

**Amar Singh and anr. Vs. New Okhla Industrial Development Authority and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/493675](http://sooperkanoon.com/493675)

**Court :** Allahabad

**Decided On :** Nov-19-2007

**Reported in :** 2008(1)AWC509

**Judge :** Tarun Agarwala, J.

**Appellant :** Amar Singh and anr.

**Respondent :** New Okhla Industrial Development Authority and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**Tarun Agarwala, J.**

1. The plaintiffs filed a suit for perpetual injunction praying that the defendants be restrained from interfering in their possession over 9 biswas of land on plot No. 401 situate in village Atta, tehsil Dadri, now in N.O.I.D.A., district Gautam Budh Nagar.

2. The plaintiffs alleged that the total area of plot No. 401 was 4 bighas 19 biswas, out of which, 4 bighas and 10 biswas was acquired and that 9 biswas was left out from the acquisition proceeding initiated under the Land Acquisition Act. The

plaintiffs contended that the remaining 9 biswas which was left out from acquisition, was an abadi land, which was being used by the plaintiffs and their forefathers for keeping cattle, etc. for the last 60-70 years. The plaintiffs alleged that they were the owners and in possession of the land in question which was never acquired nor possession was taken nor could it be legally acquired at this stage. The plaintiffs further alleged that the defendants illegally came to the appellants' land on 29.8.1985 and tried to forcibly evict them from the land in question which consequently led to the filing of the present suit.

3. The defendants are the N.O.I.D.A. Authority, in whose favour the land was acquired and possession given to them by the State Government. The defendants filed their written statement denying the claim of the plaintiffs and submitted that they are neither the owners of the land in question nor are in possession. The defendants contended that by two notifications dated 1.5.1976 and 12.1.1977 issued under Section 6 of the Land Acquisition Act, the State Government declared its intention to acquire 4 bighas, 18 biswas and 10 biswansi of land from plot No. 401. The defendants further submitted that possession was taken by the State Government on 4 bighas 18 biswas and 10 biswansi of land on 21.7.1976 and 28.3.1977, and therefore, it was handed over to the defendants, and that, since then, the defendants are in possession of the land in question. The defendants further contended that the remaining land, namely, 10 biswansi was acquired by the P.W.D. for the purpose of constructing a road. The defendants submitted that necessary parties were not impleaded and that the plaintiffs are rank trespassers, having encroached the land recently for the purpose of filing the present suit.

4. On the basis of the pleadings, various issues were framed and, after considering the evidence, the trial court dismissed the suit holding that the plaintiffs were neither the owners of the land in question nor were in possession. The trial court found that the land acquisition proceedings were initiated under Sections 4 and 6 of the Land Acquisition Act and, based on these proceedings, possession of the land was taken over by State Government on 21.7.1976 and 28.3.1977. Consequently, the plaintiffs having not been found to be in possession of the land in question, the suit was dismissed with cost. The plaintiffs, being

aggrieved by the dismissal of the suit, filed an appeal which also met the same fate. The plaintiffs, thereafter, filed the present second appeal which was admitted on the following substantial question of law, namely ;

Whether in the absence of any evidence to the effect that any award of the disputed area of 9 biswas was prepared and compensation thereof was paid (out of the total area of 4 bighas 19 biswas) of plot No. 401 and on the face of positive evidence to the effect that compensation of only 4 bighas 10 biswa area was prepared and paid, the learned lower courts have manifestly erred in assuming the vesting of the disputed 9 Biswa land into State and extinguishment of right and title of the plaintiffs therefrom.

5. Heard Sri K.S. Chauhan and Sri S.D. Kautilya, the learned Counsel for the plaintiffs-appellants and Sri Zafar Nayar, Additional Advocate General assisted by Smt. Mridul Tripathi for the defendants-respondents.

6. The learned Counsel for the plaintiffs submitted that even though a notification was issued by the State Government under Section 6 of the Land Acquisition Act declaring its intention to acquire 4 bighas and 19 biswas of land, in fact, the defendants had only acquired 4 bighas 10 biswas and that the balance 9 biswas of land was never acquired.

7. In support of his submission, the learned Counsel for the plaintiffs-appellants placed reliance on Form No. 11 which, in fact, is an extract of the award passed by the Collector/ Special Land Acquisition Officer which indicated that compensation for 4 bighas and 10 biswas of land was only paid to the plaintiffs. Consequently, the learned Counsel submitted that 9 biswas of land was never acquired nor possession was taken by the defendants.

8. The learned Counsel further submitted that the possession of 9 biswas of land was never taken since it was an abadi land, and therefore, submitted that a perpetual injunction ought to have been granted by the court below. The learned Counsel further submitted that possession under Section 17 (1) read with Section 9 of the Land Acquisition Act was not taken and that the possession memo only indicates that possession was taken under Section 6 of the Act which was wholly

immaterial.

9. In support of his submission, the learned Counsel placed reliance upon a decision of a Division Bench of this Court in *Smt. Prabha Wati Kunwar and Anr. v. State of U.P. and Ors.* 1996 (2) AWC 924. in which it was held that if possession under Section 17 of the Land Acquisition Act was not taken, in that case, acquisition was not complete under the provisions of the Land Acquisition Act.

10. In the light of the above submissions, the learned Counsel submitted that since the possession was not taken by the defendants under Section 17 of the Act and that admittedly the award was not made under Section 11A with regard to 9 biswas of land, consequently in view of the provision of Section 11A of the Land Acquisition Act, the award, having not been made within two years from the date of the issuance of the notification under Section 6 of the Act, the land acquisition proceedings with respect to 9 biswas of land had lapsed which cannot be acquired and since the plaintiffs were in possession, a decree of perpetual injunction ought to have been granted by the courts below.

11. The learned Counsel also placed reliance upon an unreported decision of a learned single Judge of this Court in First Appeal No. 703 of 1987, *Madan Lal Sharma v. New Okhla Industrial Development Authority and Anr.* decided on 14.10.2003 in which the suit was decreed in view of the finding that the authority had only acquired a portion of the land and the remaining portion was never acquired under the Land Acquisition Act. The learned Counsel also placed reliance upon a decision of the Supreme Court in *Kunwar Pal Singh (Dead) by L.Rs. v. State of U.P. and Ors.* 2007 (3) AWC 2529 (SC).

12. On the other hand, the learned Additional Advocate General submitted that the plaintiffs were neither the owners nor were in possession of the land in question and that the entire land of the plaintiffs was acquired and possession was taken by the State Government, and thereafter, handed over to the NOIDA Authority. An award was made and compensation was paid to the plaintiffs and now nothing remained and that the suit was not maintainable. Further, no evidence was filed to indicate that the land in question was an abadi land. The learned Additional Advocate General submitted that the plaintiffs were not entitled for any relief since

they were rank trespassers, having encroached upon the land for the purpose of filing the suit.

13. I have heard the learned Counsels for the parties and having perused the record, this Court is of the opinion that the plaintiffs were not entitled for any relief whatsoever.

14. Admittedly, the notifications under Sections 4 and 6 of the Land Acquisition Act was issued by the State Government. The notifications under Section 6 of the Act indicates the intention of the State Government to acquire plot No. 401 measuring 4 bighas 18 biswas and 10 biswansi. The record indicates that the State Government had taken possession of the said land as indicated in the notifications issued under Section 6 on 21.7.1976 and 28.3.1977. A perusal of the notifications under Section 6 of the Land Acquisition Act indicates that the urgency clause under Section 17 (1) of the Land Acquisition Act was applied and that the State Government was directed to take possession upon the expiry of 15 days from the date of the publication of the notice under Section 9 (1) of the Act. The possession memo indicates that the possession was taken by the State Government, and thereafter, the land was handed over to the N.O.I.D.A. Authority.

15. The submission that the possession was taken under Section 6 and that no possession was taken under Section 17 (1) of the Act, in my opinion, is bereft of merit and is totally misconceived. The possession of the land is taken either under Section 16 or under Section 17 and is not taken under Section 6 of the Act. There is no allegation in the plaint that the notice under Section 9 of the Act was not issued. There is no allegation in the plaint that the possession under Section 16 or under Section 17 was not taken by the State Government. No evidence has been filed on this aspect. Further, a perusal of the possession memo indicates that the possession was taken by the authorities pursuant to the declaration made under Section 6 of the Land Acquisition Act which contained a recital about the issuance of the notice under Section 9 alongwith Section 17 (1) of the Act. The possession memo does not indicate that possession was taken under Section 6 of the Act. Consequently, the submission raised by the learned Counsel for the appellants is patently misconceived.

16. In the absence of any averment in the plaint and in the absence of any evidence coming forward from the plaintiffs, an irresistible conclusion is drawn that the urgency clause under Section 17 (1) of the Act must have been invoked and notices under Section 9 of the Act must have been issued and that the possession was taken after the expiry of the period mentioned in the notice. Once the possession had been taken by the State Government, such land vested absolutely with the State Government free from all encumbrances.

17. It may be stated here at this stage that under the land acquisition proceedings, the alleged possession was taken by the State Government/ Collector/Special Land Acquisition Officer/Tehsildar/Amin, who are all relevant and necessary parties. Unfortunately, the plaintiffs has not impleaded them as parties. They were the best persons/authority to indicate as to how the possession of the land was taken from the plaintiffs and could have placed the relevant material. The defendants are not the appropriate authority to come forward and intimate the Court as to how the possession was taken, since the land was acquired in their favour and the land was handed over to them after possession was taken by the State Government.

18. The emphasis by the learned Counsel on the possession memo to the effect that the land was taken under Section 6 is patently erroneous. The reliance placed upon the judgment of a Division Bench of this Court in the case of Smt. Prabha Wati Kunwar (*supra*), consequently has no application.

19. Once the possession of the land had been taken under Section 17 of the Act, the said land vested in the Government free from all encumbrances and the plaintiffs were divested of their title and possession. The allegation that the plaintiffs were still in possession of the land in question, is patently erroneous. After the expiry of 15 days from the issuance of the notice under Section 9 of the Act, the occupant of the land stood divested from the land. By a fiction of law, the possession was deemed to have been taken over and taking of physical possession was not necessary under Section 17 read with Section 9 of the Act.

20. In my opinion, constructive delivery upon the expiry of 15 days of the issuance of the notice under Section 9 is sufficient. In any case, the possession memo

clearly indicates taking over of physical possession by the Amin from the plaintiffs which fact has not been denied. Consequently, the right, title and interest held by the plaintiffs was divested by operation of law under Section 17 read with Section 9 of the Act. Since possession of 4 bighas, 18 biswas and 10 biswansi was taken by the Amin on 1.7.1976 and 28.3.1977, the plaintiffs were divested of their title, right and possession of the land in question and the same vested in the Government, who in turn handed over the possession to the defendants, N.O.I.D.A. Authority. The allegation that the plaintiffs are still in possession and that the possession on the date of the filing of the suit was only required to be considered, is wholly erroneous. The plaintiffs have been divested of their title and possession after possession was taken under Section 17 of the Act. The mere fact that the plaintiffs had encroached upon the land will not entitle the plaintiffs to claim that they remained in possession continuously.

21. The learned Counsel for the plaintiffs placed reliance upon a decision of the Supreme Court in *Tamil Nadu Housing Board v. A. Viswam (Dead) by LRs.* AIR 1996 SC 3377. The same decision has also been relied upon by the learned Additional Advocate General. The Supreme Court held-

It is true that normally *Kunwar Pal Singh (Dead) by L.Rs. v. possession* is nine times the title. If that principle is extended to public acquisition by illegal squatting, erstwhile owner has compensation as well as possession of the land by encroachment upon his erstwhile land and claim that he remained in possession. Such construction would defeat the public purpose.

22. As pointed out earlier, the State Government was the best authority to prove as to how they had taken the possession of the land. The plaintiffs are asserting the legal title on the acquired land. The State Government, in my opinion, was a necessary party. The plaintiffs should have claimed the relief against the State Government which was not done in the present case. The present defendant, namely, the NOIDA Authority were given possession of the land from the State Government. The defendants cannot be expected to prove as to how the possession was taken by the State Government from the plaintiffs.

23. The plaintiffs alleged that compensation for 4 bighas and 10 biswas was only paid by the State Government and that no compensation for 9 biswas was paid till date. Consequently, the learned Counsel submitted that the acquisition was incomplete, and now, at this stage, the remaining 9 biswas of land cannot be acquired since more than 2 years had elapsed and no award had been made for the remaining 9 biswas of land, in view of the provision of Section 11A of the Land Acquisition Act.

24. In support of his submission, the learned Counsel placed reliance on an unreported decision of the learned single Judge in the case of Madan Lal Sharma v. New Okhla Industrial Development Authority and Anr. passed in First Appeal No. 703 of 1987 on 14.10.2003 and the decision of the Supreme Court in Kunwar Pal Singh (Dead) by L.Rs. v. State of U.P. and Ors. 2007 (3) AWC 2529 (SC).

25. In my view, the submissions made by the learned Counsel for the appellants is misconceived. Once possession under Section 17 is taken, it is not necessary that the award must be made within 2 years.

26. The Supreme Court in a large number of decisions has held that where the urgency clause under Section 17 is invoked and possession is taken in pursuance to the notice under Section 9 of the Act, the award can be made even after the expiry of two years, and that, the land acquisition proceedings would not lapse, even if the award could not be given within two years from the date of the issuance of the notice under Section 6 of the Act.

27. In my view, assuming that compensation for 4 bighas 10 biswas had only been given to the plaintiffs, the acquisition will not lapse. The plaintiffs at best are only entitled for compensation for the remaining land which had been acquired and in which the award had not been made. Once the land stood vested in the State Government, free from all encumbrances, there was no question of divesting the land and reverting the land to the plaintiffs. The only right, if any, which the plaintiffs have is, to the determination of the compensation in accordance with the provisions of the Land Acquisition Act. Consequently, it is open to the appellants to approach the appropriate authority for the redressal of their grievance with regard to the non-payment of the compensation.

28. Before parting with this case, there is another aspect in the matter. In the present case, the plaintiffs claimed that they are the owners and in possession of the land in question. On the other hand, the defendants submitted that the land had been acquired and possession taken and compensation paid to the plaintiffs. Consequently, in such a dispute, the plaintiffs should have filed a suit for a declaration of their title and consequential injunction.

29. In my opinion, mere filing a suit for injunction was not sufficient even though the<sup>1</sup> Court could go into the question of title even in the absence of a specific prayer for declaration, nonetheless, a suit for a relief of a perpetual injunction requires disclosure of facts to satisfy the requirements of Section 38 of the Specific Relief Act and absence of prohibition contained in Section 41 of the Specific Relief Act.

30. In my opinion, filing of a mere suit for perpetual injunction without giving the correct disclosure, as happened in the present case, and without impleading the necessary parties disentitled the plaintiffs from seeking the relevant reliefs as provided under Section 41 (i) of the Specific Relief Act. The court below was justified in declining to exercise its discretion under Section 38 of the Specific Relief Act.

31. In view of the aforesaid, this Court holds that once possession had been taken by the State Government after invoking the urgency clause under Section 17 of the Land Acquisition Act, the plaintiffs stood divested from the land in question and they had no right or title over the said land. Even If compensation of only a portion of land had been paid to the plaintiffs, nonetheless, the plaintiffs are only entitled for compensation for the remaining portion of the land but are not entitled for a decree of perpetual injunction as they were neither the owners nor in possession of the land in question at the tune of the institution of the suit. The question of law as stated aforesaid, is decided accordingly.

32. In view of the aforesaid, the second appeal fails and is dismissed with cost.