

Siddha Gopal Vs. Kanpur Development Authority and Others

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Court : Allahabad

Decided On : Aug-19-1998

Reported in : 1998(3)AWC2100

Judge : B.K. Roy and ;B.K. Sharma, JJ.

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 294A; Uttar Pradesh Zamindari Abolition and Land Reforms Act

Appeal No. : C.M.W.P. No. 29469 of 1992

Appellant : Siddha Gopal

Respondent : Kanpur Development Authority and Others

Advocate for Def. : S.C. and ;Lalji Sinha, Adv.

Advocate for Pet/Ap. : L.P. Singh, Adv.

Judgement :

B.K. Roy and B.K. Sharm a, JJ.

1. The prayer of the petitioner is to quash citation to appear issued under Rule 294A of the U. P. Z. A. and L. R. Act in regard to payment of Rs. 7,925 plus 10% interest thereon (as contained in Annexure-5). A further prayer has been made to command the respondent No. i to withdraw the aforementioned notice.

2. The petitioner asserts, inter alia, that he is owner of House No. 12/145 Gwal Toll, Kanpur Nagar, which is a double storey paced building and in possession thereof : under slum-clearance scheme No. XXXVI the house aforementioned was acquired by the Kanpur Development Authority (opposite party No. 1) for the development work ; but the scheme was executed without need of the house ; that a decision was taken (as contained in Annexure-1) under Section 17 of the Urban Planning and Development Act, 1973 to reconvey the house to the petitioner on deposit of Rs. 3,273.09 p. on perpetual lease ; on 1.1.1987 such a lease deed was executed in favour of the petitioner (copy appended as Annexure-2) after realisation of the reconveyance charges : that a notice (as contained in Annexure-4) was served on the petitioner on the allegation that the house has been trespassed by him from 17.11.1965 despite award No. 63 dated 29.8.1984 and claimed a sum of Rs. 4,625 : the petitioner raised objection asserting that there was no question of trespass by him as he was using and utilising the same as its owner ; that thereafter no demand was made ; that on 17.7.1992 the Amln from the office of the Tehsildar Tehsil Sadar, Kanpur, respondent No. 3 came with the impugned citation and served it on the petitioner to which the petitioner filed an objection (as contained in Annexure-6) on 29.7.1992 praying to withdraw the recovery certificate from opposite party Nos. 2 and 3 on the ground that despite acquisition he has been utilising the house as its owner ; and that as despite this the recovery certificate has not been withdrawn and opposite party No. 3 is adamant for the collection taking recourse to coercive measure and hence this writ petition.

3. Shri L. P. Singh, learned counsel appearing on behalf of the petitioner contended as follows : (i) the earlier notice having been waived by the respondents, they cannot serve the impugned notice ; (ii) since the petitioner had remained all through in possession of the house, by the impugned notice he cannot be asked to pay the amount referred to therein ; and (iii) the lease deed does not contemplate payment of any amount therein and thereby for this additional reasons also the impugned notice is liable to be set aside.

4. In our view, all the three submissions lack substance. Admittedly the land in question was acquired by the respondents. The acquisition was after payment of

compensation. With the acquisition, the right, title and interest of the petitioner stood completely wiped off. The decision to lease (as contained in Annexure-1) and the lease deed (as contained in Annexure-2) clearly demonstrate the right, title and interest of the Development Authority in the land on which the house in question stands both. The lease is for a period of 99 years. Admittedly the petitioner continued his possession despite acquisition. The amount is sought to be recovered from the petitioner on account of his having continued in possession during the period under which the petitioner had ceased his right, title and Interest in his land and house. It cannot be said, thus that the action of the respondents is arbitrary or vitiated on account of any error of law.

5. For the aforementioned reasons, this writ petition is dismissed. With the dismissal of this writ petition, the interim order dated 4.9.1992 restraining the respondents from realising the amount in question, stands evaporated. However, in the peculiar facts and circumstances, we make no order as to cost.

6. The office is directed to hand over copy of this order within a week to Shri Lalji Sinha, standing counsel for the respondents for its communication to and follow up action by them against the petitioner.

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