

SUPREME COURT OF INDIA

Greater Noida Ind.Dev.Authority

Vs.

Savitri Mohan & Ors.

C.A.No. 5372 of 2016

(Anil R.Dave and Adarsh Kumar Goel,JJ.,)

29.06.2016

JUDGMENT

Adarsh Kumar Goel,J.,

SLP(Civil)No.9550 of 2015

1. Leave granted. This appeal has been preferred against judgment and order dated 30th May, 2012 of the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No.13109 of 2009 whereby the High Court allowed the writ petition and set aside the notification dated 12th March, 2008 under Section 4(1) and Section 17(4) of the Land Acquisition Act, 1894 (the Act) and the notification dated 3rd February, 2009 under Section 6 read with Section 17(1) of the 1894 Act.

2. The notified purpose for acquisition of land is 'planned industrial development' of Greater Noida Industrial Development Authority (GNIDA). Land of the respondents is in Village Chhapruala and is part of larger area of land acquired falling in many adjoining villages. The Award was declared on 31st March, 2011.

3. The original petitioners did not receive the compensation as they had already filed a petition in the High Court on 3rd March, 2009 mainly on the ground that the urgency clause could not have been invoked so as to deprive the land owners of their right to file objections. On coming to know of the proposed acquisition, the respondents made representation dated 11th April, 2008 stating that they were running an agro based industry and floriculture for producing hybrid seeds of flowers. Case of the writ petitioners was that possession was wrongly shown to have been taken on 9th March, 2009 as interim order was already passed on 5th March, 2009.

4. The writ petitioners relied upon decisions of this Court inter alia in *Anand Singh versus State of U.P.*¹, *Dev Sharan versus State of U.P.*², *Radhey Shyam (dead) through Lrs. versus State of U.P.*³, *Devendra Kumar Tyagi & Ors. versus State of U.P.*⁴, *Devendra Singh & Ors. versus State of U.P. & Ors*⁵, *Greater Noida Industrial Development Authority versus*

*Devendra Kumar & Ors.*⁶ , and *Darshan Lal Nagpal versus Government of NCT of Delhi & Ors.*⁷ in support of their case.

5. The stand of the State is that having regard to immediate need for development and likelihood of illegal and unauthorized constructions, invocation of urgency clause was justified. It was submitted that the power under Article 226 should not be exercised so as to obstruct development of infrastructure which will serve larger public interest. Instead, the relief could be moulded so to compensate the writ petitioners. It was submitted that the land was part and parcel of larger area. In view of substantial development having taken place, the plea of the writ petitioners should not be considered in isolation. Reliance was placed on a Full Bench Judgment of the High Court in *Gajraj and others versus State of U.P. and others*, whereby 461 petitions were decided. Acquisition was upheld but additional compensation of 64.70 per cent was awarded with further direction to allot developed plots to the extent of 10 per cent of the acquired land subject to maximum of 2500 square meters as against allotment of abadi plots to the extent of 6 per cent. This order was passed having regard to the extent of development, which had already taken place after the acquisition. The said judgment also covered land of village Chhapraula as a part of group No.18 (out of 65 groups). While discussing the writ petitions of village Chhapraula, the Full Bench judgment noted that compensation had already been disbursed to the extent of 76 per cent.

6. The Division Bench of the High Court, following the decisions of this Court referred to above, held that power of dispensing inquiry under Section 5A could be exercised in exceptional situations and not without real urgency. In the present case, invocation of urgency was not justified. The judgment of the Full Bench in *Gajraj* (supra) was distinguished on the ground that therein the writ petition was filed with delay of two years and in some cases where there was no delay, the acquisition had been quashed.

7. GNIDA has challenged the view of the High Court mainly on the ground that the Division Bench has taken a view contrary to the view taken by the Full Bench which by now stands affirmed by this Court in *Savitri Devi versus State of Uttar Pradesh*⁷. Subject to the moulding of relief as above, the Full Bench had upheld the acquisition relating to village Chhapraula covered by the very same notification as in the present case. It was submitted that large scale development work had already been executed on the acquired land. 82 per cent land owners had accepted compensation which covered 76 per cent of the land in terms of the area, the GNIDA had constructed roads, laid down sewer lines, electric transmission lines, developed green belts, provided drinking water facility and other infrastructure. In these circumstances, the impugned judgment could not be sustained. Learned counsel for the respondents supports the impugned judgment.

8. We have heard learned counsel for the parties at length and perused the record including the lay out plan showing Sectors 13 and 16 (Ind.) in Greater Noida (West).

9. Only question for consideration is whether the matter is covered by the judgment of this Court in *Savitri Devi* (supra), as claimed by the appellant in which case the respondents will

be entitled to relief of higher compensation and allotment of land instead of quashing of acquisition proceedings.

10. Our attention has been drawn to the relevant part of the full Bench judgment of the High Court in Gajraj (supra) as follows :

"50. The writ petitions of Group-18 relate to village Chhapraula. In Writ Petition No.46775 of 2011 (Jai Pal And Others v. State of U.P. and others) pleadings are complete which is treated as leading writ petition of village Chhapraula. This writ petition has been filed by 48 tenure holders challenging the notification dated 12th March, 2008 issued under Section 4 read with Sections 17(1) and 17(4) of the Act proposing acquisition of 68.129 hectares land of village Chhapraula. The declaration under Section 6 of the Act was issued on 3rd February, 2009. The State Government by Government order dated 8th September, 1997 and 9th February, 2005 has issued specific directions to the acquiring bodies not to include the land covered by abadi in the acquisition and in case it is utmost necessary for acquisition displaced person be given comparable land. The petitioners claim to be in actual possession of the land. It has been pleaded that it has become fashionable to discriminatingly apply the provisions of Section 17(4) of the Act in every case of acquisition. The land has been allotted to private builders whereas the purpose of acquisition was planned industrial development. In the counter affidavit filed by the State it has been stated that possession of the land was taken on 9th March, 2009 and award was declared on 21st March, 2011. Copies of the possession memo and award have been brought on the record. According to paragraph 24 of the counter affidavit, the land use of part of Sector Tech Zone was changed from institutional to residential and similarly land use of part of Sector Echotech-13 was changed from industrial to institutional which changes were approved by the Board on 11th February, 2010 and also the same were approved by the Government on 30th March, 2010. The compensation has been disbursed to the extent of 76%. An application for intervention has been filed on behalf of M/s Marion Biotech Private Limited which claim allotment of land by allotment letter dated 31st March, 2011 of an area of 10,000 square meters as an industrial plot in Echotech-16. The applicant claims that 200-300 persons shall be employed in the project."

11. Operative part of the order is as follows :

"21 In view of the foregoing conclusions we order as follows:

1. The Writ Petition No. 45933 of 2011, Writ Petition No. 47545 of 2011 relating to village Nithari, Writ Petition No. 47522 of 2011 relating to village Sadarpur, Writ Petition No. 45196 of 2011, Writ Petition No. 45208 of 2011, Writ Petition No. 45211 of 2011, Writ Petition No. 45213 of 2011, Writ Petition No. 45216 of 2011, Writ Petition No. 45223 of 2011, Writ Petition No. 45224 of 2011, Writ Petition No. 45226 of 2011, Writ Petition No. 45229 of 2011, Writ Petition No. 45230 of 2011, Writ Petition No. 45235 of 2011, Writ Petition No. 45238 of 2011, Writ Petition No.

45283 of 2011 relating to village Khoda, Writ Petition No. 46764 of 2011, Writ Petition No. 46785 of 2011 relating to village Sultanpur, Writ Petition No. 46407 of 2011 relating to village Chaura Sadatpur and Writ Petition No. 46470 of 2011 relating to village Alaverdipur which have been filed with inordinate delay and laches are dismissed. 2(i). The writ petitions of Group 40 (Village Devla) being Writ Petition No. 31126 of 2011, Writ Petition No. 59131 of 2009, Writ Petition No. 22800 of 2010, Writ Petition No. 37118 of 2011, Writ Petition No. 42812 of 2009, Writ Petition No. 50417 of 2009, Writ Petition No. 54424 of 2009, Writ Petition No. 54652 of 2009, Writ Petition No. 55650 of 2009, Writ Petition No. 57032 of 2009, Writ Petition No. 58318 of 2009, Writ Petition No. 22798 of 2010, Writ Petition No. 37784 of 2010, Writ Petition No. 37787 of 2010, Writ Petition No. 31124 of 2011, Writ Petition No. 31125 of 2011, Writ Petition No. 32234 of 2011, Writ Petition No. 32987 of 2011, Writ Petition No. 35648 of 2011, Writ Petition No. 38059 of 2011, Writ Petition No. 41339 of 2011, Writ Petition No. 47427 of 2011 and Writ Petition No. 47412 of 2011 are allowed and the notifications dated 26.5.2009 and 22.6.2009 and all consequential actions are quashed. The Petitioners shall be entitled for restoration of their land subject to deposit of compensation which they had received under agreement/award before the authority/Collector.

2(ii). Writ petition No. 17725 of 2010 Omveer and Ors. v. State of U.P. (Group 38) relating to village Yusufpur Chak Sahberi is allowed. Notifications dated 10.4.2006 and 6.9.2007 and all consequential actions are quashed. The Petitioners shall be entitled for restoration of their land subject to return of compensation received by them under agreement/award to the Collector.

2(iii). Writ Petition No. 47486 of 2011 (Rajee and Ors. v. State of U.P. and Ors.) of Group-42 relating to village Asdullapur is allowed. The notification dated 27.1.2010 and 4.2.2010 as well as all subsequent proceedings are quashed. The Petitioners shall be entitled to restoration of their land.

3. All other writ petitions except as mentioned above at (1) and (2) are disposed of with following directions:

(a) The Petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for village Patwari in addition to the compensation received by them under 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for Authority to take a decision as to what proportion of additional compensation be asked to be paid by allottees. Those Petitioners who have not yet been paid compensation may be paid the compensation as well as additional compensation as ordered above. The payment of additional compensation shall be without any prejudice to rights of land owners Under Section 18_ of the Act, if any.

(b) All the Petitioners shall be entitled for allotment of developed Abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 square meters. We

however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of abadi plot to the extent of 10% be also given to;

(a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and

(b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned at direction No. 3.

5. The Greater NOIDA and its allottees are directed not to carry on development and not to implement the Master Plan 2021 till the observations and directions of the National Capital Regional Planning Board are incorporated in Master Plan 2021 to the satisfaction of the National Capital Regional Planning Board. We make it clear that this direction shall not be applicable in those cases where the development is being carried on in accordance with the earlier Master Plan of Greater NOIDA duly approved by the National Capital Regional Planning Board.

6. We direct the Chief Secretary of the State to appoint officers not below the level of Principal Secretary (except the officers of Industrial Development Department who have dealt with the relevant files) to conduct a thorough inquiry regarding the acts of Greater Noida (a) in proceeding to implement Master Plan 2021 without approval of N.C.R.P. Board, (b) decisions taken to change the land use, (c) allotment made to the builders and (d) indiscriminate proposals for acquisition of land, and thereafter the State Government shall taken appropriate action in the matter."

12. Perusal of the above shows that compensation had already been disbursed to the extent of 76 per cent. Thereafter, for the entire land of village Chhapraula falling in Group No.18, the relief granted is payment of additional compensation and allotment of land. As already noted, the part of the order where relief of quashing of notification has been given is not of the category of the present case. In these circumstances, we find merit in the contention raised on the behalf of the appellant that the division bench was in error in distinguishing the present case from the judgment in Gajraj (supra).

13. As observed by this Court in Savitri Devi (supra), in spite of the finding that invocation of urgency clause was uncalled for, the relief of setting aside the acquisition was not granted having regard to the development that had already undertaken on substantial part of the land. However, to balance the equities higher compensation and allotment of land was ordered to meet the ends of justice.

14. Learned counsel for the respondents vehemently submitted that present case calls for the relief of quashing the acquisition as in the present case, the writ petitioners have approached the Court without any delay.

15. This argument cannot be accepted in view of the fact that Full Bench judgment as upheld by this Court is not based on the extent of delay in individual cases. Consideration for not granting the relief of quashing the acquisition is overall development on substantial part of the acquired land as noted in para 50 of the Full Bench judgment already quoted hereinabove. Filing of prompt petitions by an individual is not the only consideration for grant of relief of quashing acquisition when almost entire land has already been developed. The Full Bench has quashed acquisition only where substantial part of the land had not been developed. The category of the judgment where acquisition has not been quashed covers the entire village where land of the respondents is located.

16. The respondents are, thus, entitled to be treated at par with other similarly placed persons. They are entitled to the following relief as per para 48.1 to 48.3 of the judgment of this Court in Savitri Devi (supra):

" 48.1. Increasing the compensation by 64.7%;

48.2. Directing allotment of developed abadi land to the extent of 10% of the land acquired of each of the landowners;

48.3. Compensation which is increased @64.7% is payable immediately without taking away the rights of the landowners to claim higher compensation under the machinery provided in the Land Acquisition Act wherein the matter would be examined on the basis of the evidence produced to arrive at just and fair market value.
"

17. As earlier noted in para 11 earlier, allotment of 10% of the acquired land to the concerned land owners is subject to maximum of 2500 sq. meters.

18. In view of the above, we allow this appeal, set aside the impugned judgment and direct disposal of the writ petitions of the respondents in terms of the judgment of this Court in Savitri Devi (supra). There will be no order as to costs.

Judgment Referred.

¹(2010) 11 SCC 0242

²(2011) 4 SCC 0769

³(2011) 5 SCC 0553

⁴(2011) 9 SCC 0164

⁵(2011) 9 SCC 0551

⁶(2011) 12 SCC 0375

⁷(2012) 2 SCC 0327

⁸(2011) 11 ADJ (1)

°(2015) 7 SCC 0021