Neutral Citation No. - 2023:AHC:209820-DB

Court No. - 21

Case :- WRIT - C No. - 26401 of 2019

Petitioner :- Som Dutt Sharma And 27 Others
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Shri Krishna Mishra
Counsel for Respondent :- C.S.C.,Kartikeya Saran

Hon'ble Manoj Kumar Gupta,J.
Hon'ble Donadi Ramesh,J.

1. Heard Sri S.K. Mishra, learned counsel for the petitioners, Sri Rajiv Gupta, learned Additional Chief Standing Counsel for the State-respondents and Sri Kartikeya Saran, learned counsel for Ghaziabad Development Authority.

2. The petitioners have prayed for a writ of mandamus directing respondents nos. 3 and 4 to pay enhanced compensation to the petitioners for their acquired land under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act'). The prayer for enhanced compensation is based on (i) Clause-4 of agreement between the parties and (ii) award dated 02.04.2019 by A.D.M. (Land Acquisition) Irrigation Department, Ghaziabad.

3. It is not disputed before this Court that there was agreement between the petitioners and the acquiring body regarding quantum of compensation, followed by an award under Section 11 (2) of the Act.

4. The petitioners have placed reliance on Clause-4 of the agreement in contending that they are entitled to enhanced compensation. Clause-4 of the agreement is reproduced below:

"4. उपरोक्त संदर्भित ग्रामों की इसी अधिसूचना के अंतर्गत अधिग्रहित भूमि का भविष्य मे सहमति के आधार पर यदि उपरोक्त निर्धारित प्रतिकर से अधिक प्रतिकर सक्षम प्राधिकारी द्वारा निर्धारित होता है तो उक्त अतिरिक्त बढ़े हुये प्रतिकर का लाभ इस करार में सम्मिलित भू स्वामी को भी देय होगा।"

5. The said clause stipulates that if in future, any higher compensation is fixed by the competent authority for the acquired land on basis of agreement, then the petitioners, would also be entitled to enhanced compensation.

6. Concededly, there is no order of competent authority based on any agreement fixing higher compensation.

7. The claim of higher compensation based on Clause-4 of the agreement and also award on merits in respect of other persons who had not entered into any agreement, was repelled by a Co-ordinate Bench in a batch of petitions, leading one being Writ C No. 10276 of 2020 (Radheyshyam and Others Vs. State of U.P. and 4 Others) decided on 3.11.2020. Taking note of the aforesaid judgment, another Co-ordinate Bench by judgment dated 23.2.2021 decided another batch of writ petitions, leading one being Writ C No. 27499 of 2019 (Balwan Singh and 106 Others Vs. State of U.P. and 3 Others), relevant part of which is extracted below:

"In Radheshyam and 3 others (supra), a coordinate Bench of this Court while dwelling upon a similar issue and after relying on the decision by the Supreme Court in the case of ***Ranveer Singh Vs. State of UP, AIR 2016 SC 3753*** *declined the enhanced compensation on the finding:-*

3. It is a case where a land belonging to the petitioners was taken by the side opposite after entering into the agreement on 8.10.2007. The petitioners received the compensation pursuant to the agreement and possession of the land was taken by respondents. Subsequent to the aforesaid, acquisition proceeding was held for the other land and was completed by an award dated 2.4.2019. The claim for enhancement of

the amount of compensation has been made in reference to subsequent award. For ready reference, clause -4 of the agreement is quoted hereunder :-

> *"4. उपरोक्त संदर्भित ग्रामों की इसी अधिसूचना के अंतर्गत अधिग्रहित भूमि का भविष्य मे सहमति के आधार पर यदि उपरोक्त निर्धारित प्रतिकर से अधिक प्रतिकर सक्षम प्राधिकारी द्वारा निर्धारित होता है तो उक्त अतिरिक्त बढ़े हुये प्रतिकर का लाभ इस करार में सम्मिलित भू स्वामी को भी देय होगा।"*

Perusal of clause-4 shows enhancement of the compensation if an agreement is entered with others for compensation on higher rate. Clause -4 does not show enhancement of compensation in reference to the award but higher compensation pursuant to an agreement with other land holder. The enhancement has been claimed by the petitioner in reference to the award and not based agreement thus clause -4 is not attracted in the present case.

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7. We have considered the aforesaid arguments also and find no substance therein for the reason that ratio propounded by the Supreme Court in reference to Section 11 (2) does not permit enhancement of compensation contrary to the terms of agreement. If the parties have consented for compensation on agreed rate then it is inclusive of all the claims. It does not permit further claim which may be for interest or enhancement of the compensation. The claim cannot be accepted going contrary to the agreement between the parties. Thus in the light of ratio propounded by the Apex Court in the case of Ranveer Singh (supra), we cannot accept the plea taken by learned counsel for the petitioners for enhancement of compensation in reference to subsequent award after an agreement between the parties. The remedy to seek enhancement under the Act is lost.

8. Learned counsel for the petitioners has made a reference of Section 28 A of the Act of 1894, which is to claim benefit of higher compensation in reference to subsequent award. Section 28 A permit enhancement of compensation in reference to the subsequent award by the court. The word "Court" has been defined under the Act of 1894 which does not include an authority. There is nothing on record to show enhancement of compensation by the Court and otherwise it would not apply to the petitioners for the reasons that they entered into the agreement to receive agreed amount of compensation. In view of the aforesaid, we are unable to accept the arguments of the learned counsel for the petitioners even in reference to Section 28 A of the Act of 1894.

In the case at hand also we perceive that a similar stand, as was taken by the petitioners in Radheshyam and the batch of petitions decided therewith (supra), is taken in present case, having been negatived, we are not pursuaded to take a different view. Therefore, in our considered opinion, in present batch of petition, the relief as sought by the petitioners cannot be granted.

Though, an attempt is made on behalf of the petitioners to distinguish the judgment on the basis of contention that certain expropriated owners filed a writ petition challenging the Notification under Section 4(1) and Section 6 of Land Acquisition Act, 1894 which was dismissed on 14.5.2010 whereagainst in SLP preferred by them, the Supreme Court vide its judgement and order dated 3.11.2016 allowed the appeals preferred by land owners and while setting aside the judgment of this Court directed the respondents therein to pay enhanced compensation to all the appellants in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The contentions are taken note of and are rejected at the outset as there is no whisper in the supplementary affidavit filed by the petitioners that the said expropriated owners who preferred the writ petitions had settled the land under Uttar Pradesh Land Acquisition (Determination

of Compensation and Declaration of Award by Agreement) Rules, 1997. In view whereof, the land owners who were subjected to acquisition by virtue of Notification under Section 4(1) and Section 6 of Act of 1894 stood at a different footing than the present petitioners whose land was acquired on the basis of an Agreement executed under the Rules of 1997. In other words, the petitioners in these batch of petitions are not benefited by the judgment referred to by the petitioners."

8. Sri S.K. Mishra, learned counsel for the petitioners could not dispute that the controversy involved herein is no more res integra and is concluded by the aforesaid two judgments of the Co-ordinate Bench, which are binding on us. We therefore, reject the claim for higher compensation.

9. As regards the claim for allotment of 5% development land in terms of Clause 6 of the Agreement, the petitioners are at liberty to file appropriate application before the Authority and if such application is preferred within a period of 30 days from the date of communication of this order, the Authority concerned shall consider the same in terms of Clause 6 of the Agreement and shall pass a speaking order thereon and communicate the same to respective parties within a period of three months from the date of receiving such application.

10. Accordingly, the petition also stands disposed of.

(Donadi Ramesh,J.) (Manoj Kumar Gupta,J.)

Order Date :- 02.11.2023

Noman

Digitally signed by :-
NOMAN AHMAD
High Court of Judicature at Allahabad