

Ashok Kumar and anr. Vs. State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Apr-06-2004

Reported in : AIR2005All44

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

Acts : [Constitution of India](#) - Article 300A; [Land Acquisition Act, 1894](#) - Sections 4 and 6; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35

Appeal No. : C.M.W.P. No. 27781 of 2002

Appellant : Ashok Kumar and anr.

Respondent : State of Uttar Pradesh and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.N. Tripathi and ;K. Dubey, Advs.

Disposition : Petition allowed

Judgement :

ORDER

1. Heard learned counsel for the parties.

2. This is yet another case which has come up before us where the land of the petitioners has been taken over by the Government without following the

procedure of the Land Acquisition Act or any other statutory enactment.

3. Article 300A of the Constitution states :

'No person shall be deprived of his property saved by authority of law'.

The petitioners have alleged in paragraph 3 of the writ petition that they are bhumidhars of the land in question. In paragraph 2 of the writ petition it has been stated that the land in question has not been acquired or requisitioned by the respondents under the provisions of the Land Acquisition Act or the U. P. Rural Development (Requisitioning of Land) Act, 1947 and no notification was issued under the provisions of the Land Acquisition Act or other enactment. In paragraph 5 of the writ petition it is alleged that similar type of action of taking possession of the land of agriculturists without acquiring the land under the Land Acquisition Act or requisitioning it under the U. P. Rural Development (Requisitioning of Land) Act had been taken in the proof by the respondents. This fact has been admitted in paragraph 9 of the counter affidavit.

4. The respondents have alleged that the land was required for building a canal. In a large number of cases which have come up before us the State Authorities have alleged that the land which the respondents have taken over is required for making a canal or road or other such purposes. If that is so it was incumbent upon the authorities to follow the procedure under the Land Acquisition Act or under the U. P. Rural Development (Requisitioning of Land), Act, 1947 or some other statutory enactment. Merely on the basis of some G. O. the property of a person cannot be taken over by the Government as that would be violative of Article 300A of the Constitution. It has not been stated in the counter affidavit that the procedure of the Land Acquisition Act or some other Act was followed before taking over possession of the petitioner's land,

5. In paras 6 to 9 of the counter affidavit it is stated that compensation amount was wrongly determined in excess and paid to the landholders. In para 6 of the rejoinder affidavit it is stated that a cheque of Rs. 6,67,700/- was got prepared in favour of the petitioner, but it could not be handed over to the petitioner as he refused to fulfil the illegal demand of the paying authority.

6. We see no reason to disbelieve the petitioner, considering the social realities and ethics of today. We hold that the petitioners have not been paid any compensation for their land.

7. Moreover, the question of paying compensation arises when the land is acquired validly under the Land Acquisition Act or some other enactment. Without following the procedure in the statute taking possession of someone's land is simply land grabbing, and is wholly illegal.

8. We therefore allow the petition and direct the respondents to either restore the possession of the land in question to the petitioners forthwith or pay compensation to them as mentioned in the Land Acquisition Act which will be determined by the District Judge, Jaunpur after hearing the parties concerned within four months of production of a certified copy of this judgment before him and the payment will be made within two months of his decision along with interest, solatium, etc. as provided in the Land Acquisition Act. We also direct that apart from paying compensation as mentioned above the respondents shall also pay an amount of Rs. One lac as exemplary costs to the petitioner for their high handedness and wholly illegal action in depriving the petitioner of his land without following the law and this payment must be paid within four months from today.

9. Before parting with this case we would like to say that now the time has come when the State Government must start behaving in a legal manner in the matter of taking over somebody's land which it unfortunately has not been doing in a large number of cases which have come up before us. We therefore issue a direction to all the authorities in the State that they must follow the law before taking over anyone's property and if they do not do so it will lead to disciplinary action against them apart from crimi-