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Agra Development Authority Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-05-2004

Reported in : 2004(3)AWC2195

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 6 and 18U; Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 - Sections 371; [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 59; [Transfer of Property Act, 1882](#) - Sections 6

Appeal No. : First Appeal Nos. 979, 980, 981, 982 and 983 of 2002

Appellant : Agra Development Authority

Respondent : State of U.P. and ors.

Advocate for Def. : Sunita Agarwal, Adv.

Advocate for Pet/Ap. : Ramesh Upadhyay and ;V.B. Misra, Advs.

Disposition : Appeal allowed

Judgement :

M. Katju, J.

1. This bunch of First Appeals reveals a scandalous state of affairs which is prevailing in the State of U.P. regarding compensation being paid for land

acquisition.

2. In First Appeal No. 981 of 2002 the land in question belonged to Bhoop Singh and others who sold their right in the land after notification under Sections 4 and 6 of the Land Acquisition Act in favour of a society respondent No. 3 (a) to the petition, represented by its Secretary respondent No. 4 for a sum of Rs. 18,69,904 by 13 different sale deeds executed on 6.6.1991 and 7.8.1991.

3. The S.L.A.O. gave his award under Section 11 of the Land Acquisition Act on 8.11.1991 awarding Rs. 19,12,366.70 paise which was received by the respondent No. 3 (a). Thereafter, the society filed a reference application under Section 18 of the Land Acquisition Act and during the pendency of the reference application, the society transferred all its rights in respect of the property and the litigation in favour of respondent Nos. 5 to 11 for a sum of Rs. 1,35,000. The compensation awarded to respondent Nos. 5 to 11 is Rs. 1,02,99,491. Against this judgment of the court below the first appeal has been filed.

4. Thus, the facts of the case reveal that after purchasing the litigation for Rs. 1,35,000 respondent Nos. 5 to 11 have been awarded over Rs. one crore by the court below.

5. In First Appeal No. 983 of 2002 the land acquired is of area 14-6-4 bigha belonging to Banwari and Kisni. The compensation awarded by the S.L.A.O. under the Land Acquisition Act was duly paid to them. Thereafter Banwari and Kisni filed reference application under Section 18 of the Land Acquisition Act. During pendency of this application they sold the litigation in favour of respondent Nos. 4 and 5 for a sum of Rs. 40,000 by three different sale deeds, dated 25.5.1998 (Rs. 10,000), 26.6.1998 (Rs. 10,000) and 23.11.1998 (Rs. 20,000). On 27.1.2001 part of the land was sold by respondent No. 4 to respondent No. 6 for Rs. 15,000. On 3.7.2002 the respondent No. 4 sold part of the land in favour of respondent No. 5 for Rs. 25,000. The respondent Nos. 4, 5 and 6 got themselves impleaded in the pending reference in place of original tenure holders, Banwari and Kisni on the strength of the sale deeds in their favour. The court below has awarded them compensation of Rs. 70,94,180.70.

6. The above facts show that after paying Rs. 40,00 respondent Nos. 4, 5 and 6 have been awarded Rs. 71,00,000 by the court below.
7. Similarly, in First Appeal No. 979 of 2002 the original tenure holders were awarded compensation by the S.L.A.O. of Rs. 31,53,041.30 which was paid to them. Thereafter they filed a reference application under Section 18 of the Land Acquisition Act and this litigation was purchased by the respondent P.N. Gupta for Rs. 50,000 by sale deed dated 21.3.1998 vide Annexure-4 to the affidavit in support of the amendment application. The amount of compensation for the land acquisition fixed by the court below is Rs. 60,16,375.77. After deducting the amount paid to the original tenure holder the amount awarded to Sri P. N. Gupta is Rs. 28,63,334.47. Thus, Sri P.N. Gupta having paid Rs. 50,000 for purchasing the litigation has been awarded Rs. 28,63,334.47.
8. In First Appeal No. 982 of 2002 one Ratan Lal was the original tenure holder. Before the award was given by the S.L.A.O. the litigation was purchased by Sri P.N. Gupta respondent No. 4 from Ratan Lal for Rs. 12,000 by registered sale deed of 30.10.1991. The compensation determined by the S.L.A.O. was Rs. 1,15,060 which was paid to respondent No. 4 P.N. Gupta and the compensation fixed by the court below for the said land is Rs. 6,24,701.47. Thus, the above facts show that after paying Rs. 12,000 P.N. Gupta has already received Rs. 1,15,060 by S.L.A.O. and now he has been awarded Rs. 6,24,701 by the court below.
9. These facts disclose the scandalous state of affairs prevailing in the District Courts of the U.P. and it is no wonder that the public is disgusted with this state of affairs which smacks of rampant corruption.
10. In our opinion all these appeals deserve to be allowed on the short point that a mere right to sue cannot be transferred as it is hit by Section 6(e) of the Transfer of Property Act. In all these cases the respondents have not purchased any property but only the litigation, which is violative of Section 6(e).
11. In *Ellis v. Torrington*, 1920 (1) KB 399, it was held that the rule that a bare right to action for damages is not assignable rested on the principle that the law will not recognise any transaction savouring of maintenance or champerty. The prohibition

in Section 6(e) is based on grounds of public policy vide 1908 (35) Cal 420 : 35 IA 48 (PC).

12. In *Monmatha Nath Dutt v. Matilal Mitra* : AIR1932 Cal719 , it was observed :

'In this case the question is whether what was assigned was a mere right to sue or property with an incidental remedy for its recovery and consequential benefit. An assignment of a mere right to sue does not convey any property, e.g., if any person out of possession of immovable property makes an assignment to the effect that the assignee would have a right to sue, without conveying any interest in property, the assignee would not be entitled to maintain any suit for the recovery of property. But it would be otherwise if the property itself is transferred.'

13. The same view has been taken in *Gangadin v. Piyare* : AIR1929 All63 and *Jagannath. v. Kalidas*, AIR 1929 Pat 245.

14. In *Ram Dayal v. Mukat Manohar* : AIR1937 All317 , this Court held that property does not include a mere right to sue for breach of contract. Hence the right to sue for breach of contract could not be transferred in view of Section 6(e) of the Transfer of Property Act.

15. In *Motilal v. Radhey Lal* : AIR1933 All642 , the Allahabad High Court held that a claim for unliquidated damages for breach of contract is not an actionable claim within the meaning of Section 3 of the Transfer of Property Act and hence it cannot be transferred in view of Section 6(e),

16. In *Sri Sri Iswar Gopal Jew v. Globe Theatres Ltd.* 0043/1944 : AIR1947 Cal200 , the Calcutta High Court held that an action for damages in tort is not assignable, and a person cannot bring an action for damages for the tort of trespass committed on the premises before he becomes the owner thereof.

17. On the other hand, in *Manmatha Nath Mullick v. Sheikh Hedait Ali*, . Privy Council held that where what was assigned was not a mere right to sue but a claim for a definite sum of money which the lessee was bound by his contract with the lessor to repay it would be an actionable claim to which Section 130 of the Transfer of Property Act applied and hence Section 6(e) had no application.

18. Thus, the above decisions show that a distinction has been drawn between a mere right to sue and an actionable claim. To give an example, if A files a suit against B claiming certain property or certain money then if A executes a deed in favour of C transferring all his right in respect of the litigation before the suit is decided such a conveyance would be invalid being hit by Section 6(e) of the Transfer of Property Act. However, if the suit of A against B is decreed, and after the decree, but before its execution, A transfers all his rights under the decree to C this conveyance would not be hit by Section 6(e) vide : AIR1935 Cal751 , : AIR1955 Mad165 etc.

19. In the present case we are of the opinion that what has been transferred is a mere right to sue and not any property or an actionable claim.

20. It is crystal clear that in the present case, the land was not transferred but merely a right to pursue the litigation to recover compensation was transferred. In our opinion, this is clearly prohibited by Section 6(e) of the T. P. Act and therefore, the conveyance deeds in favour of the respondents are wholly invalid and they cannot maintain any claim on their basis.

21. The land had vested with the Government free from all encumbrances when possession of the same was taken as the Government had invoked the provisions of Section 17(1) an (4) of the Act. The deed in favour of the contesting respondent were executed long after the date of vesting, and hence the vendors and vendees were fully aware that the land was not being transferred. Hence such transfers are violative of Section 6(e) of the Transfer of Property Act.

22. It has been clearly mentioned in the conveyance deed that the land in question has already been acquired by the Agra Development Authority and the said authority has also taken possession of the said land and houses have been constructed on it. It has also been mentioned in the conveyance deed that only the right to sue has been sold.

23. First Appeal No. 981 of 2002 has been filed against the judgment and order dated 29.8.2002. In that judgment Issue No. 9 was framed as follows :

'Whether the transferees of the original claimants, are entitled to the compensation in place of the original claimant? If so to what extent

24. The answer to Issue No. 9 has been given by the court below in the affirmative holding that the right of compensation is a transferable right. However, in view of the reasons expressed by us above we are of the opinion that the aforesaid issue has not been rightly decided and the correct legal position is that the transferees of the original claimants, have no right to get compensation as a mere right to sue cannot be transferred.

25. In view of the above it is not necessary to go into the correctness or otherwise of the finding on issue No. 1 which is :

'Whether the compensation given by the S.L.A.O. is not proper. If not what rate is proposed?'

26. Apart from the above we are also of the opinion that the references made to the Tribunal constituted under the Nagar Mahapalika Adhinyam were not in accordance with law in view of Section 59, U.P. Urban Planning and Development Act, 1973 which states that Chapter XIV of U.P. Nagar Mahapalika Adhinyam, 1959 shall in respect of a development area remained suspended. The Nagar Mahapalika Tribunal is constituted under Section 371 of the U.P. Nagar Mahapalika Adhinyam, but Section 371 is in Chapter XIV and hence it was suspended in view of Section 59 of U.P. Urban Planning and Development Act, 1973. In fact this has been conceded in the written submission filed by the answering respondents in para 9. The written submission shall be kept on record.

27. In view of the above the impugned judgments, are set aside and these appeals are allowed.

28. Let the Registrar of this Court place copy of this judgment before the Administrative Committee of the High Court for taking appropriate action against the concerned persons and judicial officers who appear to be in collusion. A copy of this order will also be sent by the Registrar General to all District Judges in U.P. who in turn will communicate it to all Judges hearing Land Acquisition References

with the warning that collusive orders may lead to disciplinary action.

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