

Reserved

Neutral Citation No. - 2023:AHC-LKO:70345-DB

Court No. - 3

Case :- WRIT - C No. - 2002945 of 1986

Petitioner :- Ranvir Industry Kursi Road Lko

Respondent :- State of U.P. and Others

Counsel for Petitioner :- P. Chandra, Karunanidhi Yadav, Niraj Kr. Srivastava, Santosh Kumar Tripathi

Counsel for Respondent :- C.S.C., Gaurav Mehrotra, Mukund Tewari, U. Chandra

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

1. Heard Shri Prashant Chandra, learned Senior Advocate assisted by Shri Karunanidhi Yadav & Shri Niraj Kumar Srivastava, Advocates learned Standing Counsel appearing for the State and Shri Mukund Tewari, learned counsel for the Lucknow Development Authority.
2. Present petition has been preferred for quashing of the impugned notification dated 12.11.1981 issued under Section 4(1) read with Section 17 and notification dated 03.12.1981 issued under Section 6 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as, the Act, 1894) for acquisition of land for construction of houses at Sitapur road under city expansion scheme for public purpose.
3. Learned counsel for the petitioner has submitted that the imposition of urgency clause i.e. Section 17 of the Act, 1894 dispensing with the right to file objections under Section 5(A) of the Act, 1894 is an arbitrary exercise of power as there was no urgency for acquisition of land. It is further submitted that the matter of acquisition could not be so urgent as to preclude even a summary enquiry as it is contemplated under Section 5A of the Act. It is further submitted that the certificate of notional possession was issued on 30.03.1984 by the Nagar Mahapalika, Lucknow i.e. after about more than 3 years of the notification issued under Section 6 read with Section 17 of the Act, 1894 which shows that there was no occasion to invoke Section 17 i.e. the urgency clause and during this

period, the summary investigation under Section 5A of the Act, 1894 could have been done. It is further submitted that the person interested in any land has a statutory right under Section 5A of the Act, 1894 for filing objection against the notification issued under Section 4(1) of the Act, 1894. In support of his submission, learned counsel for the petitioner has placed reliance upon the following judgments:-

1. M/s. Technical Associates (Pvt.) Ltd., Lucknow and Others vs. State of U.P. and Ors. [(1984) SCC Online All 142]
2. Dora Phalauli vs. State of Punjab and Ors. [(1979) 4 SCC 485]
3. Radhy Shyam (Dead) through LRS. and Ors. vs. State of U.P. and Ors. [(2011) 5 SCC 553]
4. Darshan Lal Nagpal (dead) by LRS vs. Government of NCT of Delhi and Ors. [(2012) 2 SCC 327]

4. It is further submitted that the land Plot Nos. 11, 12/1 and 12/3, which were under acquisition, is not the waste and arable land. On the said land, a Factory in the name and style of M/s Ranvir Industry is running since 1972-1973 by Late Dayanath Agarwal after forming a proprietorship firm in the name of M/s Ranveer Industry, Kursi Road, Lucknow.

5. It is further submitted that the notice under Section 9 of the Act, 1894 was never served upon the partners of petitioner or on its agents and no award has so far been made by the respondent no. 3 whereas it has been provided under Section 9 that the Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him, as a result thereof, the entire proceedings for the acquisition of petitioner's land are grossly illegal and thus, the notifications are liable to be quashed.

6. It is further submitted that the land was not waste or arable as the Factory was running on the said land since 1972-73 in the name of M/s Ranveer Industry, a proprietorship firm formed by late Dayanath Agarwal. In support of his submission, learned counsel for the petitioner relied upon the documents which are electricity connection, Registration of petitioner with Small Scale Industries U.P. dated 02.06.1973, the Tax Assessment Orders for the years 1980-81 and 1981-82, the partnership deed dated 07.05.1975 by which the petitioner's proprietorship firm then was converted into partnership firm had three partners namely Dayanath S/o Kunal Lal, Sri Lajpat Rai Gupta and Parmindar Kumar S/o Rajendra Nath, the Registration dated 22.10.1975 in Labour and Employment Office, a Department under the Factories Act, the Industrial Electricity Connection for running its factory, Receipt of amount deposited on 12.10.1976 and 18.07.1977 for usage of electric of its commercial connection, Meter Sealing Certificates issued on change of new meter in place of old burnt meter on 20.01.1977, 16.04.1977 and 29.09.1977, the regular telephone bills connected at the petitioner's firm, the partnership deed 04.10.1977 after two partners of the firm namely Lajpat Rai Gupta and Parmindar Kumar retired, an indenture dated 04.10.1977 executed in between late Dayanath Agarwal and existing partners of the petitioner's firm by which late Dayanath Agarwal has declared that entire land would be the property of petitioner from the date of commencement of partnership, the PAN Card dated 01.02.1978 issued by Income Tax Department, the partnership deed dated 06.07.1978 after the retirement of Smt Rupa Devi and Krishan Kumar Agarwal, the Tax receipts of the period 26.05.1979 and 20.03.1980 paid to the Lucknow Zila Parishad/Kshetra Samiti, the delivery challan-cum-invoice dated 25.10.1979 issued by the Steel Authority of India Limited and all these documents have been filed by a supplementary affidavit dated 22.07.2021.

7. It is further submitted that the petitioner's factory has been shown in the Masters Plan prepared by the L.D.A.

8. On the other hand, Shri Mukund Tewari, learned counsel for the Lucknow Development Authority has submitted that the writ petition on behalf of the petitioner is not maintainable as the petitioner is not the owner of land. The owner of the land in the revenue records at the time of acquisition and always thereafter was Late Dayanath Agarwal and secondly the writ petition is liable to be dismissed on the ground of laches as the notifications were issued in the year 1981 but in place of challenging the same, the petitioner had preferred an application under Section 48 of the Act, 1894 for release of land on 05.03.1982 and after about 5 years of notification, the present writ petition has been filed. In support of his submissions, learned counsel for the L.D.A. and learned Standing Counsel placed reliance upon the following judgments:-

1. Aflatoon vs. Government of Delhi [(1975) 4 SCC 285]
2. Hari Singh and Ors. vs. State of U.P. and Ors. [(1984) 2 SCC 624]
3. State of Tamil Nadu and Ors. vs. L.Krishnan and Ors. [(1996) 1 SCC 250]
4. Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and Ors. [(1996) 11 SCC 501]

9. Learned Standing Counsel in furtherance of the above has also submitted that the present writ petition is not maintainable and liable to be dismissed as the compensation of land had already been taken by Late Daya Nath Agarwal in the year 2001 itself and thereafter he had also applied for enhancement of the compensation and collected the enhanced compensation. It is further submitted that the petitioner is not the owner of the land and the recorded owner Late Daya Nath Agarwal had already received the compensation.

10. Learned Standing Counsel and learned counsel for the L.D.A. have further submitted that the present writ petition is also not maintainable for want of necessary and proper party i.e. Late Daya Nath Agarwal who was alive at the time of filing of the writ petition, as he had expired on

17.07.2013 and in support of their submission, they placed reliance upon the judgment in the case of *Avtar Singh Hit vs. Delhi Sikh Gurdwara Management Committee and Others [(2006) 8 SCC 487]*

11. Learned counsel for the petitioner in reply to the issue of accepting the compensation including enhanced compensation by Late Daya Nath Agarwal has submitted that the son of Late Daya Nath Agarwal i.e. Sri Ranveer Agarwal filed a response/reply dated 22.08.2016 before the A.D.M. (L.A.) mentioning therein that his father Late Daya Nath Agarwal had died and he is not aware with the fact that under what circumstances, he had received the compensation, although the aforesaid land had already been given to Ranveer Industries. It is further stated that he is ready to refund the amount paid to his father.

12. The petitioner also filed the report dated 12.01.2012 by the Engineer of L.D.A. as Annexure no. RA-3. This report does not show existence of the petitioner(factory) over the land rather it is said that the place is a godown of Ballabh Das and Sons which earlier was known as Ranveer Industries. On the spot some tin shades, a servant quarter and a toilet with tin shade and an office was found. This document has been filed by the petitioner itself which does not in any manner supports its case of any running factory over the land inspected. Many of the documents are of period after the notification dated 12.11.1981.

13. After hearing the learned counsel for the parties, going through the record and the judgments relied by both the sides, it is found that the petitioner was repeatedly asked to establish its ownership of the plots no. 11, 12/1 and 12/3, as in the revenue record i.e. Khatauni, its name of Dayanath Agarwal recorded as owner and bhumidhar of the land in dispute. The revenue record does not record the land as non-agricultural land (abadi) as per claim of the petitioner that a factory exists on the same.

14. Learned counsel for the petitioner has failed to show even a single document to establish that the land was ever entered in the name of the petitioner partnership firm in the revenue record or its title recorded in any other Government documents. The petitioner has also not shown any document by which land use was ever changed from agricultural use for any other use. The documents on which the reliance has been placed to show that the petitioner is a running factory on the land in question, are the documents in which the name of petitioner firm is mentioned but those documents do not mention the plot numbers or title of the property.

15. In fact, with the writ petition, no document of title is filed by the petitioner, but only the impugned notification under Section 4 and under Section 6 of the Act of 1894 are filed. Only documents on the basis of which claim is made by the petitioner to the title of the property are some unregistered partnership and retirement from partnership/declaration deed filed after the death of Daya Nath Agarwal. The partners in the said deeds are not made party in the writ petition. No government documents of any department are filed to give strength to the said deeds, therefore the genuineness of the sale deeds is seriously in doubt.

16. As discussed above undisputedly, the land in question has throughout been recorded in the revenue records namely, the khatauni as agricultural land with recorded tenure-holder as Shri Dayanath Agarwal. As mentioned above, the documents which have been filed in support of the claim that the petitioner's factory is run over the plots in question is not borne out from those documents including the partnership deeds, since there is no mention of any plot number to identify the land acquired.

17. The other contention that the son of Late Dayanath Agarwal had allegedly returned or offered to return the compensation amount, neither this fact has been proved nor any such law/provision has been shown under which the compensation received could be returned nor any such order of any competent authority has been shown to this Court. Once father has accepted the compensation around two decades back, son, after

death of father can not say that he wants to return the compensation to authorities and claim title in some other person.

18. The fact remains that initially award of the land in dispute was made on 20.09.1986. Late Dayanath Agarwal filed an application for enhancement of award under Section 28-A of the Act of 1894 in January, 1998. On the said application, enhanced award was pronounced on 15.09.2001 and was duly received by Late Dayanath Agarwal on 12.10.2001 only. All the said documents are duly filed by the respondents. Petitioner has never challenged the said acts of late Dayanath Agarwal before any court or authority. The recorded owner has accepted the compensation and the said fact shows that the said partnership deeds are in dispute.

19. In view of the aforesaid, the argument raised on behalf of the petitioner of having not been provided opportunity to file objections under Section 5-A & notice under Section 9 of the Act, 1894, on its failure to prove prima-facie title or entitlement, loses any relevance.

20. The writ petition is *dismissed*.

(Manish Kumar,J) (Vivek Chaudhary,J)

Order Date :- 28.10.2023

Ashish