SUPREME COURT OF INDIA

Mahadeo (D) through LRs.

Vs.

State of U.P.

C.A.No. 2944 of 2013

(Surinder Singh Nijjar and M.Y. Eqbal JJ.)

08.04.2013

JUDGMENT

M.Y.EQBAL, J.

1. Leave granted.

2. These appeals are directed against the orders dated 2.12.2009 passed by a Division Bench of the Allahabad High Court in Civil Misc. Writ Petition Nos. 7748 of 2002 and 21407 of 2002 whereby the writ petitions filed by the appellants herein were disposed of with a direction to respondent No. 4 – Meerut Development Authority to press its resolution dated 17.09.1997 if the said Authority is not in need of the land so acquired and the orders dated 9.4.2010 whereby the review applications filed against the orders dated 2.12.2009 in the said writ petitions were rejected.

3. The facts of the case lie in a narrow compass. The appellants filed the aforementioned writ petitions seeking the following reliefs:

> i. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to accept the proposal for withdrawing from acquisition in view of the resolution dated 17.9.97 submitted by the Meerut Development Authority at the earliest within a period to be fixed by this Hon'ble Court.

ii. Issue a writ, order or direction in the nature of certiorari quashing the entire land acquisition proceedings in pursuance of the notification u/s 4 dated 27.1.1990 and declaration u/s 6 of the Act dated 7.3.90.

ii-a. Issue a writ, order or direction in the nature of certiorari quashing the order/decision communicated by letter dated 24.08.2002 (Annexure-16 to the writ petition).

iii. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to dispossess the petitioners from their respective lands forcibly in pursuance of the acquisition for declaration was issued u/s 6 of the Act on 6.3.90.

iv. Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the damages for financial loss, mental agony and pain to the petitioners in view of section 48(2) of the Act.

v. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

vi. Award cost of the writ petition to the petitioners."

4. It appears that vide Notification dated 27.1.1990 under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act"), the State of U.P. proposed to acquire 246.931 acres of land situated at Village Abdullapur, Pargana, Tehsil and District Meerut. Since the land was alleged to have been urgently required by the State, the provision of Section 17(1) of the Act was invoked. The aforesaid land was sought to be acquired for the purpose of construction of a residential/commercial building under planned Development Scheme by the Meerut Development Authority (for short, "the MDA"). Since Section 17(1) of the Act was invoked, inquiry under Section 5A of the Act was dispensed with. Thereafter, declaration under Section 6 read with Section 17(1)(4) of the Act was made on 18.3.1990 which was published in a daily newspaper. Consequently, notice under Section 9 of the Act was issued and pursuant to that appellants are said to have filed their objections. On 17.3.1992, respondent No. 3 – the Special Land Acquisition Officer, Meerut passed an award. After the said award, the appellants applied before the Land Acquisition Officer on 24.4.1992 for making a reference under Section 18 of the said Act and accordingly respondent No. 3 referred the matter to the District Judge vide order dated 22.9.1997.

5. The appellants' case is that by resolution dated 17.9.1997, respondent No. 4 – the MDA decided to withdraw the acquisition of the land except the land measuring 42.018 acres for which compensation was paid. The MDA is said to have decided to de-requisition the land measuring 204.912 acres. It appears that in 2001-2002 meetings were held and correspondences exchanged between the authorities, the District Magistrate, Meerut and the State Government and ultimately the State Government decided not to accede to the decision of the MDA for de-requisition of the land. The appellants, therefore, on these facts, filed the aforementioned writ petitions seeking the reliefs quoted hereinbefore.

6. We have heard Mr. Vijay Hansaria, learned senior counsel appearing for the appellants and the learned Additional Advocate General appearing for the respondent-State.

7. Learned counsel appearing for the respondent-State at the very outset submitted that although the appellants sought several reliefs in the writ petitions before the High Court but the relief was confined to only a direction upon respondent No. 4 to press the resolution dated 17.9.1997. The High Court, therefore, by the impugned orders disposed of the writ petitions with a direction to the Development Authority to press its resolution if the Authority is not in need of the said land. The impugned orders passed by the High Court dated 2.12.2009 is reproduced hereinbelow:

> "In this petition, the original owners are …… They have not pressed other reliefs, except the relief seeking a writ of mandamus to command the Meerut Development Authority, Respondent No. 4 to press the resolution dated 14.05.02, which has been rejected by the Government. A perusal of the rejection order reveals that rejection is not based for other reasons, except that the land proposed to be released under Section 48 of the Land Acquisition Act, has been thrust upon the development authority to sell it out so that its financial position is improved. This is no reason. The acquisition under the Land Acquisition Act is made for the public purpose if needed. No doubt the town plan development of the council is a public purpose done by the development authority but the development authority when itself says that is not needed, then the condition of acquisition is not fulfilled as contained in the Land Acquisition Act. Therefore reason of rejection is not germane to the provisions of the Land Acquisition Act. The Development Authority is directed to press its resolution if the authority is not in need of the said land.

The petition is accordingly disposed of."

8. Dissatisfied with the orders passed by the High Court, the appellants have moved these appeals by special leave.

9. Learned senior counsel appearing for the appellants assailed the orders passed by the High Court, firstly on the ground that there is apparent error in the orders of the High Court inasmuch as the appellants never confined their reliefs only to the extent of directing the MDA to press its resolution if the Authority is not in the need of the said land. Learned counsel submitted that the MDA in clear terms already expressed its opinion in the resolution dated 17.9.1997 that the land is not required by the Authority for any development purpose. Thus, the High Court fell in error in placing onus again on the MDA to press for resolution. According to the learned counsel, the refusal of the State Government in rejecting the proposal of the Authority is illegal and liable to be set aside.

10. Some of the important facts which are not in dispute can be summarized as under:

i) Notification under Section 4 and Declaration under Section 6 were issued for the acquisition of 246.931 acres of the land for the purpose of construction of residential/commercial building under the planned Development Scheme in the District of Meerut by the MDA;

ii) Inquiry under Section 5A of the Act was dispensed with since provision of Section 17(1)(4) was invoked;

iii) In response to the notice under Section 9(1) of the Act, the appellant-land owners filed their objections and finally the award under Section 11 of the Act was passed on 17.3.1992 by the Special Land Acquisition Officer; and

iv) As requested by the appellants and other land owners, reference under Section 18 of the Act was made on 22.9.1997.

11. The respondent-MDA has filed a detailed counter affidavit stating inter alia that the land was acquired for Ganga Nagar Housing Extension Scheme because of the need for housing accommodation and to prevent unplanned growth of

construction. Notices were issued under Section 9(1) inviting objections and after completing all the procedure award was passed on 17.03.1992.

12. After the said award, a sum of Rs. 5.32 crores out of the total amount of Rs.5.51 crores was deposited. The appellants filed reference application for enhancement of compensation in 2002. It was further stated that possession of the land so acquired was taken by the State Government and delivered to MDA in 2002. The MDA further stated that out of 246 acres of land, approximately 125 acres of land has already been allotted for residential and institutional use as per the Master Plan.

13. It is stated that the MDA has already spent Rs. 21 crores for development since 2002 which includes construction of overhead tanks, roads, sewage treatment plant etc. It is stated that the earlier request of MDA was withdrawn by passing fresh resolution on 15.03.2002 in order to develop the entire acquired land as Ganga Nagar Colony. The MDA further stated that rest of the acquired land is also being developed making a huge investment on roads, sewage and other civic amenities.

14. Lastly, it has been brought on record that some of the appellants were not the original owners of the land at the time when notifications under Section 4, 6 and 9 of the Act were issued. It has further been brought to our notice that some of the appellants are the purchasers of the land from the land owners after the notification was issued under Section 4 of the Act.

15. On these facts, the sole question, therefore, that falls for consideration is as to whether merely because of internal correspondences between the MDA and the State that by the resolution dated 17.9.1997 the MDA took a decision to withdraw the acquisition and to get approval from the State Government, a writ of mandamus can be issued directing the State or the MDA to denotify or de-requisition the land which was acquired after following the due process of law and an award to that effect has been passed by the Special Land Acquisition Officer.

16. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in the case of Govt. of A.P. and Anr. vs. V. Syed Akbar AIR 2005 SC 492 held that :-

"It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala and Ors. v. M. Bhaskaran Pillai Anr. (1997) 5 SCC 432 para 4 of the said judgment reads: (SCC p. 433)

"4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. 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 and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

17. In the case of Satendra Prasad Jain Ors. vs. State of U.P. and Ors., AIR 1993 SC 2517, a 3-Judge Bench of this Court after considering various provisions including Section 17 of the Act observed as under:

"14. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been

made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

18. Indisputably, land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilized by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the land owners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law.

19. For the reasons aforesaid, there is no merit in these appeals which are accordingly dismissed.