

Court No. - 5

Case :- WRIT - C No. - 16835 of 1984

Petitioner :- M/S Modi Spining And Weaving Mills And Ors.

Respondent :- State Of U.P. And Ors.

Counsel for Petitioner :- Ravi Kant, Tarun Agarwal

Counsel for Respondent :- S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Mr. Ravi Kant, learned Senior Advocate assisted by Mr. Tarun Agarwal for the petitioner and learned Standing Counsel for State.

2. By means of present petition, the petitioners have assailed the order dated 12.10.1984 and 31.5.1985 passed by the Prescribed Authority as well as the Additional District Judge, respectively.

3. Brief facts of the case are that the petitioner no.1 is a private limited company incorporated under the Indian Companies Act and engaged in the business of manufacture of cloth, yarns, fibres, nylon yarn and threads etc. By the notification dated 28.1.1961 issued under Section 4 of Land Acquisition Act, an area of 10.23 acres of land of village Basohar was acquired for re-modelling of Quadrabad drain. It has been stated that in the said notification neither the plot numbers nor its area were mentioned in respect of the land which were proposed to be acquired. It has been further stated that notice for acquisition was issued in the name of M/s Modi Sugar Mills Private Limited as well as one Yashpal but neither notice was issued to the petitioner nor any compensation was paid to the petitioners for the said acquired land. It has been further stated that without following the due process, the land was acquired to which the petitioner has raised objection but the same

has been rejected by the order dated 12.10.1984 and the said order has been confirmed by the Additional District Judge by the order dated 31.5.1985. Hence the present petition.

4. Learned senior counsel submits that notification dated 28.1.1961 has been issued under Section 4 of Land Acquisition Act and it has been stated that possession of the acquired land was taken in the year 1962. He submits that plot no. 839 of village Basokhar from which 4 bigha 10 biswa was acquired but the area of the petitioner was never acquired. He further submits that proposal for acquisition was only for re-modelling of drain from either side. He further submits that map was prepared which shows that plot of the petitioner was neither acquired nor possession was taken but the respondents were bent upon to dispossess the petitioner illegally. He further submits that after the drain and after its widening to 130 feet, there was an intervening road of 30 feet, a Baratghar, an intervening road of 20 feet and two residential colonies were situated respectively, therefore, it is clear that land can never vest in the State Government and same cannot be, by any stretch of imagination, needed for drain. Copy of the sketch map filed by State is enclosed as Annexure no. 12 of the writ petition. The said sketch map was placed before the authorities below but they failed to consider the same.

5. He further submits that the prescribed authority has also recorded a finding of fact that payment of compensation has been made to M/s Modi Sugar Mills Private Limited whereas land in question belongs to the petitioner but still without any notice or without following proper procedure, the prescribed authority were trying to dispossess the petitioner. He further submits that against the order of the prescribed authority, the petitioner has preferred an

appeal but the same has also been dismissed however while rejecting the appeal of the petitioner, the finding of fact which has been recorded by the Prescribed Authority that the payment was made to the M/s Modi Sugar Mills, has not been controverted. He submits that said finding is perverse but without setting aside the same and without laying the foundation that the compensation was paid to the petitioner, the impugned order has been passed. He submits that once the notification does not prescribe the area along with plot number and the petitioner was never put to any notice of the proceedings, the entire proceeding is vitiated and liable to be set aside.

6. *Per contra*, learned Standing Counsel supports the impugned order and submits that proceedings have been initiated after following due process of law. He submits that the land was acquired in pursuance of the notification dated 28.1.1961 and thereafter possession of the land was taken in the year 1962 and any construction thereon is illegal and without authority of law after issuing the notification. He prays for dismissal of the writ petition.

7. After hearing learned counsel for the parties, the Court has perused the record.

8. On perusal of the records, it shows that in para 8 of the writ petition, it was specifically stated that petitioner was never put to any notice of the proceeding and the notice was issued in the name of M/s Modi Sugar Mills Private Limited and the prescribed authority has specifically recorded a finding of fact that payment of compensation was made to M/s Modi Sugar Mills Private Limited. This fact has neither been denied in the counter affidavit nor any material contrary to it, has been brought on record before

this Court. Further the record reveals that the appellate authority without reversing the finding mentioned in the order of Prescribed Authority and without laying any foundation that the payment of compensation was made to the petitioner, has passed the impugned order and held that payment of compensation has been received by the petitioner. The said observation is perverse. The petitioners have brought on record the sketch map (Annexure no. 12) and same has also been filed before the Prescribed authority but no weightage of the same, has been given. Further the record reveals that area of plot numbers which were acquired by the State, have not been mentioned in any of the order, therefore, the impugned orders cannot be sustained in the eyes of law.

9. In view of above, the writ petition is **allowed**. The impugned orders are set aside. The matter is remanded to the Prescribed Authority who shall decide the matter *de novo* after hearing all the stack holders, in accordance with law, without being influenced with any of the observation made herein above.

10. Since the matter is very old, it is expected from the Prescribed Authority to decide the same, expeditiously, preferably within a period of four months from the date of production of certified copy of this order.

11. The petitioners are directed to file a certified copy of this order before the Prescribed Authority within two weeks from today.

Order Date :- 11.12.2023
Rahul Dwivedi/-