

**Dharmendra Kumar Vs. State of U.P. and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/918101](http://sooperkanoon.com/918101)

**Court :** Allahabad

**Decided On :** Dec-02-2010

**Judge :** Ferdino Inacio Rebello; Amreshwar Pratap Sahi, JJ.

**Appeal No. :** WRIT - C No. - 69898 of 2010

**Appellant :** Dharmendra Kumar

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

**Advocate for Def. :** C.S.C.; Ramendra Pratap Singh, Advs

**Advocate for Pet/Ap. :** Uma Nath Pandey, Adv

**Judgement :**

1. The petitioner herein was the co-owner of the land bearing KHASRA No. 427. A notification dated 12.3.2008 under Section 4 (1) read with Section 17 (1) and 17 (4) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued. This was followed by a declaration dated 19.11.2008 under Section 6 of the Act. Possession of the land was taken on 16.2.2009. The petitioner has received the compensation offered.

2. By the present petition, the petitioner has prayed for the following reliefs:-

**(a) issue a writ, order or direction in the nature of Certiorari quashing the impugned notification dated 12.03.2008 (Annexure no.1 to the writ petition) issued under Section 4 (1) read with Sections 17 (1) and 17 (4) and notification dated 19.11.2008 (Annexure no.2 to the writ petition) issued under Section 6 of the Land Acquisition Act, 1894, in respect of half share of land of Khasra no. 427 situated in village Makaura, Pargana Dadri, Tehsil and District Gautam Budh Nagar.**

**(b) issue a writ, order or direction in the nature of Mandamus commanding the respondent no.2 to decide the representation dated 27.10.2010 (Annexure No.8) by speaking orders in pursuance of Government Order dated 24.04.2010 within stipulated time.**

**(c) issue a writ, order or direction in the nature of Mandamus directing the respondent authorities not to demolish and interfere in worshipping and performing rites and rituals over the sepulcher (Samadhi Sthal) of grand father of petitioner situated over plot no.427 in Village Makaura, District Gautam Budh Nagar."**

3. Insofar as prayer clause (a) is concerned, in our opinion, as the declaration under Section 6 of the Act was issued as far back as 19.11.2008 and possession of the land was taken and compensation received, it will not be open to the petitioner now to challenge the declaration under Section 6 in respect of half share of the land of KHASRA No. 427. Petitioner cannot approbate and reprobate. In our opinion, that relief cannot be granted.

Insofar as prayer clause (b) is concerned, it is the case of the petitioner that Principal Secretary, Industrial Development, has addressed a letter to the NOIDA authorities and other authorities as also to the District Magistrate that a decision has been taken that after steps for denotification has been taken, the land can be given on lease to the original owner. According to the petitioner, as per the Government policy, the petitioner is entitled to get a lease deed in his favour for the area measuring 3000 sq. meter, but in spite of repeated requests, respondent

no.3 (Greater Noida Industrial Development Authority) is not inclined to comply with the policy of the State Government. They have also illegally deprived the petitioner from the ownership of the SAMADHI STHAL of his grand-father, which is situated in that land. The petitioner by representation dated 22.10.2000, while making the said request has also made a request to exempt the land covered with sepulcher (SAMADHI STHAL) from the very acquisition.

4. The petitioner has also drawn our attention to the various petitions being filed in this Court including the petition filed by one Radhey Shyam being Civil Misc. Writ Petition No. 64127 of 2008 challenging the same notification, was dismissed by the High Court vide judgment and order dated 15.12.2008. Aggrieved, the petitioner in the said writ petition preferred S.L.P. before the Supreme Court being Special Leave to Appeal (Civil) No (s). 601 of 2009, in which the Supreme Court, after considering the facts and circumstances of the case, granted interim order on 14.01.2009. That S.L.P is pending before the Supreme Court. Our attention has also been invited to another writ petition being Civil Misc. Writ Petition No. 28110 of 2008 (C/M Durga Shiksha Samiti Through President & another vs. State of U.P. through Secretary, Industrial Development and others wherein the Division Bench had quashed the notification dated 12.03.2008 issued under Section 4 (1) read with Section 17(1) of the Act, vide judgment and order dated 19.08.2010.

5. Another instance is given of one Shri Khajan Singh, whose land had been acquired by the Authority and against the said notification, he had preferred a Writ Petition before this Court which was dismissed, and against which an S.L.P. was preferred and thereafter the respondent no.3 sent a proposal to Khajan Singh by which an offer was made to return his entire acquired land by way of lease deed. Khajan Singh accepted the offer of respondent no.3 and withdrew his S.L.P. after obtaining the lease deed equivalent to the acquired land. It is in these circumstances, the petitioner has prayed for grant of relief in terms of prayer clause (b).

6. Once an urgency clause is invoked by virtue of Section 17 (1) of the Act, it is open to the Collector to take possession of the land for public purpose and if possession is taken thereupon the land vests absolutely in the Government free

from all encumbrances.

In the instant case, possession has been taken and, therefore, the land vests in the Government free from all encumbrances. The question, therefore, of dropping or excluding SAMADHI STHAL will not arise.

7. We then consider Section 48 of the Act. Section 48 reads as under:-

**"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.**

**(2) Whether the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.**

**(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."**

Thus, by virtue of Section 48 (1), except in the cases provided for in section 36, the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken. Under Section 36 of the Act, the possession, is on payment of compensation or on executing an agreement, or on making a reference under section 35 of the Act.

It is, thus, clear that once the provisions of Section 17 (1) have been invoked and the possession of the land has been taken, the question of withdrawing from acquisition would not arise. Also in other cases where award has been made and

possession has been taken withdrawing from acquisition would not arise considering the language of Section 48 of the Act. It appears that the Government Order and its phraseology has not taken into consideration this aspect of a statutory provision under the Act. Issue of granting lease to the original owner is another aspect.

8. The land has been acquired for respondent no.3. Once that be the case, we fail to understand as to how, by an administrative instruction, the Government can direct respondent no.3 which has paid the entire compensation to handover possession of the land to the original owner on lease from whom the land is taken or issue a direction to respondent no.3 to that effect in terms of its Government Order / Circular. It is for that body to decide the use of the land in the absence of any statutory provision. In our opinion, such a Government Order if literally interpreted may be contrary to the statutory provisions of the Act. Before acquiring the land for local bodies or the like, the Government must satisfy that the land including the area which is sought to be acquired is really needed for a public purpose.

9. In matter after matter, issue comes up for our consideration as to exercise of urgency powers under the Act. We are informed that the matter is under consideration of the Government. Considering that, we do not propose to decide that issue.

10. Though, in this petition, we are not considering the issue of granting prayer clause (a) for the reasons set out above, to our mind, the entire exercise of invoking Section 17 (4) is to acquire the land for industrial development and for group housing. The petitioner has pleaded that when acquisition is for private developers, possession of the land shall not be taken indirectly without resorting to the provisions of Part VII of the Act which is Acquisition of Land For Companies. That issue need not be decided today.

11. Another issue for consideration is assuming that notification is applicable, whether the petitioner could have applied for restoration of the land or for getting back possession of the land on lease, even before an award is passed. Giving back the land immediately on acquisition will presuppose that there was no public

purpose for acquiring the land. If there be a public purpose, then it follows that reasonable time must expire, before the Government order as it exists today, can be applied. Reasonable time would be to give sufficient time for completion of the object for which the land was acquired or the need for any other public purpose. Many a time, the public purpose cannot be met within a time frame on account of paucity of funds. This does not mean that the local body or Government does not require the land. In the facts and circumstances of the instant case, the application of the petitioner cannot be considered as it would be premature, as the application was moved on 27.10.2010, the petition was filed on 26.11.2010, and the possession of the land was taken on 16.02.2009 and award has yet to be passed.

In our opinion, therefore, relief in terms of prayer clause (b) also cannot be granted at least, at this stage, assuming the notification is applicable.

12. Insofar as prayer clause (c) is concerned, once the land vests in the Government free from all encumbrances, it presupposes that the petitioner has no right in the SAMADHI STHAL of his grandfather and, to that extent, the relief, as prayed for, cannot be granted. The question of directing to make a representation also does not arise as the petitioner has no legal right. Independent of that, nobody prevents a party from making a representation.

13. We must express our displeasure of generally denying an opportunity to file objection under Section 5-A of the Act, which appears to be given a go-bye in the State of U.P. We take judicial notice of the fact that in most matters, Section 5-A is dispensed with even if there be no urgency for acquiring the land even if it be for planned development as per the master plan. The least, a person whose land is sought to be acquired must be given an opportunity to file his objection pointing out as to why his land should not be acquired. The provision of Section 5-A of the Act, for all purposes, has become inoperative in the State of U.P. We express our unhappiness in the manner in which the lands are being acquired in the State of Uttar Pradesh for the ultimate benefit of private parties denying the agriculturists their right to file objection under Section 5-A of the Act. We are informed that the matter is under consideration of the Government.

14. With the above observations, the petition stands dismissed.

