

Neutral Citation No. - 2024:AHC:187594

Reserved on 25.11.2024

Delivered on 29.11.2024

Court No. - 49

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 2034 of 2024

Petitioner :- Ram Niwas Chauhan

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Aman Srivastava

Counsel for Respondent :- C.S.C., Krishna Kant Singh, Shad Khan, Shishir Prakash

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri M.D. Singh Shekhar, learned Senior Counsel assisted by Sri Aman Srivastava, learned counsel for petitioner, Sri Krishna Kant Singh, learned counsel for respondent Nos.4 and 5, Sri Shad Khan, learned counsel for respondent Nos. 6 to 8, Sri Abhishek Srivastava learned C.S.C. for State along with Sri Rajesh Kumar Tiwari, learned A.C.S.C. for State.

2. This is a Public Interest Litigation. The petitioner has disclosed his antecedents as well as that no one associated with him will be benefited with outcome of present Public Interest Litigation. For reference paragraph of it is reproduced hereinafter :-

“That the petitioner is Ex-Pradhan and a social worker having no criminal history and the petitioner is always used to raise voice against the illegal encroachment of the government land irregularities in Government Schemes and several other matter relating to public interest, the petitioner is not associated with any political party and the petitioner also does not have any

personal benefit from the relief as prayed by way of this PIL petition. Regarding the dispute involved in the present PIL no case is pending before any Court of law, the petitioner further declares that the result of present PIL will not benefited to the petitioner or his anyone associated with the petitioner or it will not undue loss to any person, body of persons or the State. The petitioner further declare that he shall follow the order if any passed in the instant case. The petitioner has filed the present PIL petition in the form of Public Interest Litigation as the question involved in the present PIL petition directly affects to the right and interest of eligible poor person of the area.”

3. At the outset, it has been pointed out by counsel for contesting respondents that Jawahar Thermal Power Project, J.V.U.N.L., Malawan, District- Etah has acquired land under provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and paid payments about four times of circle rate for a large chunk of village Nigoha Hasanpur which also includes land of one Vinay Pal Singh, a real brother of present petitioner which has not been disclosed in present petition as well as not specifically denied during arguments by counsel for petitioner.

4. Sri M.D. Singh Shekhar, learned Senior Counsel appearing on behalf of public interest litigant has drawn attention of this Court on prayer that exchange proceedings were contrary to procedure prescribed under Section 101 of U.P. Revenue Code, 2006 that land of Charagah cannot be exchanged.

5. Learned Senior Counsel for petitioner submitted that a large chunk of land at village- Nigoha Hasanpur was purchased by J.V.U.N.L., allegedly on an assurance that there will be construction of a residential housing colony for the

purpose of said Thermal Power Project, however, instead of constructing a residential colony thereon it being used to exchange against a land situated in other villages namely, Akbarpur and Malawan, which was reserved for a Charagah i.e. now the land acquired at village Nigoha Hasanpur, which was purchased for construction of residential housing colony, will be used for Charagah, whereas land reserved for Charagah at village Akbarpur/Malawan will be used for construction of residential housing colony. No approval was sought from Gaon Sabha, Village- Nigoha Hasanpur.

6. Learned Senior counsel further submitted that exchange was contrary to establish procedure prescribed under Rule 101 and 102 of U.P. Revenue Code Rules, 2006 that a land of Charagah cannot be exchanged as well as to convert the land acquired in Nigoha Hasanpur for purpose of Charagah would highly prejudice the residents of said village since it falls within the abadi and adverse consequence of it being used for Charagah will affect the villagers. Learned Senior Counsel refers the following grounds taken in present Public Interest Litigation :-

“B. Because, to the best knowledge of the petitioner, no prior permission has been taken by the respondent Nos. 6 to 8 for exchange of their land from the S.D.O and therefore, the entire proceedings of exchange is wholly illegal.

C. Because, the Chart (contained in annexure no.6 referred above) also clearly speaks that the valuation of both the land is for different of more than 10% and as such, the exchange is illegal.

D. Because, there is difference of 25% in area proposed and to be taken in the present proceedings and therefore, the same cannot be legally sustained.

E. Because, even in any case, the S.D.O./ Respondent No. 3 has not referred the matter for taking permission for grant of exchange from the State Government as provided under rules 101 and 102 of the U.P. Revenue Code/ Rule, 2006 and therefore, entire exchanged proceedings and its orders wholly illegal.

F. Because, no notice has been issued to the Goan Sabha Nigoh Hasanpur/ Respondent no. 5 as mandatory under Rule 1 and 2 of the U.P Revenue Code/rule and therefore, the proceedings of exchange is wholly illegal.

G. Because, the Respondent and the Sub Divisional Officer has not followed the procedure as provided under rule 101 and 102 of the U.P Revenue Code Rule, 2006 and no notice has been issued to the persons concerned surrounding and therefore, the entire proceedings of exchange is wholly illegal.

H. Because, no enquiry has been done as provided under rule and there is no enquiry memo/ spot inspection report in the record and has not been asked by the S.D.O./ Respondent no. 3 before granting permission for exchange in favour of Respondent Nos. 6 to 8 and therefore, the entire proceedings is wholly illegal.

I. Because, its crystal clear that the present proceedings of exchange is a result of great manipulation and only in order to grab the property of State/Gaon Sabha in a meager amount by the Respondent Nos. 6 to 8, whereas the CHARAGAH is situated on the main Highway of Etah to Agra and adjacent to main Highway having high potential value and as such in these circumstances, it is submitted before this Hon'ble Court that the present exchange proceedings is a result of well planned manipulation/ conspiracy and it appears that the State authorities are also in the gloves of Respondent Nos. 6 to 8 having no objection in granting such exchanged, which is apparently illegal and not permissible in the law, by the present exchange proceedings the State Government/ Gaon Sabha shall suffer more than crores of law, but even then, it has not been watched out by the authority concerned by granting permission for exchange of the land in question.”

7. Per contra, learned counsels for State as well as learned counsel for respondent Nos.6 to 8 has vehemently opposed the above submissions. They submitted that under Section 101(2) of U.P. land Revenue Code, the State has

power to grant permission for the exchange of land. Further there is a Government Order No. 11/2020/689/ek-1-2020-20(5)/2016 dated 06.07.2020 on the issue.

8. Learned counsels for State as well as learned counsel for respondent Nos.6 to 8 further submitted that the Jawaharpur Thermal Power Project, J.V.U.N.L., Malawan, District Etah has acquired the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The department has made payments four times of the circle rate and has received all the essential permissions and the non-objection certificate from the Ministry of Environment, Forest and Climate Change (MoEFCC). It is further submitted that the department has spent Rs. 33 Crore over the villages which are coming in the 10KM of the radius of the project for the social development like health centers, development works requires in the Government schools, Anganwadi Centers, construction of Community Centers, installations of rain water harvesting systems in the area, installation of Solar street lights and with the aim to develop the area.

9. Learned counsels further submitted that Jawaharpur Thermal Power Project, J.V.U.N.L., Malawan, District Etah has legal and absolute right to exchange its properties. It has further submitted that the Jawaharpur Thermal Power Project, J.V.U.N.L., Malawan, District Etah has never given any assurance to the villagers as stated in the Paragraph 12 of the instant P.I.L. petition. Jawaharpur Thermal Power Project, J.V.U.N.L., Malawan, District Etah has already

spent Rs. 33 Crore on the social development of the area as stated in the preceding paragraphs. It is further submitted that the exchange of the properties have been done under Section 101(2) of U.P. Land Revenue Code, and nothing has been kept as confidential.

10. Learned counsels further submitted that Divisional Commissioner, Aligarh, Division Aligarh vide order dated 02.02.2024 has granted the permission for the exchange of the properties and pursuant to that the Sub-Divisional Magistrate, Tehsil Etah, District Etah vide order dated 29.10.2024 has directed to make necessary changes in the Revenue records. The contents of paragraph 25, ground 'C' of the instant P.I.L. are misconceived, misleading, hence denied and it was submitted that difference of valuation of the exchange of the properties is not more than 10% rather only 2%. The Charagah which is situated in village Malawan and Akbarpur is about 15.400 hectares and its value is about Rs. 5,30,77,360/- whereas the property which has been exchanged at Nigoha Hasanpur is about 19.251 hectares and its value is about Rs. 5,39,03,360/- and as such the difference in value is about 2% only.

11. Learned counsels also submitted that the land situated in Nigoha Hasanpur is about 19.251 Hectares whereas the Chargah which is situated in village Malawan and Akbarpur is about 15.400 hectares which is within the limit prescribed in Section 101(2) of U.P. Land Revenue Code. It was also mentioned that the Gaon Sabha of Malawan & Akbarpur has passed the resolution in favour of the exchange from where the land is acquired by the

Jawaharpur Thermal Power Project, J.V.U.N.L, Malawan, District Etah i.e. at village Nigoha Hasanpur. The property were legally and lawfully exchanged and the exchange fees of Rs.1,32,69,340/- was already deposited. After following the due procedure of law and after completing all the legal formalities the properties have been exchanged by the department.

12. Learned Senior Counsel appearing on behalf of petitioner in rejoinder submitted that this petition was filed on 07.11.2024 and in order to make out a case, a permission was granted by Sub-Divisional Officer subsequently on 19.10.2024 i.e. after Divisional Commissioner, Aligarh, Division Aligarh has granted permission for exchange on 02.02.2024, which was erroneous since, the procedure has to be in other way i.e. Sub-Divisional Magistrate has to grant permission at first instance and only thereafter Divisional Commissioner will grant the permission.

13. Heard counsel for parties and perused the record.

14. As referred above the petitioner has not come up before this Court with clean hands since the land of real brother of petitioner was purchased/acquired by J.V.U.N.L., still the Court proceeds to consider the rival submissions as it is being alleged that land of Charagah is being illegally used for purpose of exchange. The petitioner has come up with a case that there was an assurance when land was acquired by J.V.U.N.L. at Nigoha Hasanpur that a colony will be constructed thereof, however, it is not based on any material as well as nothing is mentioned in sale-deeds annexed along with this petition.

15. The purpose to acquire land at village Nigoha Hasanpur was not the construction of a residential colony. It has also not been denied that acquiring authority has paid four times to circle rate otherwise also, the persons who have sold the land are not before this Court as well as they have not challenged the acquisition proceedings in accordance with law, therefore, the Court is of considered opinion that alleged assurance as pointed out by petitioner is not based on any material, therefore, the purpose to acquire the land by paying four times of circle rate was not finalized or it cannot be held that acquiring authority cannot change the purpose of acquisition or purchase later on.

16. The land which has been put on exchange is situated in other two villages and none of villagers of said villages have either objected exchange or have come forward before this Court. There is no material on record that any of villagers has made any complaint whatsoever, therefore, to allow the petitioner to espouse their cause i.e. residents of other villages do not have any substance.

17. The petitioner can very well raised a question about land situated in his village possibly on a ground that it has now been used for purpose of Charagah, however, there is no material on record that in case, the land at his village is used for Charagah any prejudice could be caused to petitioner or villagers at large.

18. The question whether the procedure of exchange was legally followed or not, it can be put by villagers of said two villages since their land of Charagah is being used for purpose

of construction of residential housing colony, however, as referred above, there is no material that any villager has come forward to oppose the said exchange.

19. The only objection to the land now proposed to use as a Charagah, it appears to be that it is surrounded by abadi land and probably it may not be properly used for said purpose, however, there is no material to support this submission, still the Court is of considered opinion that, the land reserve for purpose of Charagah in his village can be utilised for other public utility purpose with approval of Gram Sabha since now this land is vested in Gram Sabha of Nigoha Hasanpur, if there is already other land reserved for Charagah therefore, all objection to use of said land as a Charagah are baseless and accordingly, rejected.

20. Now the issue left is in regard to exchange procedure as observed above the petitioner could not have any objection to it since if exchange could affect adversely it would be the villagers of two said villages who have no objection to exchange. It is also not in dispute that exchange was proceeded with prior approval of Gram Sabha of both villages.

21. An argument of counsels of contesting parties i.e. State and J.U.V.N.L., has also substance that Charagah which is situated in village, Malawan and Akbarpur is about 15.400 hectares and its value is about Rs. 5,30,77,360/- whereas the property which has been exchanged is about 19.251 hectares situated in village Nigoha Hasanpur and its value is about Rs.5,39,03,360/- and as such the difference in value is about two percent, therefore, the contention of Public Interest Litigant

that difference in value was more than ten percent is baseless and there is no material that above referred value are contrary to record or incorrect.

22. It is also brought on record that land situated in Nigoha Hasanpur is about 19.251 hectares, whereas Charagah land situated in Malawan and Akbarpur is about 15.400 hectares i.e. much less than the land situated at village Nigoha Hasanpur, therefore, the Gram Sabha, Nigoha Hasanpur has got more land for purpose of public utility as such Gram Sabha Nigoha Hasanpur is in beneficial position.

23. It is also on record that Gram Sabha Malawan has passed a resolution in favour of exchange from land acquired by J.U.V.N.L. at Nigoha Hasanpur. There is no requirement in law to take permission of Gram Sabha of village Nigoha Hasanpur since the land put for exchange for party purchased by J.U.V.N.L. and it was not a land of Gram Sabha rather the Gram Sabha cannot object to exchange since instead of land used for construction of residential housing colony. Since they have been benefited that said land is now reserved for Charagah i.e. an open land otherwise also the Gram Sabha, Nigoha Hasanpur has not filed any objection to exchange even petitioner has not come up with any document that villagers of said village are in opposition of exchange.

24. It is being rightly pointed out by learned counsel for State and learned counsel for respondent Nos.6 to 8 that Government Order dated 06.03.2003, placed on record along with counter affidavit filed by respondent Nos. 6 to 8 that it provides that if a land having value more than 40 lakh, the permission has to

be firstly granted by Commissioner which has been done in present case, therefore, there was no illegality in granting permission firstly by Commissioner and thereafter by concerned S.D.M.

25. It has also been pointed out by learned counsel for State and learned counsel for respondent Nos.6 to 8 that land in village of petitioner which has now been reserved for Charagah is few kilometers away from other villages and procedure prescribed under Rule 102 of U.P. Revenue Code Rules, 2016 is being followed in its entirety and no illegality has been pointed out.

26. In the aforesaid circumstances, not only present petitioner has not come up with clean hands but fails to point out any objection to land reserve for Charagah in his village as well as to point out any illegality in exchange proceedings as well as the Court takes note that exchange proceedings is on basis of resolution passed by Gram Sabha of two villages and since Gram Sabha, Nigoha Hasanpur is beneficiary as well as land has already purchased is now being reserved for Charagah, therefore, there is no need for any permission of said Gram Sabha.

27. Details of land exchanged at village Malawan and Akbarpur is on record. In village Malawan out of 6.655 hectare reserved for Charagah. 6.131 hectare is now being used for construction of residential colony of power project and in village out of 11.744 hectare land reserved for forests. 5.8212 hectare is not used for said purpose, therefore, in village more than 50% land is still available for Charagah, So far as village

Malawan is concerned, it is observed that power project will take endeavour to provide additional land for Charagah in same village also as substantial part of earlier reserved land for Charagah is now being used for residential purpose.

28. The order dated 02.02.2024 passed by Commissioner has considered all requisite parameter for exchange along with consideration and granted permission in the interest of public. It is not disputed even by learned Senior Counsel for petitioner that power project is a work in a larger public interest.

29. In the aforesaid circumstances, all grounds raised in Public Interest Litigation as well as orally submitted by learned Senior Counsel fails and accordingly, prayer sought in this petition is rejected and present PIL is disposed of with above referred observation.

Order Date :- 29.11.2024

Pushpendra Pandey

[Saurabh Shyam Shamshery, J.]