

SUPREME COURT OF INDIA

Shakuntala Yadav & Ors.

Vs.

State of Haryana & Ors.

C.A.No.2174-2175 of 2012

(Kurian Joseph and R.F.Nariman,JJ.)

09.03.2016

JUDGMENT

Kurian Joseph,J.

1. We have heard learned counsel for the parties.
2. The appellants are aggrieved since their request for release of 1.23 acres of land falling in Khasra No. 23/8/1, 8/2, 9/2, 12/2 and 13/1 in village Sahaul, Tehsil and District Gurgaon and .25 acres of land falling I Khasra No. 23/10/1 in the same village has been rejected.
3. Placing reliance on the letter of the Finance Minister of Haryana, for releasing lands coming under Lal Dora, the appellants approached the High Powered Committee. It appears that the High Powered Committee turned down the request on the ground that possession of the property had already been taken, pursuant to Award passed on 12.3.2004 and that the same had already been handed over to Haryana Urban Development Authority (in short 'the HUDA'). That decision of the High Powered Committee was challenged before the High Court leading to the impugned judgments.
4. The High Court endorsed the view taken by the High Powered Committee and has held that once the acquired land has already been taken possession of, there is no question of release under Section 48 of the Land Acquisition Act, 1894 (in short 'the Act').
5. Learned counsel appearing for the State sought to establish that the land had already been taken possession of, by inviting our attention to the order passed by the High Powered Committee on 28.3.2008, wherein it is stated as follows :-

"8. In fact the petitioner had two pockets of land measuring 1.23 acres falling in Khasra No. 23/8/1, 8/2, 9/2, 12/2, 13/1 and 0.25 acres falling in Khasra No. 23/10/1. The applicants had applied for change of land use of these khasra numbers for setting up of information technology unit on 5.12.2005 in the office of Director, Townand Country Planning. The said application was returned vide No. G-1721-AD(B)-

2006/9881 dated 21.4.2006 mentioning that the applied land is under acquisition and the applicants were asked to get the land released and then apply for change of land use permission. The land is already acquired and HUDA has taken a possession of land of other land owners vide Rapat Rojnamcha dated 12.3.2004. It was also informed by Chief Town Planner (HUDA) that HUDA has planned industrial plots on this land and allotted 11 No. such plots. It was noted that land of the applicant is lying vacant. Since as mentioned above the land is awarded, possession of the adjoining land stands taken and also stands allotted by HUDA, therefore, the land of the petitioner mentioned in CWP No. 10294/2004 and 14669 of 2005 cannot be considered for release."

6. We find it difficult to appreciate the contention of the learned counsel for the State, that the High Powered Committee had taken note of the fact of taking possession. On the other hand, what is revealed from the order is that the lands which were taken possession and handed over to HUDA was that of other land owners. The stand in the counter affidavit is not clear on the aspect of taking possession. On the other hand, the appellants assert that they have never been dispossessed from the land.

7. In the above circumstances, this Court on 7th July, 2010 passed the following order :-

"Learned counsel for the petitioners submits that in pursuance of the orders of the Finance Minister of Haryana, issued in the year 1981, two acres of land of Lal Dora on all four sides of the lands in Village Sarhaul, Tehsil and District Gurgaon was left free from acquisition and this has been confirmed by the Land Acquisition Officer, Urban Estate, Gurgaon, Haryana by letter dated 2.3.2005 and by the District Town Planner Enforcement, Gurgaon in his letter dated 9.6.2006 addressed to Millennium Industries Private Limited who are neighbours of petitioners. He also submits that on the basis of the said direction, the land of Millennium Industries Private Limited has been left out of acquisition. It is submitted that the land of the petitioners also falls within the two acres area around the village as in the case of Millennium Industries Private Limited but the High Powered Committee (HPC) has erroneously refused to leave out the land of the petitioners. In view of the said submissions, issue notice. Status quo regarding possession."

8. Thereafter it is seen that the matters were adjourned from time to time, to 13.9.2010, 9.11.2010, 22.2.2011, 30.3.2011, 4.5.2011 all before the Registrar and on 22.7.2011 before the Court. Thereafter, on 26.8.2011, this Court passed a specific order that the counter affidavit was vague on the aspect of Lal Dora and Millennium Industries Private Limited, specifically referring to in the order dated 7 th July, 2010. The order dated 26.8.2011 reads as follows :-

"We find that the counter affidavit filed on behalf of respondents 1 to 3 does not deal with the submission that was recorded by this Court in the order dated 7.7.2010. At this stage, learned counsel for the respondents submitted that an additional affidavit

with reference to the order dated 7.7.2010 will be filed. Finally, adjourned by four weeks."

9. On 23.9.2011, since time was sought for additional affidavit, a detailed order was passed, which reads as follows :-

"By order dated 7.7.2010, we had noted the submission of the petitioner that on the orders of the Finance Minister of Haryana, issued in the year 1981, two acres of land of Lal Dora on all four sides in village Sarhaul, Tehsil and District Gurgaon was left free from acquisition and this has been confirmed by the Land Acquisition Officer, Urban Estate, Gurgaon, Haryana by letter dated 2.3.2005 and by the District Town Planning and Enforcement by letter dated 9.6.2006. The contention of the petitioner was that on that ground the lands of Millennium Industries Private Limited who are neighbours of petitioners were left out of acquisition, but their land, which is similarly situated, has not been left out. In the counter filed, this issue was not dealt with and consequently on 26.8.2011, when we drew the attention to this fact, the learned counsel for the respondent submitted that an additional affidavit will be filed. But the said additional affidavit has not been filed. Learned counsel for respondents 1 to 3 again seeks time. We find no reason to grant further time. However, finally four weeks' time is granted to file an additional affidavit subject to deposit of Rs.2500/- as costs with the Supreme Court Legal Services Committee and producing acknowledgment within that period. List thereafter."

10. Despite the State being put on cost for filing additional affidavit, it was noted by this Court when the matter was taken up thereafter on 21.11.2011, that the additional affidavit had not been filed. Hence four weeks' more time was granted and the matter came up before this Court again on 3.1.2012. It was noted that neither the cost was deposited nor the affidavit filed. Therefore, this Court imposed a further cost of Rs.5000/- and gave one more opportunity, by way of last indulgence, to file the additional affidavit. Yet the additional affidavit was not filed and therefore, on 10th February, 2012, this Court passed the following order :-

"Right of the respondents to file additional affidavit is closed. Delay condoned in filing special leave petitions. Leave granted. List the matters for hearing at an early date. In the meanwhile, interim order to continue."

11. We have extensively referred to the background of the case before this Court only to indicate that there was no assistance on the two crucial aspects which are actually pivotal for a decision in the case.

12. The High Court, unfortunately, has gone only on one tangent that the land having vested with the Government on operation of Section 16 of the Act, the request for release under Section 48 cannot be considered. An attempt for review, when the appellants pointed out the instance of Millennium Industries Private Limited, in similar circumstances, was also turned down, without going into those aspects, by passing a cryptic order.

13. There being no Rojnama to show that the physical possession had already been taken, nor any pleadings in that regard, we find it difficult to appreciate the submission made by the learned counsel for the State that the possession had already been taken and handed over to HUDA. Unless the property is taken possession of, in accordance with law, there arises no question of handing over the property to HUDA. Symbolic possession, as has been held by this Court in titled as *Ragbir Singh Sehrawat versus State of Haryana and others*¹, will not serve the purpose .

14. In case the land of the appellants is in Lal Dora, we find no reason to deny, a similar treatment as has been granted to Millennium Industries Private Limited. However, on the pleadings available before this Court, we find it difficult to arrive at a definite conclusion in that regard. Therefore, we deem it just and proper to remand the matter to the High Powered Committee.

15. In the above circumstances, the appeals are allowed, the impugned orders passed by the High Court are set aside. The impugned order passed by the High Powered Committee is also set aside. The request made by the appellants for release of their land are remanded to respondent No.3 - High Powered Committee for consideration afresh.

16. We make it clear that the request of the appellants shall not be turned down, on the ground of operation of Section 16 of the Act. In case it is found that the land is in Lal Dora, they shall also be granted similar treatment, as has been given to Millennium Industries Private Limited.

17. The orders, as above, shall be passed expeditiously by Respondent No.3 - High Powered Committee, at any rate, within a period of three months from the date of production of copy of this judgment. In the event of any delay beyond the said period, the members of the Committee shall be personally liable for costs to the tune of Rs.500/- (rupees five hundred only) each per day.

18. Till orders are passed, as above, the interim orders passed by this Court to maintain status quo, with regard to possession, will continue to operate.

19. No order as to costs.

Judgment Referred.

¹ (2012) 1 SCC 0792