

SUPREME COURT OF INDIA

New Okhla Industrial Development Authority

Vs.

Lt.Col.J.B.Kuchhal

C.A.No.2478-2479 of 2019

(A.K.Sikri,J., S.Abdul Nazeer and M.R.Shah,JJ.,)

05.03.2019

JUDGMENT

S.Abdul Nazeer,J.,

SLP(Civil)No.16472-16473 of 2018

1. Leave granted.
2. These appeals have been preferred by New Okhla Industrial Development Authority challenging the final judgment and order dated 21.2.2018 passed by the High Court of Judicature at Allahabad in Review Application No. 96395 of 2017 in Writ Petition (C) Nos. 24775 of 1990 and the final judgment and order dated 19.12.2016 in Writ Petition (C) No. 24775 of 1990.
3. Brief facts necessary for the disposal of these appeals are as under:
4. The State Government had issued preliminary Notification dated 30th November, 1989 under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), proposing to acquire 91-11-0 bighas (57.218 acres) of land comprising a large number of khasras in Village-Bhagel Begumpur, Pargana Dadri, District Ghaziabad (now Gautambudh Nagar) at the instance of the appellant herein. This was followed by a final Notification dated 16th June, 1990 issued under Section 6(1) of Act. The State Government also exercised powers under Sections 17(1) and (4) of the Act and dispensed with inquiry under Section 5A of the Act.
5. The private respondents were served with notice dated 18.08.1990 under Section 9 of the Act. In the first writ petition filed by the private respondents challenging the acquisition, the High Court passed an interim order dated 10.10.1990 as under:

"Connect with Writ Petition No. 21643 of 1990. Counter affidavit may be filed by the respondents within three weeks. Respondent no.4 shall annex the concrete plan of the land, if it is finalized. Rejoinder affidavit may be filed thereafter within a

week. Meanwhile the respondents are directed not to dispossess the petitioners from the disputed plots, if they had not already been dispossessed therefrom. However, the petitioners are directed not to change the nature of the plots."

6. The Award under Section 11 of the Act was made on 31.07.1992 excluding the disputed land. On 05.12.1997 the first writ petition was dismissed for want of prosecution. Possession of plot Nos. 136M and 137M was taken by the Collector and transferred to the appellants on 10.09.1999. Order dated 05.12.1997 dismissing the first writ petition in default was recalled on 01.05.2007. This writ petition along with several other matters was directed to be placed before the larger Bench. A large number of writ petitions were ultimately decided by the Full Bench of the High Court of Judicature at Allahabad in *Gajraj Singh and others v. State of U.P. and others*, 2011 (11) ADJ 1, vide judgment dated 20.10.2011 but these writ petitions were not decided by the said Bench.

7. Another set of writ petitions came before the Full Bench on 14.05.2012 where the Court directed the Collector to get appropriate measurement of plots through competent revenue officials in the presence of the private respondents and submit report to the Court. The Collector submitted its report dated 06.06.2012 giving details of the plot Nos. 136, 137 and 138. The Full Bench directed this matter to be placed before the Division Bench vide order dated 09.05.2013.

8. The appellants filed a counter affidavit stating that the land in question is lying vacant.

9. It was the case of the writ petitioners/private respondents that without leave of the Court, the appellants started construction of City Bus Terminal in January, 2015 on the disputed land despite the protest raised by the writ petitioners. It was further contended that the construction raised by the appellants despite interim order passed by the High Court is unauthorised and illegal. Therefore, possession of the disputed land is to be directed to be restored to them.

10. The appellants filed counter affidavit stating that the writ petitioners have no right to challenge the Notification issued under Section 4(1) read with Section 17 of the Act. Land has been acquired for residential complex to accommodate industrial labourers and persons of weaker sections, construction of roads, bus depot, and also green belt to avoid pollution arising from medium and large industries including Hosiery Complex and NOIDA Export Processing Zone Complex. The total land proposed to be acquired is 91-11-0 bighas and out of this 25-19-7 bighas is marked for residential complex, 2-4-0 bighas for road, 9 bighas for bus depot and 54-7-13 bighas for green belt. There was a big 'Nala' having width of about 80 ft. and green belt proposed on both sides of 'Nala'. It was denied that the appellants have no scheme or plan and the requirement is for public purpose.

11. The High Court noticed that the same notifications were challenged by one Daya Ram Tyagi and some other tenure holders and that the writ petitions had been dismissed. The said judgment of the High Court has been reversed in appeal by this Court vide judgment dated 23.08.2011 in *Daya Ram Tyagi (D) through LRS. and others v. State of UP and others*¹ and the impugned notifications have been quashed. The Court held as under:

"21. Though, various authorities have been cited at the Bar but we find that in respect of acquisition notifications in question, the matter is squarely covered by Supreme Court's judgement in Daya Ram Tyagi and others (supra) wherein these very notifications have been quashed on the ground of illegal exercise of power under Section 17 and dispensation of inquiry under Section 5A of the Act, 1894. Since these very acquisition notifications were involved in the aforesaid judgment, the same is binding on us and we cannot take a different view."

12. Therefore, the High Court allowed the writ petitions and quashed the impugned notifications in so far as the writ petitioners' lands are concerned.

13. Having heard Shri Ranjit Kumar, learned senior counsel for the appellant and Dr. A.M. Singhvi, learned senior counsel appearing for the writ petitioners, we are of the view that the High Court was justified in quashing the notification having regard to the judgment of this Court in Daya Ram Tyagi (supra).

14. At this stage, Shri Ranjit Kumar submits that the High Court was not justified in directing determination of compensation of lands in dispute at twice the market value which would be determined in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It was further contended by Shri Ranjit Kumar that the writ petitioners had failed to establish their right and title in the land acquired. Therefore, the question of payment of compensation to the writ petitioners does not arise.

15. On the other hand, Dr. Singhvi submits that the writ petitioners have produced documentary evidence in support of their contentions that they are the owners of the land. In this regard, he has taken us through the materials produced before the High Court.

16. The High Court has considered this issue. The reasons assigned for determination of compensation are as under:

"23. It is in these peculiar facts and circumstances and looking to the facts that though respondents are clearly guilty of going ahead with constructions over a land which was not legally acquired and acquisition notification was already set aside by Supreme Court vide judgement dated 23rd August, 2011, in respect of some of the tenure holders whose land was also acquired under same acquisition notifications, therefore, respondents should have been careful enough not to create/change nature of property till pending writ petitions are decided, but they went ahead and changed nature of land in dispute ignoring completely illegality they have already committed and also suffered in some cases involving same dispute and acquisition notifications. This act on the part of respondents needs to be deprecated. We have no hesitation in holding that authority concerned who permitted it, went to the extent of undertaking illegal construction putting huge public exchequer at risk.

24. Having said so still we find that it would be very harsh on the part of this Court to get entire constructions demolished and restore possession of disputed land of petitioners.

25. In the facts and circumstances, we mould relief and allow both these writ petitions in following manner:

(i) Acquisition notifications dated 30th November, 1989 and 16th June,1990 in so far as relate to petitioners' land are hereby quashed, since dispensation of inquiry under Section 5A by invocation of urgency under Section 17 is patently illegal as held in judgement of Supreme Court in Daya Ram Tyagi and others (supra).

(ii) Respondents shall determine compensation of disputed land at twice market value which would be determined in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and pay the same to petitioners within three months from the date of judgment, failing which they shall restore possession of disputed land to petitioners by removing constructions, if any, raised thereon.

(iii) Petitioners shall also be entitled to cost which we quantify to Rs.5,00,000/- in each set of writ petition”.

17. It is necessary to notice that it has now been almost 28 years since the subject land had been notified for acquisition. The appellant has put up construction over the land without acquisition of the said land putting public exchequer at risk. It is no doubt true that the writ petition was dismissed for default. However, it has been restored subsequently and the restoration order has not been challenged. The appellant has not produced any document to substantiate its contention that the writ petitioners are not the title holders of the land. On the other hand the writ petitioners have produced their title deeds in relation to the said land.

18. We are of the view that the appellant is not justified in contending that the writ petitioners are not the title holders of the land. Having regard to the facts and circumstances of the case, we are also of the view that the direction of the High Court for determination of compensation of the disputed land is just and proper.

19. Therefore, we find no merit in these appeals. They are accordingly dismissed. We make it clear that the High Court has passed the order directing determination of compensation on the peculiar facts and circumstances of the case. The said order shall not be made applicable for determination of compensation in respect of other lands acquired under the same notification.

20. There will be no order as to costs.

Judgment Referred.

¹C.A.No.7237 of 2011