Court No. - 21

Case :- WRIT - C No. - 28539 of 2023

Petitioner :- Beena And 2 Others
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Navin Kumar,Harendra Singh
Counsel for Respondent :- C.S.C.,Kaushalendra Nath Singh

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

1. Learned counsel for the petitioners admits that the claim of the petitioners in the instant petition for allotment of 10% abadi land would not be sustainable in view of the order dated 1.9.2022 passed in Writ - C No. 23534 of 2022, which is as follows: -

> Mr. Kaushalendra Nath Singh, learned counsel has put in appearance on behalf of the respondent development authority.
>
> The petitioners herein are the fence sitters. They did not challenge the acquisition notification and were not party to the Full Bench judgment in Gajraj & ors vs State of U.P & ors reported in 2011 (11) ADJ 1 (FB) but are seeking benefit of the directions issued therein for allotment of developed Abadi Plot to the extent of 10% of their acquired land subject to maximum of 2500 sq.mts.
>
> It is agreed by the counsels for the parties that the issue raised herein are squarely covered by the judgment and order dated 31.05.2022 passed by this Court in Writ C no.14113 of 2017 (Runwell India Pvt.Ltd v. State of U.P. and others).
>
> For the reasons as stated in paragraphs '35' to '39' of the judgment and order dated 31.05.2022 quoted hereinunder; the prayer made in the present petition cannot be granted:-
>
> "35. The grounds urged on behalf of petitioners for claiming 10% developed land subject to ceiling limit of 2,500 square meters, though appears to be attractive at the first flush, but are devoid of substance. The submission is that subsequent to the Full Bench judgement of this Court in Gajraj's case (supra), some of the land owners/tenure holders challenged the same before the Supreme Court. All the Civil Appeals/Special Leave Petitions were clubbed together and decided by a common judgement dated 14.02.2015, as Savitri Devi's case (supra), wherein, in paragraph no. 50, it has been held that in view of the peculiar circumstances, the order passed by the High Court would not form precedent for future cases. The observation made in paragraph no. 50 in Savitri Devi's case (supra) reads as under:-

50. Conclusion Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution. However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/specific background and, therefore, it would not form precedent for future cases."

(emphasis supplied)

36. Subsequent to the judgement in Savitri Devi's case (supra), the Supreme Court in Khatoon's case (supra), while considering the question as to whether the appellants therein are entitled to claim additional abadi land in lieu of their acquired land in terms of the judgement in Gajraj's case (supra) and upheld in Savitri Devi's case (supra), has held as under:-

"49. That apart, there is no basis for the appellants to press in service the principle underlined in Article 14 in such cases for the simple reason that firstly, Article 14 does not apply to such cases; and secondly, there is no similarity between the case of those landowners, who filed the writ petitions and the present appellants, who did not file the writ petitions. Though the High Court, in Gajraj's case (supra) decided the rights of both categories of landowners but the cases of both stood on a different footing. It is for these reasons, the appellants were not held entitled to take benefit of condition No. 3 (a) and (b) of the case of Gajraj (supra) which was meant for the writ petitioners therein but not for the appellants. However, the appellants were held entitled to take the benefit of only condition No. 4 (a) and (b) of the said judgment and which they did take by accepting the additional compensation payable at the rate of 64.70%.

50. In our view, therefore substantial justice was done to all the landowners including the appellants, as observed in para 49 of Savitri Devi's case (supra).

37. In view of subsequent judgements of this Court as well as the Apex Court as noted herein-above, claim of the land owners/tenure holders for allotment of 10% of Abadi land subject to the ceiling limit of 2,500 square meters has been negated, the benefit, as claimed by the petitioners, cannot be granted.

38. The land owners/tenure holders, whose lands have been acquired under the 1894 Act, are not entitled as a matter of right for allotment of 10% of developed land, subject to the ceiling limit of 2,500 square meters.

39. In view of the aforesaid, as held by the Apex Court in Savitri Devi's and Khatoon's cases (supra), the landowners/tenure holders cannot get benefit of the same as the judgement rendered by the Full Bench of this Court in Gajraj's case (supra) was in view of the peculiar facts & circumstances of the case, which would not form precedent for the future cases and therefore, the benefit cannot be accorded to the petitioners, who were not before the Court in earlier round of litigation."

2. Accordingly, the petition is dismissed.

Order Date :- 2.11.2023
Mukesh Kr.

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

Digitally signed by :-
MUKESH KUMAR
High Court of Judicature at Allahabad