

**Surendra Singh and Others Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Feb-25-2000

**Reported in :** 2000(2)AWC1202

**Judge :** O.P.Garg and ;M.C. Jain, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 3, 4, 4(1), 6 and 48(1)

**Appeal No. :** C.M.W.P. Nos. 7561, 7562, 8232, 8235, 8237, 8282 and 8482 of 2000

**Appellant :** Surendra Singh and Others

**Respondent :** State of U.P. and Others

**Advocate for Def. :** M.S. Pipersenia, ;Dinesh Dwivedi, ;U.S. Awasthi, Advs. and ;S.C.

**Advocate for Pet/Ap. :** Ajit Kumar, ;D.V. Singh, ;P.P. Srivastava and ;B.D. Mandhyan, Advs.

**Judgement :**

**M.C. Jain, J.**

1. In alt these writ petitions, an order dated 3.12.1999 passed by the Secretary, Ministry of Industry, Lucknow, has been challenged who has been arrayed as

respondent No 3 in Writ Petition No. 8282 of 2000 and as respondent No. 1 in all the remaining writ petitions. The controversy involved and the question calling for adjudication in all the writ petitions being identical, we propose to decide them by this common order treating Civil Misc. Writ Petition No. 7561 of 2000 as the leading writ petition. The impugned order is Annexure-9 to the Writ Petition No. 7561 of 2000. The writ petitions have been opposed by the respondents at the admission stage itself.

2. Succinctly placed, the relevant facts are that notifications under Sections 4 and 6 of the Land Acquisition Act had been issued for the purpose of planned development of district Ghaziabad (now district Gautam Budh Nagar) through NOIDA on 5.1.1991 and 7.1.1992 respectively, concerning nearly 496 acres of land including that of the petitioners, spread over hundred of plot numbers. The said land came to be acquired. All the petitioners challenged those notifications before this Court through writ petitions which were dismissed. They carried the matter by Special Leave Petitions to the Supreme Court. By Judgment dated 15.7.1998, all the appeals were dismissed by the Supreme Court. However, the Supreme Court held that the appellants (present petitioners) were in actual possession of their, acquired land. Despite dismissal of the special leave petitions, the Supreme Court gave liberty to the appellants (present petitioners) to file written representations before appropriate authorities of the State of U.P. invoking the State Government's power under Section 48(1) of the Land Acquisition Act to release their land from acquisition if it were to be satisfied about the merits of the representations. It was further directed that the State authorities would have to be satisfied on the following points in this connection. :

1. Whether there was any abadi on the acquired lands at the time of Section 4(1) notification :
2. Whether such abadi was a legally permissible abadi ;
3. Whether such abadi has continued to exist till the date of representation ;
4. Whether such abadi was covered by any Government policy in force at the time of issuance of Section 4(1) notification and/Section 6 notification for not acquiring

lands having such abadi ;

5. Whether such Government policy has continued to be in force till the date of representation.

3. Petitioners did make representations before the State Government which came to be decided by the order dated 3.12.1999 under challenge. The representations of the petitioners did not find favour with the State Government and they were rejected. Aggrieved thereby, these writ petitions have been filed by the petitioners.

4. We have heard Sri B.D. Mandhyan from the side of the petitioners in Writ Petition No. 8282 of 2000 and Sri P.P. Srivastava learned Senior Advocate assisted by Sri. D.V. Singh on behalf of the petitioners in all the remaining writ petitions, Sri M.S. Pipersenia learned standing counsel has been heard on behalf of respondent Nos. 1, 2 and 4 in Writ Petition No. 8282 of 2000 and respondent No. 1 in all the remaining writ petitions. Sri Dinesh Dwivedi. learned counsel for NOIDA respondent No. 3 In Writ Petition No. 8282 of 2000 and respondent No. 2 In all the remaining writ petitions has also been heard in opposition of the admission of the writ petitions.

5. It has been argued by learned counsel appearing for the petitioners that the impugned order dated 3.12.1999 is not sustainable as it has been passed ignoring the directions issued by the Supreme Court. It has been submitted that In respect of certain land even decrees had been passed by competent civil courts before the issuance of notifications under Sections 4 and 6 of the Land Acquisition Act to the effect that there was abadi thereon ; that the impugned order is also in violation of the Government policy not to acquire abadi land ; that proper opportunity of hearing was not afforded to the petitioners; that documents were not considered : that individual cases were not decided separately and that inspection had been made by the authority concerned ex parte. On the other hand, the argument from the other side is that the order in question dated 3.12.1999 cannot at all be flawed as it has been passed for Justifiable and sustainable reasons, fully complying with the directions of the Supreme Court.

6. While recording conclusion, it should be stated at the initial brunt of the matter that the administrative authority passing the impugned orders In question could not be expected to discuss each and every piece of evidence threadbare as is required in a trial before the judicial court. What has to be ascertained is as to whether in passing the impugned order the material and evidence on record had been considered to arrive at the conclusion while complying with the directions of the Supreme Court. Testing the Impugned order with this yardstick, we find that the authority concerned has recorded finding on each and every aspect required to be considered under the directions of the Supreme Court. So far as non-consideration of decrees of the civil courts in respect of certain land as being abadi earlier to passing of notifications under Sections 4 and 6 of the Land Acquisition Act is concerned, their Lordships of the Apex Court themselves observed that the Civil Court litigation could not bind the State authority as State of U.P. was not a party to those proceedings. From the perusal of the impugned order, the contention of the petitioners is negated that no opportunity of hearing was given. The hearing took place on 4.11. 1999 when the petitioners with their counsel presented their case together with evidence. The same was duly considered. The decision of all the representations by the authority concerned by a common order does not suffer from any defect or infirmity, because the entire material and evidence before him had been considered before the passing of the Impugned order.

7. This contention also does not hold water that Inspection of the spot was made ex parte by the authority concerned. It is clear from paragraph 9 of the order in question that the spot Inspection was made by the authority concerned after due notice to the petitioners. Two of them, namely, Veer Singh and Jal Singh were present also at the time of inspection while others abstained for the reasons best known to them.

8. Accepting the case of the petitioners that even before the notifications under Sections 4 and 6 of the Land Acquisition Act, there was some stray abadi in the plots of the petitioners at scattered points In the vast area of acquired land, it could not inhere In them a right to get their land released from acquisition. It may be pointed out that as per Section 3(a) of the Land Acquisition Act, the term 'land' even includes buildings and super structures. Needless to say. 'building' is a thing

permanently attached to the earth. Therefore, the State Government has right to acquire the land of the petitioners in spite of there being abadi at some points. Actually It was for the reason that their land had been found to be in their possession that Section 48 of the Land Acquisition Act was held to be applicable and the Supreme Court gave them opportunity to make representations to the State Government for releasing their land from acquisition. But the Apex Court made It clear that the entire matter was left at large for consideration of the State authority. It was directed that in case of the appellants (petitioners) filed written representations, the appropriate authorities of the State Government were to consider the same regarding feasibility of releasing such land from acquisition under Section 48(1) of the Land Acquisition Act on the ground that there were abadis on these lands at the relevant time and were governed by any State policy in force at the time of issuance of notifications under Sections 4 and and 6 for not acquiring the lands having such abadi and the same had continued to be in force till the date of the representations. It should be pointed out that large area of land Including the land of the petitioners had been acquired for the public purpose of planned development of District Ghaziabad (now District Guatam Buddha Nagar). Obviously, such public purpose was to be frustrated If the stray and scattered land of the petitioners comprised in the acquired huge area was to be released from acquisition.

9. As for the Government policy to release such abadf land from acquisition, reliance has been placed from the side of petitioners on a letter dated 8.8.1997 Issued by the Board of Revenue to all the Commissionersand District Magistrates of the State (Part of the representation--Annexure-2 to the Writ Petition No. 7561 of 2000). The said letter dated 8.8.1997 directs that at the time of acquisition of any area, the village abadi be left out from acquisition. Obviously, it Is of much recent origin having nothing to do at the time when the notifications under Sections 4 and 6 of the Land Acquisition Act were issued In respect of the land In question on 5.1.19991 and 7.1.1992 respectively.

10. The crux flowing from the Impugned order dated 3-12.1999 is that the representations of the petitioners did not commend themselves to the State Government for acceptance as there was no Government policy at the time of

Issuance of notifications under Sections 4 and 6 of the Land Acquisition Act on 5.1.1991 and 7.1.1992 respectively in respect of the disputed land, not to acquire land comprising some abadi which might have continued till the time of the making of representations by the petitioners.

11. Another ground for rejection of the representations was that the release from acquisition of the land of the petitioners (because of there being stray abadi In scattered targe acquired area) was to frustrate the very public purpose for which the acquisition was made. We are of the definite opinion that substantial compliance has been made of the directions of the Apex Court by the authority concerned. Indeed, the impugned order has to be viewed reasonably and not In a pedantic way with the avowed goal to find fault in it.

12. As a result of the above discussion, we come to the conclusion that the authority concerned has passed a detailed order backed by solid and sustatnable reasoning for rejection of the representations of the petitioners. The grounds of attack against the impugned order advanced by the petitioners are wholly untenable built on straw. The petitioners can have no grudge if on giving them fulloppportunity of hearing and after consideration of the entire material and evidence, the State Government has chosen not to release their land from acquisition under Section 48(1) of the Land Acquisition Act. We see no merit In these writ petitions and are inclined to dismiss the same.

13. All the writ petitions are hereby dismissed.