

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO. 2885 OF 2001

Kailash N. Dwivedi & Others ..Appellants

versus

State of U.P. & Others ..Respondents

WITH

CIVIL APPEAL NO. 2886 OF 2001

J U D G M E N T

G.S. Singhvi, J.

1. These appeals are directed against order dated 08.07.1999 of the Division Bench of the Allahabad High Court dismissing the writ petitions filed by the appellants for issue of a mandamus to the respondents to release their land.

2. For the sake of convenience, we have taken the facts from the record of Civil Appeal No.2985 of 2001.

3. The appellants are said to be the owners of land measuring 14 Bighas 11 Biswas comprised in field Nos.595, 596, 599, 600, 603, 606, 619, 632 and 633 of village Gaujaini. By Notification dated 25.7.1959 issued under Section 53 of the Cawnpore Urban Area Development Act, 1945 (for short, 'the 1945 Act'), the competent authority notified the framing of Kalyanpur Panki Pandu Town Expansion and Green Belt Scheme No.40 (for short, 'the scheme'). The State Government sanctioned the scheme in December, 1959 and to this effect, Notification dated 23.12.1959 was issued under Section 60 of the 1945 Act.

4. With the enactment of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 (for short, 'the 1959 Act'), Chapters II to XXV of which were brought into force on

1.2.1960, the 1945 Act stood repealed. However, the schemes framed under that Act were continued by Section 577 of the 1959 Act. The competent authority passed award dated 31.7.1967 in respect of 265.75 acres land including land belonging to the appellants and the amount of compensation was paid to the appellants, which they accepted without any ostensible protest.

5. After almost thirty years, the appellants filed Civil Miscellaneous Writ Petition No.18779/1996 and prayed for issue of a mandamus to the respondents to release their land by asserting that possession thereof was still with them and the same has not been utilised for the purpose specified in Notifications dated 25.7.1959 and 23.12.1959.

6. Similarly, land belonging to Ram Narain Shukla and another (appellants in Civil Appeal No.2886 of 2001) was included in the scheme. They also filed Civil Miscellaneous Writ Petition No.8539/1996 and prayed for issue of a direction to the respondents to release their land by asserting that the scheme had not been executed and

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possession of the land was still with them.

7. The Division Bench of the High Court adverted to the grounds on which the appellants had prayed for release of their land, the counter affidavit filed by Shri R.S.Khare on behalf of Kanpur Development Authority wherein the deponent stated that the the writ petitioners had received the compensation and physical possession of the acquired land had been taken long ago and held that once the petitioners' land had been acquired and possession thereof was taken by the competent authority, an order for release cannot be passed by entertaining the petitions filed after 30 years more so because a portion thereof had been transferred to U.P. State Industrial Development Corporation (for short, 'the Corporation') and the latter had developed the same and allotted plots to industrial

entrepreneurs.

8. Mrs. Rachna Gupta, learned counsel for the appellants vehemently argued that the impugned order is liable to be set aside because the High Court did not consider her clients prayer in a correct perspective. She emphasised that land of the appellants had not been utilised for the scheme framed in 1959 and the High Court committed grave error by non-suiting them on the grounds of delay and acceptance of the compensation. Learned counsel submitted that the appellants had no occasion to challenge the notifications issued under the 1945 Act till 1995 when a portion of the acquired land was transferred to the Corporation. She then argued that the scheme framed under the 1945 Act will be deemed to have lapsed because the same was not implemented for more than three decades and by virtue of proviso to Section 17 of the Uttar Pradesh Urban Planning and Development Act, 1973 (for short, 'the 1973 Act'), the petitioners are entitled to seek release of the acquired land.

9. Shri Pradeep Mishra, learned counsel appearing for the Municipal Corporation of Kanpur extensively referred to the provisions of the 1959 Act and submitted that by virtue of provisions contained in Sections 357, 363, 365, 574 and 577 of the 1959 Act, the scheme framed under the 1945 Act will be deemed to be continuing and land covered by the scheme will be deemed to have been acquired as if that exercise was undertaken after complying with Sections 4(1) and 6(1) of the Land Acquisition Act, 1894.

10. Shri Ravi Prakash Mehrotra, learned counsel for the State Industrial Development Corporation submitted that after the transfer of land in 1995, the Corporation has developed the same, carved out plots and allotted them to large number of industrial entrepreneurs.

11. We have considered the respective submissions. In our

view, the scheme framed under the 1945 Act cannot be

treated to have lapsed because the same was continued by

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Section 577 of the 1959 Act, the relevant portion of which

are extracted below:

"577. Continuation of appointments, taxes, budget estimates, assessments, etc. - Save as expressly provided by the provisions of this Chapter or by a notification issued under Section 579 -

(a) any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration rule, bye-law, regulation, form made, issued, imposed or granted under the U.P. Municipalities Act, 1916, or the Cawnpore Urban Area Development Act, 1945, or the U.P. Town Improvement Act, 1919, or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be;

(b) any notice or notification or sanction of any improvement scheme for the area included in the City issued under the U.P. Town Improvement Act, 1919 or the Cawnpore Urban Area Development Act, 1945, shall be deemed to have been issued under this Act and all further proceedings in furtherance of such scheme may be taken accordingly;

(c) all proceedings for acquisition of land whether in pursuance of any scheme of improvement or otherwise initiated under the U.P. Town Improvement Act, 1919, the Cawnpore Urban Area Development Act, 1945, or the U.P. Municipalities Act, 1916, or any other enactment applicable to the area included in the City may be continued as if they had been initiated under this Act;

(d) to (g) xx xx xx xx xx xx xx xx xx xx xx xx"

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12. The argument of Mrs. Rachna Gupta that the appellants

are entitled to seek release of land in terms of proviso to

Section 17 of the 1973 Act is without merit and deserves to

be rejected because that provision is attracted only in

respect of land acquired under that Act and not for the

schemes framed under the 1945 Act which were saved by

Section 577 of the 1959 Act.

13. In view of the above, we hold that the High Court did not commit any error by declining the appellants' prayer for ordering release of the land which stood acquired more than 30 years ago and that too by ignoring the fact that a portion of the land covered by the scheme has been transferred to the Corporation, which developed the same and allotted plots to eligible applicants.

14. We also agree with the High Court that after having accepted the amount of compensation, the appellants do not have the locus to seek a direction for release of the acquired land.

15. In the result, the appeals are dismissed. Interim order passed on 12.4.2001 and continued by subsequent orders stands automatically vacated.

.....J.
[G.S. SINGHVI]

NEW DELHI;
NOVEMBER 29, 2011

.....J.
[SUDHANSU JYOTI MUKHOPADHAYA]
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ITEM NO.101 COURT NO.6 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2885 OF 2001

KAILASH N. DWIVEDI & ORS Appellant (s)

VERSUS

STATE OF U.P. & ORS Respondent(s)

(With appln(s) for substitution and c/delay in filing substitution
appln. and with office report)
WITH Civil Appeal NO. 2886 of 2001
(With office report)

Date: 29/11/2011 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Appellant(s) Mrs. Rachna Gupta, Adv.
Dr. Indra Pratap Singh, Adv.

For Respondent(s) Mr.Pramod Swarup, Sr.Adv.
Mr.Ameet Siingh, Adv.
Ms.Pareena Swarup, Adv.
Mr.Manoj Dwivedi, Adv.
Mr. Gunnam Venkateswara Rao,Adv.(Not present)

Mr. Ravi Prakash Mehrotra,Adv.
Mr.Vibhu Tiwari, Adv.

Mr. Pradeep Misra, Adv.
Mr. Suraj Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

I. A. Nos. 1 and 2 and 4 and 5 are allowed in terms of the prayer made. Delay in filing the applications for bringing on record the legal representatives of appellant No.2 Ganga Ram, who died on 8.10.2008 and appellant No.3, who died on 9.5.2006 is condoned and their legal representatives are allowed to be brought

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on record.

The office is directed to amend the cause title accordingly.

Arguments heard.

The appeals are dismissed in terms of signed judgment.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

[Non-reportable judgment is placed on the file]