

Court No. - 40

Case :- WRIT - C No. - 27564 of 2023

Petitioner :- Satish Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Saroj Kumar Tiwari

Counsel for Respondent :- C.S.C., Vibhanshu Vaibhav

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Sri Saroj Kumar Tiwari, learned counsel for the petitioner, Sri Fuzail Ahmad Ansari, learned Additional Chief Standing Counsel for the State-respondents and Sri Vibhanshu Vaibhav, learned counsel for Aligarh Development Authority (respondent No.4).

2. Present writ petition has been preferred for direction to the District Magistrate, Aligarh (respondent no.2) to pass reasoned and appropriate order on the applications of the petitioner dated 31.5.2023 and 27.7.2023 in the light of Government Order dated 19.3.2015. Further prayer is made to issue direction to the Additional District Magistrate (Finance & Revenue), District Aligarh (respondent no.3) not to force the petitioner to execute sale deed in Khata No.349 Gata No.978M area 0.0580 hectare situated at Village Alhadadpur, Tehsil Kol, District Aligarh till disposal of the application/representations dated 31.5.2023 and 27.7.2023 pending before respondent no.2.

3. The petitioner claims to be shareholder of Gata No.976 area 0.0580 hectare situated at Village Alhadadpur, Tehsil Kol, District Aligarh. He has also constructed 16 shops on Gata No.978 area 0.0580 hectare for commercial purpose and these shops have been given on rent. The respondent no.3 published a notice on 19.05.2023 that Dhanipur Hawai Patti is to be developed in villages namely Alhadadpur, Khangarhi, Nazamatpur Borna, Ekri Pateti and Pikhlauni, Tehsil Kole, District Aligarh. Consequently, the petitioner moved applications before the respondent no.2 on 13.05.2023 and 27.07.2023 stating therein that his land is commercial land and 16 shops have been constructed. It is alleged that without due acquisition, the respondents are constructing "Dhanipur Hawai Patti" (airport).

4. In this background, this writ petition was entertained on 29.08.2023 and we had directed to the learned Additional Chief Standing Counsel to seek instructions in the matter. Thereafter, the matter was taken up on 19.09.2023 and on the request of the petitioner the case was passed over. Again the matter was taken up on 03.10.2023 and on the said date, we have passed a detailed order to the following effect:-

"1. Heard Sri S.K. Tiwari, learned counsel for the petitioner and Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State respondents.

2. Learned counsel for the petitioner has vehemently submitted that the petitioner is entitled to higher compensation in the light of the Government order.

3. The matter was taken up on 29.08.2023 and on the said date, the Court had proceeded to pass following order:-

"1. Heard Shri Saroj Kumar Tiwari, learned counsel for the petitioner and Shri Devesh Vikram, learned Addl. Chief Standing Counsel for the State respondents.

2. Present writ petition has been preferred for a direction to respondent no.2-District Magistrate, Aligarh to pass reasoned and appropriate order on the applications of the petitioner dated 31.5.2023 and 27.7.2023 in the light of Government Order dated 19.3.2015 and for a direction to respondent no.3-Addl. District Magistrate (Finance & Revenue), Distt. Aligarh not to force the petitioner to execute sale deed in Khata No.349 Gata No.978M area 0.0580 hect. situated at Village Alhadadpur, Tehsil Kol, Distt. Aligarh till the disposal of the application/ representation dated 31.5.2023 and 27.7.2023 pending before respondent no.2.

3. It appears from the record that the respondents had made a public notice on 19.5.2023 for acquiring the land for purpose i.e. for construction of Dhanipur Hawaii Patti (airport). Learned counsel for the petitioner submits that the petitioner is not against the acquisition but since over his holding there are 16 shops, which are used for commercial purpose and there is boundary wall also, the adequate compensation is to be paid to the petitioner. He submits that in most arbitrary manner the respondents have denied the adequate compensation on the ground that the land in question is earmarked for agricultural purpose and till date it is not declared as abadi land. The petitioner moved an application before respondent no.2 on 31.5.2023 and 27.7.2023 requesting therein that since his land is situated near city and 16 shops are also running there, the land be declared as abadi land. He has also made application under Section 80 (2) of the U.P. Revenue Code, 2006 before the Sub Divisional Magistrate, Kol, Aligarh on 16.8.2022 for declaring the land as abadi. Eventually the Sub Divisional Magistrate had rejected the said application on 18.11.2022 on the ground that since the land in question is required for development of airport, therefor, in the interest of the State Government, the land cannot be declared as abadi (non-agricultural land). Learned counsel for the petitioner submits that adequate compensation is to be ensured by the respondents on the basis of fact finding report, wherein the respondents themselves have acknowledged that there are 16 shops, which are used for commercial purpose. He submits that it may not be the object of the State to discriminate the petitioner merely on the ground that the land in question is not declared as abadi. Said action is per se unsustainable and in arbitrary manner the compensation cannot be reduced.

4. Before proceeding further in the matter, let Shri Devesh Vikram, learned Addl. Chief Standing Counsel obtain instructions in the matter.

5. Put up this matter as fresh on 19.09.2023."

4. In response of the aforesaid order, learned Additional Chief Standing Counsel has placed detailed instructions dated 18.9.2023 sent by the Sub Divisional Officer, Koal, District Aligarh indicating therein that the disputed land falls under the territorial jurisdiction of Aligarh Development Authority (regulated area).

5. In this backdrop, we have asked learned Additional Chief Standing Counsel to explain as to under what circumstances in absence of permission under Section 14/15 of U.P. Urban Planning & Development Act, 1973, the developments/constructions had been carried out over the disputed land. Even while placing the instructions the amount for ex-gratia payment has also been quantified qua the constructed portion.

6. On the joint request of parties, the matter is passed over.

7. Put up this matter again as fresh on 06.10.2023 for further orders."

5. Lastly, on 06.10.2023, we have asked the Aligarh Development Authority (in short, ADA) to file response in the matter. In response thereof, a detailed counter affidavit has already been filed by the ADA indicating therein that the petitioner has raised illegal construction in area of 225 square yard of the disputed land and the same was made without sanctioning of map from the ADA, which is in contravention to the provisions of U.P. Urban Planning & Development Act, 1973 (in short, the Act, 1973). Against illegal construction carried out by the petitioner, the notice under Section 27(1) of the Act, 1973 has already been issued on 14.12.2020 and thereafter, again a reminder notice was sent on 02.11.2023. Both the notices have been brought on record as Annexure CA-1 and CA-2 respectively to the counter affidavit. He submits that as the proceedings are pending consideration, leave may be accorded to the ADA to proceed strictly in accordance with law.

6. Learned counsel for the petitioner has placed reliance on an order of a coordinate bench dated 18.09.2023 passed in Writ - C No.31657 of 2023 (**Smt. Mamta Devi vs. State of U.P. and 2 others**), wherein the petitioner had claimed for a direction commanding the respondents from compelling the petitioner to execute sale deed in favour of State. The coordinate Bench vide order dated 18.09.2023, disposed of the aforesaid writ petition restraining the respondents from compelling the petitioner to execute sale deed in favour of State unless the parties arrive at a consensus in relation to the sale consideration. Learned counsel for the petitioner further states that in view of the aforesaid order, the respondents may be directed not to compel the petitioner to execute the sale deed in their favour unless the parties arrive at a consensus in relation to the sale consideration.

7. On the other hand, Sri Fuzail Ahmad Ansari, learned A.C.S.C. has placed reliance upon Para-11 of the Government Order dated 19th March, 2015, wherein the State Government itself has provided that in case the farmer is not inclined to execute the sale deed then the authorities would proceed as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, Act, 2013). He submits that in case the petitioner

is not ready to handover or to execute the sale deed in favour of the respondents, the leave may be accorded in view of the aforesaid Government order wherein the authorities have discretion to proceed to acquire the land as the land is required urgently for construction of an airport for public purpose.

8. Sri Vibhanshu Vaibhav, learned counsel for the respondent No.4 states that as the notice has already been given by the ADA regarding illegal construction in view of provision of Section 27 of the Act, 1973, some reasonable time may be accorded to the ADA to conclude the said proceeding to a logical end.

9. We find that in the present matter, there are two issues, one regarding illegal construction, which has been carried out by the petitioner contrary to the Act, 1976. It is also pressed before us that no permission was accorded to the petitioner for raising the construction and the map was not sanctioned by the Competent Authority. In view of provisions of Sections 14 and 15 of the Act, 1973, even though the notice under Section 27 (1) of the Act had been issued to the petitioner on 14.12.2020 and thereafter, again reminder notice was sent on 02.11.2023 but the said proceeding has not been finalized till date. It is expected from the ADA not to permit any such construction, which is contrary to the Master Plan and Building Bye-laws. The other issue pertains to the adequate compensation. In case the land in question is required for expansion of the airport, then the claim of the petitioner is to be redressed in view of the Government order dated 19.03.2015 and in case the petitioner is not inclined to execute the sale deed, then the respondents are at liberty to take recourse as provided under the Act, 2013.

10. With the aforesaid observation/direction, the writ petition is **disposed of**.

Order Date :- 29.11.2023

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