prohibits making of declaration 'after the expiry of one year from the date of publication of the notification under Section 4(1) of the Act.' For the petitioners, reliance has been placed on a decision of the Supreme Court in *Oxford Indian School v. Government of Tamil Nadu*, AIR 1995 SC 2398. On the other hand, it has been submitted for the acquiring body, namely, Agra Development Authority, that in view of the Judgment of the Division Bench of this Court dated 20.8.1993, it is not open to the petitioners to challenge the acquisition on the ground of bar of limitation provided by clause (ii) of the first proviso to Section 6(1) of the Act.

6. In *Oxford Indian School* (supra), the High Court had quashed the notification under Section 6 of the Act and directed enquiry proceedings to be completed within a limited time. The Supreme Court held that the time limit for notification under Section 6 being absolute, the High Court could not give a direction permitting issuance of declaration under Section 6 beyond the prescribed period. In the present case, the Division Bench Judgment of this Court dated 23.2.1993 has attained finality. The petitioners having acquiesced to the said judgment cannot be permitted to challenge the declaration under Section 6 on the ground that it has been made beyond the statutory period of one year from the date of publication of notification under Section 4(1) of the Act. In any case, the possession of the lands in question having been taken, the lands vested in the Government under Section 17(1) of the Act and delay in making the declaration under Section 6 would not lead to reversion of lands to the owners in the absence of any provision in the Act providing that the lands statutorily vested in the State can revert to the owners in a situation like one in the present case.

7. In *Awadh Bihari Yadav v. State of Bihar and others*, AIR 1996 SC 122. It was contended that in view of Section 11A, the entire land acquisition proceeding lapsed as no award under Section 11 was made within two years from the date of commencement of the Land Acquisition Amendment Act, 1984. The contention was repelled by the Apex Court holding that since the Government had already taken possession of the land under Section 17(1) of the Act. It was not open to the Government to withdraw from the acquisition in that Section 48 of the Act gives liberty to the State to Withdraw from the acquisition of any land of which possession has not been taken. Obviously, therefore, if once possession of a land acquired under the Act is taken by the State Government, it is not open for the State to withdraw the acquisition proceeding. The Supreme Court placed reliance on its earlier decision in *Satendra Prasad Jain v. State of U. P.* (1993) 4 SCC 360. In which it has been held as under :

'Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession, the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government falls to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending, and by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of acquisition under Section 17, because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.'

The same principle will apply to the facts of the present case. Clause (ii) of the proviso to Section 6(1) will have no application to a case where a fresh declaration under Section 6 is made pursuant to a judgment of a court of law.

8. The next ground on which the acquisition proceedings are sought to be quashed is that the petitioners were not afforded opportunity of hearing on the objections filed by them and the report was made to the State Government for acquisition in breach of Section 5A(2) of the Act. The submission made by the learned counsel appearing for the petitioners cannot be sustained. True, any person interested in any land which has been notified under Section 4(1) as being needed or likely to be needed for public purpose or for a company may, within thirty days from the date of publication of the notification, object to the acquisition of land and the Collector is under an obligation to give the objector an opportunity of being heard in person or through any person authorised by him in this behalf or by pleader and shall after hearing all such objections and after making such further inquiry, if any, as he thinks necessary either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations and the objections, but on facts it could not be established that the petitioners were not afforded opportunity of hearing. Thus, the second ground on which the acquisition proceedings are sought to be quashed too falls to the ground.

9. It has then been submitted for these petitioners that their lands have been acquired for non-existent purpose. This submission too cannot be countenanced inasmuch as the lands have obviously been acquired for the planned development of the locality under a scheme framed by the A.D.A. Acquisition proceedings do not suffer from the vice of legal mala fide inasmuch as it has not been established that acquisition has been made for any unlawful purpose or for a purpose other than 'public purpose'.

10. In Civil Misc. Writ Petition No. 3625 of 1995, Agra Cantonment Sahkari Awas Samiti Limited v. State of U. P. and others, the challenge to the acquisition proceedings, is in addition to the grounds aforesaid, also on the ground that

neither the award has been made nor possession taken and, therefore, the acquisition proceeding in respect of the land belonging to the society stood lapsed in view of Section 11A of the Act which provided that Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, entire proceeding for the acquisition of the land shall lapse :

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act. 1984, the award shall be made within a period of two years from such commencement. The Explanation appended to Section 11A provides that in computing the period of two years, referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded. It has not been disputed by the learned counsel appearing for the A.D.A. or learned standing counsel representing the State that neither possession was taken nor award made in respect of the lands belonging to the petitioner society. As such, the ownership of the land remained with the society and due to the failure of making an award within the statutory period, the proceeding for the acquisition of the land stood lapsed. Civil Misc. Writ Petition No. 3625 of 1995, Agra Cantonment Sahkari Awas Samiti Limited v. State of U. P. and others ; Civil Misc. Writ Petition No. 3797 of 1995. M/s. Raj Grah Sahkari Avas Samiti and another v. State of U. P. and others and Civil Misc. Writ Petition No. 3798 of 1995, Suraj Bhan and others v. State of U. P. and others, therefore, deserve to be allowed.

11. Now we are left with the writ petitions filed by the A.D.A. challenging the award and the writ petitions filed by the land owners for mandamus commanding the respondents to pay them the awarded compensation. The fate of the petitions filed by the land owners depends on the fate of the writ petition filed by the A.D.A. These petitions, therefore, may be examined together. In so far as writ petition filed by the A.D.A. is concerned, the main ground of challenge therein is that the A.D.A. being the acquiring body had the right to appear in the acquisition proceeding before the Collector and adduce evidence for the purpose of determination of the amount of compensation and such right necessarily implies right of being given reasonable opportunity of leading evidence as per law laid

down by Supreme Court in U. P. Avas Evam Vikas Parishad v. Cyan Devi. AIR 1995 SC 724. It has been submitted by Sri Murli Dhar, senior advocate appearing for the A.D.A. that the compensation was determined by the Collector in violation of such right of the A.D.A. The principle of law laid down by the Apex Court in Cyan Devi, (supra) that sub-section (2) of Section 50 confers rights on the local authority for whom the land is being acquired to participate in the acquisition proceeding at the stage of determination of amount of compensation before the Collector as well as reference court and the right so conferred carries with it a right to be given adequate notice by the Collector as well as the reference Court, has not been disputed by Sri Dileep Gupta, learned counsel appearing for the land owners who have filed writ petitions for issuance of mandamus commanding the respondents to pay compensation as per award made by the Collector. Shri Dileep Gupta, however, submits that the A.D.A. had 'knowledge about the pendency of acquisition proceeding before the Collector' and despite such knowledge failed to adduce evidence and, therefore, proceeds the submission, cannot complain of denial of right conferred by Section 50(2) of the Act. We have given our thoughtful consideration to the submission made by the learned counsel for the petitioners on the question aforesaid. In Gyan Devi(supra), the Supreme Court has held as under:

'In other words, the right conferred under Section 50(2) of the Land Acquisition Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending on the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the Land Acquisition Act, can therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference Court and has not suffered any prejudice on account of failure to give such notice.'

12. Material on record would amply demonstrate that the A.D.A. had knowledge of pendency of the acquisition proceedings before the Collector and was in fact

consulted at every level of discussion held in respect of determination of compensation. By letter dated 7.3.1990 the Special Land Acquisition Officer addressed to the A.D.A. that as against the demand of Rs. 21.53 crores, a sum of Rs. 1 crore only had been deposited by the A.D.A. towards the estimated compensation whereas it was incumbent upon it to deposit the entire amount of estimated compensation before acquisition. On 10.8.1990 the Secretary, A.D.A. wrote to the State Government that out of the estimated compensation of Rs. 21.53 crores as demanded by the Special Land Acquisition Officer, a sum of Rs. 3.8 crores had been deposited and possession of 58 acres of land for which the compensation was deposited had been handed over to the A.D.A. on 7.7.1990. On 3.10.1991 Special Land Acquisition Officer wrote to the A.D.A. that possession of about 514 bighas of land had already been given to the A.D.A. but only a sum of Rs. 4.30 crores had been deposited towards compensation. The A.D.A. was accordingly requested to deposit the balance amount so that 80% of the estimated amount of compensation may be distributed. On 28.11.1991 the Secretary, A.D.A. wrote to the Special Land Acquisition Officer that the process for determination of compensation might be started so that the award could be made within the period of limitation. A request was also made by the Secretary in the said letter that the amount of compensation required to be deposited may also be made known to the A.D.A. On 11.1.1992 the Vice-chairman, A.P.A. wrote to the Collector in reference to the letter dated 30.11.1992 sent by the Special Land Acquisition Officer and pointed out therein that initially by means of the letter dated 20.3.1991 the Special Land Acquisition Officer had demanded a sum of Rs. 21.53 crores but the same had later on been raised to Rs. 40 crores. The Vice-Chairman asserted that for the determination of the market rate of the land a meeting might be held at the earliest by the Collector in which the Special Land Acquisition Officer. Vice-Chairman may participate. In reply to the said letter A.D.M. wrote to the Vice-Chairman. A.D.A. pointing out therein that for the determination of the market rate of the land the Collector. Agra, had called a meeting on 16.1.1992. The said meeting was adjourned to 28.1.1992 and the Vice-Chairman, A.D.A. was informed of the change in the date of the meeting. The Special Land Acquisition Officer in his note dated 24.1.1992 to the Collector, Agra, pointed out that on the request of the Vice-Chairman, A.D.A. all the relevant records were shown to him. It was indicated in

the said note that the market rate of the land situate in village Basal would be Rs. 130 per square yard (in respect of the land situated in municipal limit) and Rs. 98 per square yard (in respect of the land situated outside the municipal limit) and for village Tora it would be Rs. 98 per square yard. By his letter dated 25.1.1992 the Special Land Acquisition Officer informed the Vice-Chairman, A.D.A. that it was due to arithmetical mistake that 21.53 crores had shown to be the estimated compensation instead of Rs. 40 crores. The meeting for determination of the market rate of the land was held on 28.1.1992 as scheduled. The Collector ; Vice-chairman, A.D.A. ; Secretary, A.D.A. and Special Land Acquisition Officer participated in the said meeting. The Vice-Chairman, A.D.A. sent letter dated 28.1.1992 to the State Government making reference of the meeting held on 27.1.1992 and pointed out therein that the rate has been determined on the higher side. Another letter was written to the Collector on 30.1.1992. It appears that draft award was prepared by the Special Land Acquisition Officer on 3.2.1992 and the same was sent to the Director, Land Acquisition, Lucknow, seeking latter's approval of the rate of land determined in the meeting held on 28.1.1992. The Vice-Chairman. A.D.A. sent his objection on 5.2.1992 to the Director. Land Acquisition. Lucknow in respect of the rate of land. The Director, Land Acquisition called for comments from the Collector. Agra, vide letter dated 7.2.1992, on the letter of the Vice-Chairman dated 5.2.1992. A detailed reply was sent by the Collector. Agra to the Director. Land Acquisition. U. P., Lucknow pointing out therein that detailed discussions were held in the meeting held on 28.1.1992 regarding determination of market rate. Deputy Land Reforms Commissioner prepared detailed note dated 15.2.1992 for the Director, Land Acquisition after considering the viewpoints put forth by the A.D.A. as also Collector and expressed his opinion that the rate fixed by the Collector were appropriate. The Director, Land Acquisition then prepared a detailed note for the Chairman, Board of Revenue whose approval was required since the amount of compensation was more than Rs. 2 crores. The Board of Revenue through its telex dated 20.2.1992 invited the Vice-Chairman, A.D.A. for discussion regarding rate of compensation proposed by the Collector, Agra, at a meeting scheduled to be held on 24.2.1992. Both Vice-Chairman, A.D.A. and the Special Land Acquisition Officer appeared before the Chairman. Board of Revenue where the matter was discussed. It

appeared that the Vice-Chairman. A.D.A. had submitted letter to the Chairman. Board of Revenue that A.D.A. was prepared to pay compensation (c) Rs. 78 per square yard for the land situated within the municipal limit and Rs. 58 per square yard for the land situate outside the municipal limit. The Chairman, Board of Revenue gave his approval vide his letter dated 28.2.1992 to the rate prescribed by the Collector, Agra. It would thus appear that the A.D.A. had the full knowledge about the pendency of the proceeding for determination of compensation before the Collector and it was in fact associated in the discussion made at relevant stages for determination of the rate at which the compensation should be determined. The A.D.A. could have adduced material evidence relevant to determination of compensation. In view of the law laid down in Gyan Devi's case, therefore, the determination of compensation cannot be faulted merely because formal notice about determination of compensation was not given to the A.D.A.

13. The next submission made by Sri Murlidhar, learned senior advocate appearing for the A.D.A. is that out of 54 sale deeds filed as exemplar the Special Land Acquisition Officer rejected 53 sale deeds and picked up one for determining the compensation @ Rs. 130 per square yard. This sale deed. It has been submitted by Sri Murlidhar, was in fact for a consideration of Rs. 13,000 and it was by interpolation in the deed and relevant register that the consideration was shown as Rs. 13,000 for a small piece of land admeasuring 100 square yards. It has been submitted that the Special Land Acquisition Officer has placed reliance upon the said sale deed sans proper self direction to the suspicious nature of the document and the interpolations made therein.

14. The Special Land Acquisition Officer has determined the market value of the land situate within the municipal limits @ Rs. 130 per square yard and that of the land situate outside the municipal limit less by 25%. The rate is based upon the sale deed executed by Madhuban Sahkari, Avas Samiti Limited, Agra, in favour of Smt. Kastoori Devi on 22.6.1987. The sale deed was registered on 20.1.1988. In the certified copy of the said sale deed obtained on 11.2.1993 the consideration shown was Rs. 3,000 half of which comes to Rs. 1,500 but in the registration endorsement figure Rs. 13,000 has been mentioned. A rectification deed dated 5.2.1993 was registered for substitution of figures Rs. 3,000 and Rs. 15,000 by

figures Rs. 13,000 and Rs. 6,500. The question whether the actual sale consideration was Rs. 13,000 or Rs. 3,000 was not gone into by the Special Land Acquisition Officer perhaps, for the reason that no such objection was raised before him. The Vice-Chairman, A.D.A. seems to have written a letter on 7.2.1993 to the A.D.M. (Finance) pointing out for the first time that consideration of Rs. 3,000 in the sale deed had been changed by Rs. 13,000 by interpolation. The vendor Madhuban Sahkari Avas Samiti had purchased the said land vide sale deed dated 26.5.1987 @ Rs. 20.05 per square yard. The said society had sold the other parts of Khasra No. 324 on 19.12.1989 @ Rs. 82.54 per square yard to one Shri Shyam Sunder. This sale deed was obviously executed after the notification had been issued under Section 4 of the Act. We have also perused the photostat copies of the sale deed. In our opinion, the question is not free from doubt. But this Court in exercise of power under Article 226 of the Constitution is not supposed to reappraise the evidence and supplant the finding recorded by the Special Land Acquisition Officer in respect of the market value of the land in question by its own finding. And upon regard being had to the delay in payment of compensation that has already taken place and the delay that may take place in the event of the matter being remitted to the Special Land Acquisition Officer as also the fact that even according to the offer made by the A.D.A. the compensation payable in respect of the land situate within the municipal limit should be Rs. 78 per square yard and Rs. 60 per square yard in respect of the land situate outside the municipal limit, we are of the view that no useful purpose would be served for remitting the matter to the Special Land Acquisition Officer for determination of the question as to whether the sale deed relied upon by him was actually for a consideration of Rs. 3,000 as submitted by Shri Murli Dhar or it was for a consideration of Rs. 13,000 as submitted by Shri Dileep Gupta. This Court is not sitting in appeal over the correctness of the decision. Rather it is to examine the error, if any, in the decision-making process. Since the A.D.A. participated at every relevant level of discussion held for the purpose of determination of the compensation and the rate at which the compensation has been awarded is not unreasonably high, we are not inclined to interfere with the impugned award. Consequently, the writ petition filed by the A.D.A. is liable to be dismissed and those filed by the land owners for the directions to the respondents to pay

compensation as per the award deserve to be allowed.

15. In the result this bunch of writ petitions is disposed of in the following manner :

(i) Civil Misc. Writ Petition Nos. 31481 of 1992, 2651 of 1995. 2918 of 1995, 3612 of 1995. 3613 of 1995, 3632 of 1995. 3848 of 1995. 3913 of 1995, 4603 of 1995. 4718 of 1995. 4719 of 1995. 5166 of 1995, 5167 of 1995, 5631 of 1995, 6089 of 1995 and 30597 of 1999 are dismissed.

(ii) Civil Misc. Writ Petition Nos. 489 of 1992, 3625 of 1995. 3797 of 1995 and 3798 of 1995 are allowed and the impugned notifications in respect of the lands held by these petitioners are quashed.

(iii) Civil Misc. Writ Petition Nos. 13600 of 1992, 23315 of 1992, 23316 of 1992, 38393 of 1993. 41530 of 1993, 26919 of 1996 and 29513 of 1999 are allowed and the respondents therein are directed to pay compensation as per the impugned award forthwith.

(iv) Parties shall bear their own costs.

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