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Court : Allahabad

Decided On : Sep-23-2002

Reported in : AIR2003All200

Judge : M. Katju and ;D.R. Chaudhary, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 18 and 54

Appeal No. : Civil Misc. Writ Petn. No. 49594 of 2000

Appellant : Moel Joshwa

Respondent : Gorakhpur Development Authority and ors.

Advocate for Def. : S.P.K. Tripathi, Adv.

Advocate for Pet/Ap. : Shashi Nandan, Adv.

Disposition : Petition dismissed

Judgement :

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 25-7-2000 Annexure-10 to the writ petition passed by the respondent No. 2 and for a mandamus directing the respondent No. 1, Gorakhpur Development Authority (hereinafter referred to as the 'GDA') to transfer and sell plots No. 644, 645 and

646 in Basharatpur, Gorakhpur to the petitioner at the rates already determined and to restrain the respondents 1 and 2 from transferring the plots to the respondents 3 to 5.

2. We have heard the learned counsel for the parties.

3. It has been alleged in paragraph 2 of the writ petition that the aforementioned plots were purchased by the petitioner on 16-9-1968 vide sale deed Annexure-1 to the writ petition. These plots lie in the city of Gorakhpur and it is alleged in paragraph 3 of the writ petition that the petitioner's house is situate thereon alongwith a boundary wall.

4. A notification dated 7-9-1983 under Section 4 of the Land Acquisition Act was issued and published in the official gazette on 20-1-1984 vide Annexure-2 to the writ petition. Thereafter a notification under Section 6 was issued on 20-1-1987 vide Annexure-3 to the writ petition. The validity of these notifications has been challenged in writ petition No. 9409 of 1987 which has also been decided today alongwith this writ petition. We have dismissed writ petition No. 9409 of 1987 today.

5. In view of the interim order passed in writ petition No. 9409 of 1987 the petitioner claims that he continued in possession over the aforesaid plots No. 644, 645 and 646. However, it has been alleged by the respondents that writ petition No. 9409 of 1987 was dismissed for want of prosecution on 20-1-2000 by this Court and Special Land Acquisition Officer was intimated by the G. D. A. about the dismissal of the writ petition and hence the Special Land Acquisition Officer made an award on 22-4-2000 regarding plots No. 644, 645 and 646 and the possession was delivered to the G. D. A. on 22-4-2000. Subsequently, on 25-4-2000 writ petition No. 9409 of 1987 was restored but before the restoration order was passed the award had been delivered and the possession had been taken by the G. D. A. Thereafter on 25-7-2000 G. D, A. transferred the land in favour of the respondent No. 5.

6. It is alleged in paragraph 15 of the writ petition that an application dated 26-6-2000 was filed by two persons, namely, Sadik Ali and Shyam Kumar Singh of

Rapti Sahkari Avas Samiti Limited, Bashratpur, Gorakhpur before the Vice Chairman of the G. D. A. stating that they were prepared to purchase the aforesaid plots at the price fixed by the Authority. True copies of the application and affidavit are Annexures 5 and 6 to the writ petition. The petitioner has alleged in paragraphs 16 and 17 of the writ petition that he has never signed those affidavits and that it is forged and he has not given any consent for transfer. In paragraph 23 of the writ petition it is stated that without verifying the correctness of the aforesaid affidavits from the petitioner, the G. D. A. has allotted the plots In favour of respondent No. 5 by order dated 25-7-2000 vide Annexure-10 to the writ petition. It is alleged that the G. D. A. never verified the genuineness of the aforesaid affidavits which are forged and fictitious. It is alleged that the petitioner never consented to any sale by the G. D. A. in favour of the respondents 3 and 4.

7. A counter affidavit has been filed by the respondents 1 and 2 another counter affidavit by respondent No. 4 on behalf of the respondents 5 and 3. We have perused the same.

8. In this case on 2-8-2001 a Division Bench of this court passed an interim order, the relevant part of which is as follows:

'The land in question has been acquired. In para 5 of the writ petition the petitioner has stated that his house is existing on the land in question. Sri Shyam Singh has filed counter affidavit and in para 39 of the counter affidavit it is denied that there is any residential house of the petitioner but it is a vacant plot.

This is a question of fact which has to be ascertained by local inspection. After hearing Sri Shashi Nandan, learned counsel for the petitioner and Sri Radhey Shyam appearing for the respondent No. 4 we appoint Sri Akhilesh Chandra Srivastava as Advocate Commissioner to make local inspection in respect of plot No. 644, 645 and 646 situate in Basharatpur, District Gorakhpur. The learned Advocate Commissioner shall--

(a) locate the plot numbers in dispute,

(b) find out whether any construction is existing on such plots and if there is construction, the area covered by such construction, the nature of such construction and possible period of such construction.

The learned Advocate Commissioner shall also get the photographs of the area/construction. The expenses of it will be borne by the parties.'

9. Thus there was a controversy whether there was any residential house of the petitioner on the plots in question. The Advocate Commissioner has submitted a report which we have perused. The report states that there is no house on the plot in question. Hence the version of the petitioner that he has his house on the aforesaid plot does not appear to be correct in view of the report of the Advocate Commissioner which is on the record of this case.

10. The award of the Special Land Acquisition Officer dated 22-4-2000 has become final and through this award a sum of Rs. 2,89,307.32 was awarded as compensation to the petitioner. The G. D. A. has also taken over possession over the plot and they have been allotted to respondents 4 and 5 who have deposited Rs. 4,16,322/- on 28-7-2000. Thereafter on various dates as detailed in the counter affidavit filed by Sri S. K. Singh the respondents 4 and 5 has deposited Rs. 14,57,385/-. On 20-4-2001 a registered agreement has been executed which was registered on 21-4-2001 by the G. D. A. in favour of respondent No. 5 and on 23-4-2001 the actual physical possession has been given to the respondent No. 5. A photocopy of the registered agreement is Annexure SCA-I and copy of the Dakhalnama showing transfer of possession to respondent No. 5 is Annexure SCA-2.

11. In our opinion, the petitioner cannot claim that the land in dispute should have been allotted in his favour as the land has already been acquired and the compensation has been awarded and the award has become final. Once the original acquisition is valid and title vests in the G.D.A., the petitioner cannot have any say in the matter regarding how the G.D.A. utilizes the land and to whom it allots it.

12. In *Gulam Mustafa v. State of Maharashtra*. AIR 1977 SC 448 it has been observed in paragraph 5 that 'once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition.'

13. In *C. Padma v. Dy. Secretary*. (1997) 2 SCC 627 the Supreme Court observed that after the land has been acquired and the compensation paid to the appellant it vested in the State, and thereafter the appellants are not entitled to restitution of possession on the ground that the original purpose for which the land was acquired had ceased to exist.

14. In *State of Kerala v. M. Bhaskaran Pillai*, (1997) 5 SCC 432 : (AIR 1997 SC 2703) it was held that if the land is acquired for public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose, and in case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction. In view of this decision we cannot direct the respondent to restore the land to the petitioner.

15. There is no house of the petitioner (as per the report of the Advocate Commissioner) on the land in dispute and hence there is also no question of granting any exemption from the acquisition which in fact has already taken place.

16. We are not expressing any opinion on whether the affidavits dated 21-6-2000 and 10-7-2000 are genuine or forged, as this controversy has no relevance to this case. Even assuming that there are forged that will make no difference to the rate of this petition because once the land has been acquired the petitioner's consent is not required for its transfer by the G.D.A. to anyone.

17. Thus there is no force in this petition. It is accordingly dismissed. No order as to costs.