

Court No. - 3

Case :- WRIT - C No. - 2454 of 2014

Petitioner :- Kusum And Others

Respondent :- State Of U.P. Thru. Secretary
Revenue And 2 Others

Counsel for Petitioner :- Pushkar
Baghel, Saurabh Yadav

Counsel for Respondent :- C.S.C., Gaurav
Mehrotra, Shailendra Singh Chauhan, Shobhit
Mohan Shukla

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the petitioners, learned Standing Counsel for the respondents, Shri Shailendra Singh Chauhan, learned counsel for respondent no.2 and Shri Shobhit Mohan Shukla, learned counsel for the Lucknow Development Authority.

2. By this petition, the petitioners have prayed for the following main reliefs:-

"(i) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to release the land of Khata no.209 Khasra No.1192 area 0.0910 hectares situated at village Mohibullapur, Tehsil and District Lucknow forthwith to the petitioners ;

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to adequately compensate the petitioners for the loss caused to the petitioners by illegally taking possession of the land of the petitioners in gross violation of the law ;

(iii) issue appropriate writ, order or direction for conducting inquiry for wrongfully taking possession of the land of Khata No.209 Khasra No.1192 area 0.0910 hectares situated at village Mohibullapur, Tehsil and District Lucknow and action against the erring officials may also be taken for gross abuse of powers."

3. Learned counsel for the petitioners submitted

that village Mohibullapur situated at Tehsil and District Lucknow was acquired by way of notification under Section 4 read with Section 17 of the Land Acquisition Act issued on 12.11.1981 for 'Sitapur Road Nagar Prasar Yojna' (in short 'Sitapur Yojna') for the benefit of Lucknow Development Authority (in short 'LDA'). The State Government issued notification on 3.12.1981 under Section 6 read with Section 17 of the Act. Award was published on 15.01.1985 in which Gata No.209 having Khasra No.1192 area ad-measuring 0.0910 hectares was not mentioned in the award. Thus, the land was not acquired. However, the LDA took possession over the land and started making construction.

4. The petitioners' predecessors-in-interest moved an application to different authorities to award compensation but no compensation was given. The predecessors died and an application under section 34 for incorporation of the names of the petitioners in revenue records were given. An application was also moved under section 41 of the Land Revenue Act for demarcation of land.

5. On 11.2.2014, a report was submitted by Lekhpal saying that the land of Gata No.1192, area 0.0910 hectares could not be demarcated as there was no reference points since the land has been acquired by the LDA for development of residential colony.

6. Aggrieved by the aforesaid illegal action of the LDA, the petitioners have approached this Court

by means of this writ petition.

7. Learned counsel for the petitioners have pointed out this Court's order passed earlier on 18.4.2017. The relevant portion of order dated 18.04.2017 is being quoted hereinbelow :-

“Regard being had to the aforesaid submissions, we are of the view that in the present writ petition several disputed question of facts are involved, which can well be examined by the revenue authority. Since the District Collector is the District Revenue Authority, it would be appropriate to issue direction to the District Magistrate, Lucknow to look into the matter and if he feels so, he can constitute a committee to enquire the matter. The petitioners as well as Lucknow Development Authority shall cooperate in the inquiry.

Accordingly, direction is issued.

The finding given by the inquiry committee shall be placed before this Court by the next date.”

8. It has been submitted by learned counsel for the State-respondents that the District Magistrate, Lucknow filed a personal affidavit dated 17.01.2022 in compliance of order of this Court passed on 18.04.2017. In such an affidavit, the District Magistrate has stated that the query put forth with regard to whether any compensation was paid for Gata no.1192 area 0.0910 hectares situated at village Mohibullapur was looked into and a report was sought from the Additional District Magistrate, (Land Acquisition) Nagar Mahapalika- Pratham, Lucknow. A report was submitted by Additional District Magistrate, (Land Acquisition) Nagar Mahapalika on 11.1.2022 saying that land of Gata No.1192 area 0.0910 hectares situated at Mohibullapur was not acquired for Sitapur Yojna for the LDA. No steps were taken for acquisition of land either under

Section 6 or Section 17 and no declaration of award, or memo of possession is available on record and no record regarding compensation being paid to the petitioner is available in the office.

9. On the basis of such affidavit filed by the then District Magistrate, the learned Standing Counsel has submitted that there was no proposal for acquisition of Gata No.1192 of village Mohibullapur, no declaration of award for taking of possession or payment of compensation was contemplated by the District authorities.

10. Learned counsel for the petitioners have pointed out the affidavit filed by the District Magistrate on 25.05.2022, wherein the then District Magistrate has stated that in pursuance of order passed by this Court, an Enquiry Committee was constituted on 21.01.2022 under the Chairmanship of In-charge Officer, (Land Management), Collectorate, Lucknow. The Enquiry Committee conducted an enquiry on the spot and submitted its report on 30.04.2022. Copy of enquiry report has been annexed to the said affidavit of the District Magistrate.

11. We have gone through the report, copy of which has been filed as SCA-2. In the said report, mention has been made of various entries in the revenue records and also made during consolidation operation with regard to Gata No.1192 (old Gata no.1070 Sa, 1071 Sa, 1072 Sa) which was earlier recorded as Navin Parti. In CH

Form 45, Gata No.1191/0-7-4 was created out of old free hold Gata and mentioned in Khata No.595 as Navin Parti.

12. On 15.02.1976, the Sub Divisional Magistrate, Sadar, Lucknow has approved the Land Management Committee proposal for allotment of land of Gata No.1192 in favour of Badloo, Son of Jagan, Resident of Beligarad, Lucknow. The file relating to such allotment is available in the Tehsil record room. In Khasra No.1330 Fasli, the land has been mentioned in Khata of Navin Parti but in the Khasra, the crop of bajra has been shown to have been sowed on it. In 1381 Fasli also, possession of Badloo over 0-7-4 land of Gata No.1192 has been mentioned and the crop shown is that of bajra. Similarly, in 1383 Fasli khasra, crops of wheat has been shown to have been sown by Badloo. In 1384 Fasli, the Khasra shows the land to have been recorded as old Parti land. In 1385 Fasli khasra, possession of Badloo, Son of Jagan on Gata no.1192 has been maintained and the crops of Urd-Bengal gram has been shown to have been sown by them. Similarly, the name of Badloo, Son of Jagan, has been recorded in subsequent Khatauni of 1398-1403 Fasli of village Mohibullapur, Pargana, Tehsil and District Lucknow. Initially, but later on, mutation has been made in the names of Ram Asrey and Govind, Sons of Badloo. In 1404-1409 Fasli, Ram Asrey and Govind, Sons of Badloo have continued to be recorded initially as allottees of land on 29.05.1997, and they have been declared as Bhumidhars.

13. The LDA notified Sitapur Yojna and acquired 12 villages including Mohibullapur and proposed to acquire 1527 acres of land, notifications were issued under Section 4/17, Section 6/17 on 12.01.1981 and 03.12.1981 respectively. The LDA was given possession in the year 1983-84 and the award was declared on 15.01.1986. Since Gata no. 1192 area 0.0910 hectares in Mohibullapur was not proposed to be acquired as it was recorded as Navin Parti. In the letter sent by the then District Magistrate dated 15.03.2003 to the Vice Chancellor of LDA, it has been noted that besides acquiring land of several farmers, land relating to several villages had been taken possession of without appropriate proceedings being initiated under Section 17 for assumption and also included land of Gram Sabha of 395.225 hectares of 31 villages recorded under category 5 and 6 as user, banjar, parti and rasta has been included in the land proposed to be notified for Yojna and such land which has not been resumed in a proper manner has a market value of Rs.78,12,93,750.00. A suggestion was made by the District Magistrate, Lucknow to the then Vice Chancellor, LDA that a proper proposal for resumption of land be made and the entire costs of Rs.78,12,93,750.00 should be deposited in the Gaon Sabha Fund to enable appropriate proceedings for resumption of land from respective Gaon Sabha/Samaj be carried out. A communication in this regard was also sent on 05.07.2012 to the Nagar Nigam, Lucknow.

14. In the conclusion drawn by the Enquiry

Committee, it has been mentioned that Badloo, Son of Jagan, has been recorded as allottee of land on the basis of proposal made by Land Management Committee in the year 1975-76 and the allotment file relating to allotment has been found in the record room and there has been no proceeding initiated for cancellation of such allotment. In the year 1997, the land of Gata No.1192 area 0.0910 hectares of village Mohibullapur, the name of Badloo, Son of Jagan was recorded as Bhumidhar with transferable rights. It is evident from such enquiry report.

15. It has been submitted by the team constituted by the then District Magistrate that before the land in question was initially recorded as navin parti and proposal for its allotment was made in favour of Badloo, Son of Jagan, the land of Gaon Sabha/Samaj having been allotted and continued as such in favour of Badloo, Son of Jagan and this continued possession of Gata No.1192 of land and sowing of crops has been recorded in the Khasra, he has been declared as Bhumidhar of transferable rights in 1997.

16. It is not made clear however, that as to how the LDA has got possession of land of private person without there being any notification of proposed acquisition either under Section 4 or 6 or under Section 17 of Land Acquisition Act, 1984.

17. In the counter affidavit that has been filed on behalf of respondent no.3 LDA on 04.01.2016, it has been stated that under CH Form 41 and 45,

the land has been shown as Navin Parti and belonging to Gaon Sabha and as to how the name of the petitioners have been recorded in the revenue record is the subject matter of enquiry by the revenue authorities for which the LDA has written a letter to the District Magistrate.

18. The land being recorded in the name of Gaon Sabha/Samaj as Navin Parti land, as such there was no question of its acquisition for being utilized for Sitapur Yojna. For the said scheme, land measuring 666 bigha, 7 biswa and 8 biswansi of village Mohibullapur was acquired vide notifications dated 12.11.1981, 03.12.1981 and possession was taken on various dates i.e. 19.11.1982, 20.1.1983, 25.02.1983, 13.03.1983, 22.03.1983 and 15.12.1984 and award was published on 15.01.1986. The LDA in its counter affidavit has shown its ignorance as to how the name of the petitioners have come to be recorded in the revenue record. It has been admitted that the land has been utilized for the scheme as claimed by the LDA and it has also been admitted that the land in question being recorded as Navin Parti land, therefore, no proposal for its acquisition was made.

19. Having gone through the pleadings on record, this Court finds that the pedigree of the petitioners has been mentioned in para 3 of the writ petition which shows that Badloo, son of Jagan had two sons namely, Ram Ashrey and Govind. After the name of Badloo, names of Ram Ashrey and Govind

have been recorded in the revenue record. Ram Ashrey's wife was Kusum, whereas name of Govind's wife was Savitri and Savitri had two sons namely Chandra Pal and Vijay.

20. Learned counsel for the petitioners has informed this Court that petitioner nos.1, 2 and 3 arrayed in memo of writ petition originally derived their title from Govind, Son of Badloo. Chandra Pal had died and he has been substituted by his legal heirs, wife and two sons. The substitution has been carried out by learned counsel for the petitioners in pursuance of this court's order dated 29.08.2023. Chandra Pal is survived by Rinky, Prince Rawat and Arun Rawat and they have been substituted as petitioner nos.2/1, 2/2, 2/3. An application for deletion for name of Vijay has been moved and it is pending. It has been informed that Vijay died unmarried and issue-less.

21. Having gone through the pleadings on record and the enquiry report which has been placed by way of personal affidavit by the then District Magistrate, Lucknow it is evident that when acquisition was proposed vide notification issued in 1981, only the record of rights- Khatauni was looked into. Although Badloo, Son of Jagan has been allotted the land in 1975-76 after approval of the competent authority i.e. Sub Divisional Magistrate, Khasra and record of possession was not seen. Had the Khasra been examined at that time, the possession of Badloo and then of his family Govind and Ram Ashrey would have been

noted in the Khasra of the relevant year and the names of such persons have been recorded and the crops sown by them has also been recorded. Since land was recorded as Navin parti in the Khatauni and belonging to the Gaon Sabha/Samaj, there was no proposal of the acquisition and therefore, the LDA did not provide for any compensation for taking possession of such land. Possession is taken in ordinary course only symbolically and no demarcation by metes or bounds has been made. The memo of possession would have been prepared at the time when LDA was given possession under Section 17 of the Act would have shown relevant Gata number as belonging to Gaon Sabha/Samaj and therefore, the predecessors of the petitioners could not come to know that actual physical possession was not taken at any point of time. There was no threat of eviction and the predecessors-in-interest of the petitioners carried on with their usual farming on the land allotted to them. Since there was continuance possession after allotment in 1997, they were also given their maturity rights with that of bhumidhari rights.

22. It is apparent that because of ignorance of the revenue officials who did not looked into Khasra, the land of the petitioners were also shown to have been acquired along with other land of Gaon Sabha/Samaj of village Mohibullapur. The LDA has also sold off the land by including in its Sitapur Yojna and subsequent allottee has built a school over it. Such taking over of possession cannot be

sustained this way, however. Since the petitioners have been deprived of their property for no fault of theirs, this court directs that compensation be given by the LDA to the petitioners on the basis of evaluation done as per the New Act of 2013. Such compensation be paid by the LDA to the petitioners within a period of three months from the date of production of certified copy of this order.

23. With the aforesaid direction, the writ petition stands **allowed**.

Order Date :- 16.4.2024

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