

**Ram Gopal Varshney and ors. Vs. State of U.P. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/482729](http://sooperkanoon.com/482729)

**Court :** Allahabad

**Decided On :** Dec-10-2003

**Reported in :** 2004(1)AWC206; (2004)1UPLBEC845

**Judge :** B.S. Chauhan and ;M.A. Khan, JJ.

**Acts :** [Land Acquisition Act, 1894](#) - Sections 16 and 48; General Clauses Act - Sections 21

**Appeal No. :** C.M. Recall Application No. 205032 of 2002 in C.M.W.P. No. 8943 of 1991

**Appellant :** Ram Gopal Varshney and ors.

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

**Advocate for Def. :** Siddharth Verma and ;S.C.

**Advocate for Pet/Ap. :** V.K. Barman, ;Pankaj Barman and ;N.K. Chaturvedi, Advs.

**Judgement :**

**Dr. B.S. Chauhan, J.**

1. This application has been filed by the respondent No. 2 for recalling the order dated 16.3.2001 or for its clarification as the said order had been passed recalling

the earlier ex parte order dated 28.1.1993.

2. Facts and circumstances giving rise to this application are that the land belonging to the petitioners had been notified under Section 4(1) of the Land Acquisition Act, 1894. (hereinafter called the 'Act') on 22.6.1988. Thereafter declaration under Section 6 of the Act was issued on 1.12.1988. Provisions of Section 17(1) of the Act were also resorted to dispensing with the application of Section 5A of the Act. Land acquisition proceedings were challenged by filing the writ petition on various grounds including non-publicity of the substance of notification under Section 4 and the declaration under Section 6 of the Act. This Court vide order dated 28.3.1991 directed not to dispossess the petitioners from the land in dispute. The matter came up for hearing on 28.1.1993. None appeared for the petitioners to press the petition. However, the Court considered it proper to dispose of the petition on merit. The Court took note of the facts that Section 4 notification was issued on 22.6.1988 and Section 6 declaration was made on 1.12.1988 and the writ petition was filed on 19.3.1991, i.e., after the expiry of more than two years after issuance of declaration under Section 6 of the Act. The possession of the land had been taken by the respondent-authorities on 9.1.1990 and award had also been made on 29.1.1991. In view of the fact that the petitioners had already been dispossessed and the award had also been made, the writ petition was filed at a belated stage. The same was dismissed. Subsequently, an application to recall the order dated 28.1.1993 was filed, which was decided in absence of the counsel for the respondents wherein the statement was made by learned counsel for the petitioners that the land belonging to the petitioners had been de-notified, i.e., released from the land acquisition proceedings, therefore, the Court should recall the order dated 28.1.1993 and dismiss the petition as having become infructuous. The application was disposed of accordingly.

3. This application has been filed by the respondent No. 2 on the ground that earlier order dated 28.1.1993 was passed on merit observing that the petitioners stood dispossessed on 9.1.1990 and the award had been made on 29.1.1991. In the order dated 16.3.2001, statement of the petitioners' counsel has been referred to that the land belonging to the petitioners stood de-notified. The grievance, of the

respondents is that the said statement is being read as a finding of the Court.

4. Shri V.K. Barman, learned counsel appearing for the petitioners has vehemently opposed the application contending that the application has been filed at a belated stage and if the petitioners' land had been de-notified, this Court should not give any indulgence, whatsoever.

5. Be that as it may, as the order dated 16.3.2001 created utter confusion and the application to recall the order dated 28.1.1993 was disposed of only at the statement made by learned counsel for the petitioners that their land had been de-notified, the earlier finding of fact recorded by the Court that they had been dispossessed on 9.1.1990 and award had been made on 29.1.1991, cannot be understood to have been washed away. Therefore, in order to do substantial Justice, we decide the application observing that in case petitioners' land stood de-notified, prior to the date of their dispossession, i.e., 9.1.1990, it should be understood to have been released for the reason that the land can be released from acquisition proceedings only prior to its vesting in the State under Section 16 of the Act free from all incumbrances and once it is vested in the State, it cannot be divested.

6. So far as the application of Section 48 of the Act is concerned, in State of Madhya Pradesh v. V.P. Sharma, AIR 1966 SC 1593, the Hon'ble Supreme Court has held as under :

'The argument is that Section 48 is the only provision in the Act which deals with withdrawal from acquisition and that is the only way in which Government can withdraw from the acquisition and unless action is taken under Section 48(1), the notification under Section 4(1) would remain, presumably for ever.... We are not impressed by this argument. In the first place, under Section 21 of the General Clauses Act (Act No. 10 of 1897), the power to issue a notification includes the power to rescind it. Therefore, it is always open to the Government to rescind a notification under Section 4 or 6 and withdrawal under Section 48(1) is not the only way in which a notification under Section 4 or 6 can be brought to an end.... The argument that Section 48(1) is the only method in which the Government can withdraw from the acquisition has, therefore, no force because the Government

can always cancel the notifications under Sections 4 and 6 by virtue of its power under Section 21 of the General Clauses Act.....'

7. Similar view has been reiterated in ' Special Land Acquisition Officer, Bombay and Ors. v. Godrej and Boyce. (1988) 1 SCC 50. wherein the Hon'ble Supreme Court held that the Government is competent to withdraw from the acquisition proceedings and while doing so, the Government is neither required to afford opportunity of hearing to the land owners nor required to record any reasons for such a withdrawal. At the most, land owners may be held entitled to claim compensation under Sub-section (2) of Section 48 in such an eventuality. But notification under Section 48(1) cannot be held to be only mode of withdrawal of the proceedings. But withdrawal is permissible only prior to vesting of the land In the State free from all Incumbrances.

8. In Satendra Prasad Jain v. State of U.P. and Ors., AIR 1993 SC 2517, the Hon'ble Supreme Court held that once land vests in the State free from all incumbrances, it cannot be divested and proceedings under the Act would not lapse even if award, is not made within the statutory period. The same view has been reiterated in Avadh Behari Vadav v. State of Bihar and Ors., (1995) 6 SCC 31 ; U.P. Jal Nigam v. Kalra Properties (P.) Ltd.. (1996) 3 SCC 124 and Allahabad Development Authority v. Nasiruzzaman and Ors., JT 1996 (8) SC 429.

9. Similar view has been reiterated by the Hon'ble Supreme Court in M. Ramalinga Thevar v. State of Tamil Nadu and Ors., 2000 (3) AWC 1814 (SC) ; (2000) 4 SCC 322.

10. Thus, in view of the above, legal position emerges that once the land vested in the State under Section 16 of the Act free from all incumbrances, it cannot be divested even in exercise of power under Section 48 of the Act or under Article 21 of the General Clauses Act or by abandonment of further proceedings. Thus, we dispose of the application clarifying that in case the petitioners satisfy the respondent-authority that their land has been de-notified prior to the date of dispossession on 29.1.1990, it shall stand released, otherwise not.

