

acquisition of his land on the ground that the proceedings will be deemed to have lapsed in 1991 because the award was not passed.

In

paragraphs 6 to 17 and 19 of the writ petition, the respondent made the following averments:

"6. That, it may be mentioned that the award to be decided by the Collector, Moradabad under section 11 of the Act was not made, therefore, taking recourse to the provisions contained in sub section 3(1) of section 17 of the Act in conformity of the direction of appropriate Government the Collector made an estimate of the compensation in respect of each plots which were sought to be required and an estimated compensation of 80 and was paid to certain land owners, though the physical possession of the land in question as not taken over by the authorities concerned.

7. That, subsequently neither any award was passed by the land acquisition officer under section 11 of the Act nor the respondents further proceeded with the acquisition proceeding in the matter and prior to final award could be prepared the acquiring body denied to accept the land and to pay full compensation.

8. That, thereafter notices were issued to the land owner to whom 80% estimated compensation was paid to return the amount on the ground that UPSIDC has refused to take land and the award which alleged to have been passed at that time has been disapproved and thereafter citations were also issued to the concerned land owners.

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9. That, being aggrieved with the recovery proceeding initiated by the authorities concerned against the land owners to whom 80% estimated compensation was paid, they approached to this Hon'ble Court and filed writ petitions and interim orders were granted by this Hon'ble Court staying recovery proceeding.

10. That, during pendency of the aforesaid writ petition a counter affidavit along with an application for stay vacation was also filed by one Lalit Mohan Upreti the then Special Land Acquisition Officer, Moradabad stating entire facts therein and he is specifically stated that the possession of the land was never taken.

11. That, from the entire facts and circumstances stated above, it is very well evident that the entire acquisition proceeding was lapsed even in the year 1991 itself as per statement made by the then Special Land Acquisition Officer namely Lalit Mohan Upreti.

12. That, as per provisions contained under section 11A of the Land Acquisition Act the period for making and award under section 11 is only two years from the date of publication of the declaration and admittedly in the present case subsequently no award was passed by the respondent no.2 and 3.

13. That, the petitioner is continuously in actual, physical and cultivatory possession over the land in question as the acquisition proceeding initiated in the year 1985 has already been lapsed in the year 1991.

14. That, in the year 2001 the respondent no.3 again proceeded with the acquisition proceedings in pursuance of the notification dated 17.8.1985 published on 26.2.1985 under section 4 of the Land Acquisition Act and notification dated 30.3.1988 published on 20.4.1988 under section 6 of the land acquisition act and again objections were called for from the land owners and thereafter the objections were submitted by the land owners before the respondent no.3.

15. That, even without affording any opportunity of hearing to the petitioner and other land owners an award was passed by the learned respondent no.3 on 31.10.2002 on the basis of the notifications

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dated 17.8.1985 published on 26.2.1985 under section 4 of the Land Acquisition Act and notification dated 30.3.1988 published on 20.4.1988 under section 6 of the Act awarding the amount of compensation on the basis of the valuation of the year 1985 without considering the fact that the entire acquisition proceeding had already been lapsed in the year 1991 itself. A true copy of the award dated 31.10.2002 is being filed and marked as Annexure No.3 to this writ petition.

16. That, a perusal of the said award dated 31.10.2002 reveals that while passing the same the learned respondent no.3 made an observation with regard to the possession taken over from the land owners on 23.3.1990, though in this regard it is submitted before this Hon'ble Court in writ petition no.5341 of 1991 and in other writ petitions the then Special Land Acquisition Officer, Moradabad has already made statement that no possession was taken over on 23.3.1990.

17. That, the entire acquisition proceeding as well as award dated 31.10.2002 in pursuance of the notifications dated 17.8.1985 and 30.3.1988 are absolutely illegal, arbitrary and also without jurisdiction.

19. That, admittedly, the petitioner is in actual and physical possession over the land in question, hence a fresh notification should have been issued under section 4 and 6 of the Land Acquisition Act prior to proceeding of the acquisition proceedings in any manner and the amount of compensation must have been calculated on the basis of the valuation of the land of the year 2002."

In the counter affidavit filed by Shri V.K. Singh, Assistant Manager (Legal) of the Corporation, the facts relating to non passing of award within two years, payment of estimated compensation to some of the land owners, notices issued to them for

repayment of the estimated compensation, filing of writ petition by the land owners and stay of the recovery proceedings by the High Court were not denied. He, however, controverted the assertion

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that physical possession of the land had not been taken. According to Shri V.K. Singh, possession of the land was handed over to the Corporation by the Land Acquisition Officer, Moradabad on 23.3.1990. In paragraph 10 of the counter affidavit, Shri V.K. Singh referred to the judgment of this Court in Satendra Prasad Jain v. State of U.P. (1993) 4 SCC 369 and claimed that Section 11A does not apply to the acquisition made by invoking the urgency provisions contained in Section 17. Paragraphs 8,10,12,17 and 18 of the affidavit of Shri V.K. Singh are reproduced below:

"8. That in paragraph 6 of the said writ petition, it is vehemently denied that the physical possession of the plot in question was not taken over by the authorities concerned. The aforesaid assertion is totally false and incorrect. The physical possession of the plot in question was delivered to the answering respondent on 23.3.1990 by the Special Land Acquisition Officer, Moradabad/J.P.Nagar.

10. That in reply to the contents of paragraph no. 8 of the said writ petition, it is submitted that the notices referred to in paragraph under reply were issued under mis-conception that since no award had been given within 2 years, the land acquisition proceedings could not be proceeded any further and in ignorance of the unsettled legal position that the provisions of Section 11A of the Land Acquisition Act will not apply to such acquisition proceedings where the provisions of Section 17(1) and 17(4) of the Land Acquisition Act had been invoked. The aforesaid uncertainty of legal position with regard to the applicability of Section 11A to the acquisition proceedings where the provisions of Section 17(1) and 17(4) of the Land Acquisition Act had been invoked was set to rest in a decision given by the Hon'ble Supreme Court on 16.9.1993 in the case of Satyendra Prasad Jain vs. State of U.P. and others, wherein it was held that the provisions of Section 11A of the Land Acquisition Act would not apply to the land acquisition proceedings where the provisions of Section 17(1) and 17(4) of Land Acquisition Act were invoked and the possession of the land in

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question had been taken.

12. That in reply to the contents of paragraph no.10 of the said writ petition, it is submitted that the petitioner had not filed any writ petition before this Hon'ble Court challenging any recovery proceedings and as such, the petitioner

cannot get any benefit of the averment made in some counter affidavit filed in a writ petition preferred by a person other than the petitioner.

17. That in paragraph no. 15 of the said writ petition it alone is admitted that the award was passed by the respondent no. 3 on 31.10.2002 in respect of the plot in question and other land acquired in pursuance of the notifications dated 17.8.1985 and 30.3.1988. Rest of the contents of paragraph under reply are not admitted as stated and denied as totally false, incorrect and misleading. The award dated 31.10.2002 was passed after giving full opportunity to the petitioner and other tenure holders whose land had been acquired under the land acquisition proceedings in question. The market value of the land acquired has been determined not on the basis of the market value prevailing in the year 1985 but on the basis of the sale deed dated 22.2.2002. Reference in this regard may be made to the award dated 31.10.2002, copy whereof, has been appended as Annexure No. 3 to the said petition.

18. That in reply to the contents of paragraph no. 16 of the said writ petition, it is submitted that Writ Petition no. 5341 of 1999 was not filed by the petitioner and as such, the petitioner cannot get any benefit from the recitals contained in the counter affidavit filed in Writ Petition no. 5341 of 1999."

The Division Bench of the High Court quashed the acquisition of the respondent's land by relying upon order dated 16.11.2009 passed in Writ Petition No.3629 of 2005 - Bhagwan Das v. State of Uttar Pradesh and others and batch. In the case of Bhagwan Das, the High Court took cognizance of the averments contained in the counter affidavit filed by the Special Land Acquisition Officer in Writ Petition No.5341 of 1999 that he had not taken possession of

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the acquired land and observed:

"Learned counsel for the petitioners submitted that the award has not been made within two years and possession also has not been taken as it is evident from Annexure No.5 to the writ petition, which is a counter affidavit filed by S.L.O. In other writ petition, wherein it has been stated that neither the award has been made nor the possession has been taken over. The fact stated in paragraph 17 of the counter affidavit is contrary to the statement made by SLO in his counter affidavit contained in Annexure 5 to the writ petition.

In view of the fact that the possession has not been taken over, the award has been made in 2002, it is beyond two years from the date of notification under section 6. Therefore, the award is hit by section 11-A of the Land Acquisition Act and the proceedings shall stand lapsed, if the award is not made within two

years."

We have heard Shri Ratnakar Das, learned senior counsel for the petitioner and perused the record.

Since, the Corporation has not controverted the fact that in the counter affidavit filed in Writ Petition No.5341 of 1999, the Special Land Acquisition Officer, Moradabad had categorically averred that possession of the acquired land was not taken on 23.3.1990 and the averments contained in paragraphs 6, 8, 9, 11 and 16 of the writ petition filed by the respondent, there is no escape from the conclusion that possession of the acquired land was not taken on 23.3.1990 and the contrary assertion made in the counter affidavit filed on behalf of the Corporation was not correct.

We are further of the view that the urgency provisions contained in Section 17 could not have been invoked for the acquisition of land in the name of planned industrial development

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of the district. Reference in this connection can usefully be made to the recent judgment in Shri Radhy Shyam (Dead) through L.Rs. and others v. State of U.P. and others, (2011) 4 Scale 677.

That apart, learned senior counsel for the petitioners could not offer any tangible explanation for the time gap of almost 2 years and 7 months between Section 4 notification and Section 6 declaration. He also could not put forward any argument as to why the award was not made for 14 years and 7 months after issue of declaration under Section 6 of the Act.

This shows that the acquisition of the respondents land by invoking the urgency provisions was nothing but a farce.

The judgments of this Court in Satendra Prasad Jain v. State of U.P.(supra), Awadh Bihari Yadav v. State of Bihar (1995) 6 SCC 31, Pratap v. State of Rajasthan (1996) 3 SCC 1, Allahabad Development Authority v. Nasiruzzaman (1996) 6 SCC 424 and Government of A.P. v. Kollutla Obi Reddy (2005) 6 SCC 493 cannot be relied upon for upholding the acquisition because as per the affidavit of the Special Land Acquisition Officer filed in Writ Petition No.5341 of 1999, possession of the acquired land was not

taken on 23.3.1990 and admittedly, the award was made after 17 years of issue of notification under Section 4 and more than 14 years after the issue of declaration under Section 6.

The special leave petitions are accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master