

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2730 OF 2005

Laxman Pandya and others

Appellants

Versus

State of U.P. and others

Respondents

WITH

Civil Appeal No. 2732 of 2005

ORDER

These appeals are directed against two separate but identical orders dated 20.2.2004 passed by the Division Bench of the Allahabad High Court whereby the writ petitions filed by the appellants challenging the acquisition of their land were dismissed by applying the ratio of the judgments of this Court in Satendra Prasad Jain v. State of U.P. (1993) 4 SCC 369 and Awadh Bihari Yadav v. State of Bihar (1995) 6 SCC 31.

In exercise of the power vested in it under Section 4(1) read with Sections 17(1), (1A) and (4) of the Land Acquisition Act, 1894 (for short, 'the Act'), the State Government proposed the acquisition of land including 1.87 acres belonging to the appellants in C.A. No. 2

2730/2005 and 1.91 acres belonging to the appellants in C.A. No.2732 of 2005 for Habibpura Housing Scheme of the Varanasi Development Authority (for short, 'the VDA'). Declaration under Section 6(1) was published in the Official Gazette dated 30.11.1981.

The appellants challenged the two notifications in CMWP No. 1769 of 1982 and CMWP No. 14885 of 1982. The first writ petition was dismissed in default on 10.9.1990 and the second writ petition was dismissed on merits on 18.11.1997.

Notwithstanding dismissal of the writ petitions, the respondents

neither took possession of the acquired land nor any award was passed within the period prescribed under Section 11A of the Act. In the year 2000, the appellants filed CMWP Nos. 24326 and 23043 of 2000 respectively with the allegation that the respondents are seeking to dispossess them. They prayed for grant of a declaration that the acquisition proceedings will be deemed to have lapsed because the award was not passed within two years of coming into force of the Land Acquisition (Amendment) Act, 1984. In paragraphs 12 to 15 of CMWP No. 24326 of 2000 - Laxman Pandya and others v. State of U.P. and others, the following averments were made:

3

"12. That the respondents had full and complete knowledge of order dated 10.9.90 as the respondents including State Government were party in the writ petition. The writ petition having been dismissed on 10.9.1990 no proceedings were undertaken by the respondents even thereafter to either take possession of the land or deliver the award in respect of the property under acquisition. It is, therefore, clear that a period of more than nine and a half year was allowed to lapse by the respondents themselves and neither any possession was taken from the petitioner of the land in question nor any award was delivered in respect thereof. A photostat copy of Khatauni of 14504 to 1409 fasali is being annexed herewith and marked as Annexure - 3 to the writ petition.

13. That on 10th May, 2000 certain officials of Varanasi Development Authority came at a adjoining plot of land which was also subject matter of acquisition from whom the petitioner came to know that now the Development Authority with the help of Collector, Varanasi will be proceeding to take possession of the land in question.

14. That no notice whatsoever of any kind had been made or issued to the petitioners but on account of the aforesaid facts the petitioners are now under direct threat of dispossession of the land in question, hence, this present writ petition.

15. That in view of the fact narrated hereinabove it is clear that the proceeding referred hereinabove will be deemed to have lapsed in view of the provisions contained in section 11-A of the Act and as such the respondents cannot now take possession of the land in question nor do they have any authority to proceed in the matter in any manner whatsoever."

In paragraphs 11 to 17 of CMWP No. 23043/2000 - Atma Ram Dhindhania and others v. State of U.P. and others, the following averments were made:

4

"11. That it is also relevant to point that no award

was made in respect of land in spite of the fact that the notification under Section 6 is dated 30.11.1981. the interim order, which was passed in favour of the petitioner, is dated 17.12.1982, thus the respondents themselves allowed a time period of more than a year to lapse even prior to the passing of the interim order and they did not either take possession or deliver the award.

12. That the writ petition, referred to herein above kept pending and the interim order continued to be operative in favour of the petitioners but the writ petition came to be ultimately dismissed on 18.11.1997 and a true copy of the judgment in Annexure-5.

13. That the respondents had full and complete knowledge of the judgment dated 18.11.1997 as it had been delivered in open court in the presence of the learned standing counsel representing the State of U.P. as well as the counsel of the development Authority and as such, the respondents had full knowledge of the aforesaid judgment.

14. That in spite of the writ petition having been dismissed on 16.11.1997, no proceedings were undertaken by the respondents even thereafter to either take possession of the land or deliver the award in respect of the property under acquisition. It is thus clear that a period of almost more than 3 years was allowed to lapse by the respondents themselves and neither any possession was taken from the petitioners of the land in question nor any award delivered in respect thereof.

15. That on 10th May, 2000 certain officials of the Varanasi Development Authority at a contiguous plot of land, which was also subject matter of acquisition from when the petitioners came to know that now the development authority with the help of Collector, Varanasi, will be proceeding to take possession of the land in question.

5

16. That no notice whatsoever of any kind has been made to the petitioners but on account of the aforesaid fact the petitioners are now under direct threat of dispossession of the land in question. Hence, this present writ petition.

17. That in view of the facts narrated herein above, it is clear that the proceedings, referred to hereinabove will be deemed to have lapsed in view of the provisions contained in Section 11-A of the Land Acquisition Act, 1894 and as such the respondents cannot now take possession of the land in question nor do they have any authority to proceed in the matter in any manner whatsoever."

In the first case, Shri Raj Kumar, Special Land Acquisition Officer, Varanasi filed an affidavit dated 20.7.2000 stating therein that the counter affidavit filed in CMWP No. 23043/2000 may be taken into consideration and both the matters be disposed of together. In a

separate affidavit filed by Shri Mahadeo Prasad, Law Inspector of the VDA, it was pleaded that the factum of dismissal of CMWP No.1769/1982 and consequential vacation of the interim order came to the notice of the authority only in 2000 and, thereafter, possession of the acquired land was taken with the help of Collector, Varanasi in the presence of the writ petitioner. Paragraphs 11 and 13 of the affidavit of Shri Mahadeo Prasad are extracted below:-

"11. That contents of paragraph No. 10 of the writ petition are denied It is denied that there was any fault on the part of the answering respondents in making the

6

award. It is submitted that the award could not be made against the interim order passed by this Hon'ble Court. Thus, it cannot be alleged that it is the answering respondents who allowed the period to lapse. It is further submitted that in the year 2000 itself the answering respondent came to know about vacation of the interim order passed in earlier writ petition and after coming to know about the order passed by this Hon'ble Court dismissing the writ petition action was immediately taken and thereafter the possession over the plot in question was taken with the help of Collector, Varanasi in presence of the petitioner.

13. That contents of paragraph No. 12 of the writ petition are denied. It is denied that the deponent came to know about dismissal of the writ petition as alleged. It is submitted that the fact about dismissal of the writ petition came to the knowledge of the answering respondent in the year, 2000 itself and thereafter acting promptly the possession of the land in question was taken in presence of the petitioners."

In the rejoinder affidavit filed by him, Shri Laxman Pandya claimed that possession of the acquired land was not taken on 10.5.2000 or even thereafter and the contrary assertion made on behalf of the VDA was false.

In CMWP No. 23043 of 2000, counter affidavit was filed by Shri Raj Kumar, Special Land Acquisition Officer, Varanasi. He claimed that intimation regarding vacation of the stay order was received from the VDA in April/May 2000 and, thereafter, action was

7

taken for passing the award. Paragraphs 10, 13 and 14 of the affidavit of Shri Raj Kumar are extracted below:

"10. That in reply to the contents of para 8 of the writ petition, it is stated that as the petitioner had produced the stay order dated 17.12.1982, the possession could not be taken. However, after vacation of the stay order and coming to know about the vacation of the stay order on 17.4.2000, the possession of the land has already been taken over on 10.5.2000.

13. That the contents of paras 11 and 12 of the writ petition are not admitted. A notification issued under sections 4 and 6 were challenged in writ petition No. 14885/82; Atma Ram Dhandhania, writ petition No. 1769/82; Chandra Shekhar Pandia, writ petition No. 66/83, Ram Kishore, writ petition No. 175/82; Bhagwan Das, writ petition No. 15173/82; Tulia. All the above noted writ petitions were dismissed on different dates in the writ petition, regarding the dispossession of the petitioners interim stay were granted to the petitioner and as such, nothing could be done.

Regarding the dismissal of writ petition No. 1769/82 and writ petition No. 14885/82, the Varanasi Development Authority could effectively get knowledge on 24.4.2000 and on that basis sent a letter to the Collector on 25.4.2000 for making available possession of the acquired land. The Varanasi Development Authority had further sent a letter dated 8.5.2000 to the Collector, Varanasi. The said letter was received by Collector, Varanasi. On receipt of the said letter, the Collector has obtained the opinion of the D.G.Z. (Civil), Varanasi. A photo stat copy of the letter dated 8.5.2000 sent by Varanasi Development Authority and the opinion of the D.G.Z. (Civil), Varanasi are being filed herewith as Annexure-CA-2 and CA-3 to this affidavit.

14. That the contents of paras 13 of the writ petition are not admitted as written. The answering respondent had no knowledge regarding the judgment dated

8

18.11.1997. As is clear from Annexure-CA-2, the Varanasi Development Authority had received the actual knowledge on 24.4.2000 and thereafter, the Collector, Varanasi received the knowledge on the intimation of the Varanasi Development Authority."

Both the writ petitions were dismissed by the Division Bench of the High Court by short orders dated 20.2.2004 by relying upon a detailed order of the same date passed in CMWP No.18932 of 2000 - Panchu Ram v. State of U.P. and others. In that case, the High Court negated the challenge to the acquisition proceedings on the ground of violation of Section 11A by observing that possession of the acquired land could not be taken till May, 2000 because the respondents did not know about dismissal of the writ petitions filed in 1982. In the opinion of the High Court, Section 11A was not attracted in the case. The relevant portions of the order passed in

Panchu Ram's case are extracted below:

"The learned counsel for the petitioner further submitted that after the dismissal of the writ petition, the respondents did not take possession nor made the award within two years and, therefore, the provisions of section 11-A is attracted. The petitioner since urged that the possession of the land was not taken nor the award was made within two years, the entire acquisition proceedings lapsed under Section 11-A of the Act.

9

According to the petitioner the last of the writ petition was dismissed on 25.11.1997 and excluding the period of stay, the limitation to make an award or take possession stood extended till 25.11.99. Neither possession was taken nor award was made till 25.11.99 and, therefore, the acquisition proceeding lapsed by operation of law as contemplated under Section 11-A of the Act. In support of his contention, the petitioner has placed reliance of a Division Bench judgment of this Court in Sushil Kumar and others V. State of U.P. and others reported in 1999 (35) ALR 285 in which it was held that since the possession of the land was not taken under Section 17(1) of the Act before the expiry of two years, the provision of Section 11A is attracted and the acquisition proceedings lapsed by operation of law.

We are unable to agree with the aforesaid submission made by the learned counsel for the petitioner. The dismissal of the writ petitions on 25.11.1997 was brought to the knowledge of respondent nos. 1 and 2 only on 8.5.2000 whereupon possession of the land was taken and handed over to Varanasi Development Authority on 10.5.2000. The fact that the respondents came to know about the dismissal of the writ petition only on 8.5.2000 has not been denied by the petitioner in his rejoinder affidavit. Therefore, in our view, the period to be excluded under the explanation to section 11-A would be upto 8.5.2001, i.e., till the date of knowledge of the dismissal of the writ petition. Admittedly, the possession of the land was taken on 10.5.2000. The decision in Sushil Kumar's case (supra) is therefore not applicable inasmuch as in the present case the possession of the land had already been taken within the stipulated period of two years. Therefore, we hold that since the possession of the land was taken by the respondents within the stipulated period the acquisition proceedings did not lapse under section 11A of the Act.

At this stage we may look into another aspect of the matter. The provisions of section 11A was inserted in the Act to benefit the land owner and ensure that the award was made within a period of two years from the date of the declaration under Section 6 of the Act. The Supreme

10

Court in Yusuf Bhai Noormohmed Nendoliya Vs. State of Gujarat and another 1991 (4) SCC 531 at 535 held :

"On the other hand, it appears to us that the explanation is intended to confer a benefit on a landholder whose land is acquired after the declaration under Section 6 is made in cases covered by the explanation. The benefit is that

the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired."

The principle laid down by the Supreme Court in the aforesaid decision (Supra), is that the owner of the land or a person who is interested in the land and wants to take advantage of section 11A of the Act, must not have obtained an interim order.

In the present case the tenure holders including the co-sharer of the petitioner had filed various writ petitions before this Hon'ble court challenging the acquisition proceedings thereby stalling the acquisition proceedings on account of interim orders granted by this Court. The tenure holders themselves contributed to the delay and did not allow the respondents from taking possession of the land. Therefore, assuming that the possession of the land was not taken within the stipulated period, we are not inclined to quash the acquisition proceedings in exercise of the discretionary powers of this Court under Article 226 of the Constitution of India. Similar view was taken by another Division Bench of this Court in Smt.

11

Kamla Pandey Vs. Collector Agra, 1989 ALJ 622 at 625 wherein their Lordship opined :

"We think where the land owner himself contributes to the delay in making the award, the acquisition proceeding ought not to be quashed in the exercise of the discretionary powers of this Court under Article 226 of the Constitution of India. The acquisition is undoubtedly for a laudable public purpose, namely, construction of a housing colony. The urgency of providing housing accommodation in urban areas can scarcely be over emphasized. In the present case, in pursuance of the scheme conceived by the Agra Development Authority, houses/flats have already been constructed and thereafter sold or allotted to various individuals. It is not disputed that over the petitioner's land also in implementation of the housing scheme buildings have been constructed. This finds corroboration from the petitioners' applications referred to above in which she had specifically asked for the removal of the malwa existing over her land. Further the scheme is an integrated one and, therefore, it will be inappropriate to quash the acquisition proceedings on the ground that in respect of the petitioner's plot the Special land Acquisition Officer omitted to determine the amount of compensation. The omission was not a fraud on the statute but was clearly bona fide based on the consideration that there was a move afoot for the release of the land from acquisition.

Moreover, the persons who would be hit by the quashing of the acquisition proceedings are not before us. To quash the proceedings at this stage of things would not, in our considered view, be appropriate. It would defeat the larger public interest if we were to quash the proceedings on the technicality, assuming that the omission to make an award in respect of the petitioners' land within time produced the effect of vitiating the entire acquisition proceedings."

12

Thus, we hold that the petitioner is not entitled to any relief in exercise of the discretionary powers of this Court under Article 226 of the Constitution of India."

(Emphasis supplied)

We have heard learned counsel for the parties and perused the record.

The moot question which arises for consideration in these appeals is whether the High Court was justified in refusing to quash acquisition proceedings despite the fact that the award was not made within the period prescribed under Section 11A of the Act. That section reads as under:

"11A. Period within which an award shall be made.-
(1) The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within the period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.-In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

13

A reading of the above reproduced provision makes it clear that the Collector is required to pass an award within a period of two years from the date of the publication of the declaration and if award is not made within that period, the acquisition proceeding automatically lapses. Proviso to Section 11A lays down that where the declaration was published before commencement of the Land Acquisition

(Amendment) Act, 1984, the period of two years begins from the date of amendment, i.e. 24.9.1984. Explanation appearing below Section 11A lays down that in computing two years, the period during which any action or proceeding to be taken pursuant to the declaration is stayed by an order of a Court shall be excluded.

In the opinion of the High Court, the acquisition proceedings cannot be deemed to have lapsed because the respondents came to know about dismissal of the earlier writ petitions only in April/May 2000. The High Court also applied the ratio of the judgments in Satendra Prasad Jain v. State of U.P. (supra) and Awadh Bihari Yadav v. State of Bihar (supra) and held that the provisions of Section 11A are not applicable where the land is acquired by invoking the urgency provisions contained in Section 17 of the Act.

In our view, the High Court is wrong on both the counts. In the counter affidavit filed in C.A. No. 2730/2005, the VDA has taken an
14

altogether new plea on the issue of absence of knowledge about the order passed in CMWP No. 1769/1982. According to VDA, the advocate representing it, namely, Shri G.C. Dwivedi had died in 1996 and, as such, he could not give any intimation about progress of the case and certified copy of the order was received by another counsel on 19.4.2000. In this context, it is apposite to mention that not only the appellants but various other landowners had filed writ petitions in 1982. CMWP No. 1769/1982 filed by Laxman Pandya and others was dismissed in default on 10.9.1990 because no one had appeared on behalf of the petitioners. CMWP No. 14885/1982 titled Atma Ram Dhandhanian and others (including Umesh Kumar Dhandhanian) v. State of U.P. and others was dismissed on merits vice order dated 18.11.1997 in the presence of the petitioners' counsel Shri R.N. Singh, who was assisted by Shri A.P. Sahi, Shri A.K. Dubey representing the VDA and Shri Virendra Kumar, Standing Counsel. CWP No. 66/1982 - Ram Kishore and another v. State of U.P. was dismissed by the High Court on 30.10.1995. SLP(C) No. 5368/1996 filed by Ram Kishore was dismissed by this Court on 2.8.1996. Two

writ petitions being CMWP No. 15173/1982 - Smt. Tulia v. State of U.P. and another and CMWP No. 15175/1982 - Bhagwan Das and another v. State of U.P. and others, were dismissed by the Division Bench by common order dated 25.11.1997 after hearing the counsel

15

for the petitioners Shri A.N. Shukla and the Standing Counsel representing respondent Nos. 1 and 2. It is, therefore, not possible to believe that the Special Land Acquisition Officer and the officers of the VDA did not know about dismissal of the writ petitions till April/May 2000. The death of Shri G.C. Dwivedi, Advocate representing the VDA in 1996 has no bearing on the respondents' claim that till 2000 they did not know about vacation of the interim order. It is neither the pleaded case of the respondents nor it has been argued on their behalf that they were not aware of dismissal of the writ petitions filed by Ram Kishore and another in 1995 and by Smt. Tulia and Bhagwan Das in 1997. If that be so, how can the respondents say that they were not aware of dismissal of the writ petitions filed by the appellants till April/May 2000. Unfortunately, the High Court did not take cognizance of dismissal of various petitions in 1997 in the presence of the advocate representing the State Government and the VDA and accepted the assertion made in the affidavits filed on behalf of the respondents as gospel truth. In our view, before recording a finding that the respondents did not come to know about dismissal of the earlier writ petitions till April/May 2000, the High Court ought to have carefully scrutinized the entire record. We have no doubt that if this exercise had been undertaken, the High Court would not have non

16

sued the appellants by observing that there was no violation of the mandate of Section 11A.

As a sequel to the above discussion, we hold that the respondents knew about dismissal of the writ petitions filed by the appellants in 1990 and 1997 respectively and yet they failed to take possession of the acquired land and pass award within the period prescribed under Section 11A.

We are also of the view that dismissal of CMWP

No.1769/1982 and CMWP No. 14885/1982 should not have affected

adjudication of the writ petitions filed in 2000 because two sets of writ petitions were based on different causes. In the first batch of writ petitions, the appellants had questioned the notification issued under Section 4 (1) read with Section 17 and the declaration issued under Section 6(1) read with Section 17. In those petitions, they neither had the opportunity nor they could claim that the acquisition will be deemed to have lapsed due to non-compliance of Section 11A because by the time the writ petitions were filed, Section 11A had not even been enacted. Thus, dismissal of the writ petitions filed in 1982 in default or otherwise did not operate as bar to the filing of fresh writ petitions in 2000 for grant of a declaration that the acquisition proceedings will be deemed to have lapsed due to non passing of an

17

award within the period prescribed under Section 11A. Once the writ petitions filed in 1982 were dismissed, the stay order passed by the High Court stood automatically vacated and there was no impediment in the passing of award, which the competent authority failed to do for more than 10 years in the first case and more than 3 years in the second case. The possession of the acquired land also continued with the appellants till May, 2000 when attempts were made to dispossess them. Therefore, the conclusion recorded by the High Court that the land stood vested in the State is clearly erroneous.

The High Court was also not justified in applying the ratio of Satendra Prasad Jain v. State of U.P. (supra) and Awadh Bihari Yadav v. State of Bihar (supra) for negating the appellants' prayer because in those cases possession of the acquired land was taken within two years of the publication of the declaration issued under Section 6(1) and, as a result of that the acquired land vested in the State Government. In these cases, possession of the acquired land was not taken within two years of dismissal of the writ petitions. Therefore, the land cannot be said to have vested in the State

in C.A.No.2732/2005]

Mr. S.R. Singh, Sr.Adv.
Ms. Vandana Mishra, Adv.
Mr. Manoj Dwivedi, Adv.
Mr. Ashutosh Kr. Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

In terms of signed order, the appeals are allowed. The impugned orders are set aside and it is declared that the acquisition proceedings

20

will be deemed to have lapsed insofar as the appellants are concerned, due to non-compliance of the mandate of Section 11A of the Act. However, the parties are left to bear their own costs.

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master
(Signed Order is placed on the file)