

ITEM NO.8

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).7779/2007

(From the judgement and order dated 28/03/2007 in
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

SA No.432/2002

MOTI LAL GOEL

Petitioner(s)

VERSUS

NEW OKHLA INDUSL.DEVT.AUTHORITY & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 11/10/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr. Amit Sharma, Adv.
 Mr. Rahul Jain, Adv.
 Mr.Kunal Cheema, Adv.
 Mr. Anupam Lal Das,Adv.(Not present)

For Respondent(s) Mr. Ravindra Kumar, Adv.

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

Whether order dated 20.08.1993 passed by Sub
Divisional Magistrate, Dadri under Section 143 of the
U.P.Zamindari Abolition and Land Reforms Act, 1950 (for
short, 'the 1950 Act') and order dated 29.3.1995 passed by
the Commissioner and Director, Directorate of Land
Acquisition, Board of Revenue (for short, 'the
Commissioner') could be made basis by the learned Single

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Judge of the Allahabad High Court for issue of a mandamus to
respondent Nos. 1 to 3 to enter the name of the petitioner
in the revenue records and to allow him to raise
construction are the questions which arise for consideration
in this petition filed against judgment dated 28.03.2007 of
the Division Bench of the Allahabad High Court whereby the

Special Appeal preferred by respondent Nos. 1 to 3 was allowed and the order passed by the learned Single Judge in Civil Misc. Writ Petition No. 15391 of 2000 set aside.

Petitioner Moti Lal Goel and Rakesh Jain purchased plot Nos.375,376 and 377 measuring 6 Bigha, 19 Biswa and 5 Biswansi situated in village Morana, Tahsil Dadri, District Gautam Budh Nagar vide registered sale deed dated 1.9.1988.

After one year and about six months, the State Government acquired 172.90 acres land including land of the petitioner and Rakesh Jain for planned industrial development. Notification under Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') was issued on 27.2.1990 and declaration under Section 6 of the Act was issued on 8.6.1990. Possession of the acquired land was taken sometime in February/March, 1991. In the impugned order, the date of taking over possession is shown as 21.02.1991 but in the counter affidavit filed by one A.K.Saxena, Law Officer of respondent No.1 in the special leave petition, it has been stated that possession of the land was actually taken on 31.3.1992.

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After about one year, the petitioner submitted an application under Section 143 of the 1950 Act and succeeded in persuading Sub Divisional Magistrate, Dadri to entertain his prayer for declaring three plots as part of Abadi.

The petitioner then approached the Commissioner for review of the order passed for acquisition of 172.90 acres land including plot numbers 375, 376 and 377.

By an order dated 29.3.1995, the Commissioner directed respondent No.1 to release the plots belonging to the petitioner and Rakesh Jain and recover the compensation, if any, paid to them.

By taking advantage of the orders passed by the Sub Divisional Magistrate and the Commissioner, the petitioner filed an application before the Tehsildar, Dadri for

entering his name in the revenue records after striking off the name of respondent No.1. The same was rejected by the Tehsildar vide order dated 11.6.1999.

The writ petition filed by the petitioner was allowed by the learned Single Judge on the assumption that the plots in question had not been acquired by issuing notification under Section 4(1) of the 1894 Act and respondent Nos. 1 to 3 do not have any right or title over the property. The learned Single Judge quashed the order of the Tehsildar and directed the concerned authorities to process and decide the application made by the petitioner for grant of permission to raise construction.

The Special Appeal filed by respondent Nos. 1 to 3 was allowed by the Division Bench, which, after noticing the ⁴ factual matrix of the case, held that once the land had been acquired under the 1894 Act, the Sub Divisional Magistrate and the Commissioner did not have the jurisdiction to pass any order declaring it as Abadi or treating it as exempted from the acquisition. In the opinion of the Division Bench, an order for release of land could be passed only under Section 48(1) of the 1894 Act and that too by publication of notification in the official Gazette by an appropriate government and that an order passed under Section 143 of the 1950 Act cannot be made basis for grant of exemption.

Shri Amit Sharma, learned counsel for the petitioner made strenuous effort to convince us that land of the petitioner had not been acquired inasmuch as the same had not been included in the notification issued under Section 4(1) read with Section 17(1) of the 1894 Act but we are not felt convinced.

In the writ petition jointly filed by the petitioner and Rakesh Jain, it was clearly averred that that proceedings for the acquisition of land was taken by having recourse to the provisions contained in Section 17(1) of the

1894 Act but the same was exempted from the acquisition vide order dated 29.3.1995 passed by the Commissioner and was not reflected in award dated 31.3.1995 passed by the Land Acquisition Officer. This is evinced from paragraphs 5 & 6 which are extracted below:

"5. That proceedings were initiated to acquire
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the aforesaid laid (sic) by taking recourse the provisions of section 17(1) of the Land Acquisition Act. However, the land in dispute was exempted from the acquisition proceedings by means of the order dated 24.3.1995(sic) passed by the commissioner-cum-director, directorate of Land Acquisition Board of Revenue, Lucknow. By means of this order dated 29.3.1995 that plot nos.375,376 and 377 situated in village Morana i.e. the land in dispute was exempted from the acquisition proceedings. A true copy of the order dated 29.3.1995 is being filed herewith and marked as Annexure-2 to this writ petition.

6. That, subsequently the special land acquisition officer published his award dated 31.3.1995. A perusal of the aforesaid award will categorically go to show that the petitioner no.1 Moti Lal Goel, had duly filed the objection that the land in dispute i.e. plot nos.375,376 and 377 are exempted from the acquisition proceedings and accordingly the Special Land Acquisition Officer gave no award in respect of plot nos.375,376 and 377. A true copy of the award dated 31.3.1995 given by the special land acquisition officer, is being filed herewith and marked as Annexure-3 to this writ petition."

In view of the above reproduced averments, it is not open to the petitioner to contend that the plots purchased by him and Rakesh Jain had not been included in the notification issued under Section 4(1) read with Section 17(1) of the 1894 Act. It is also apposite to mention that neither in the list of dates not in the memo of special leave petition, the petitioner has averred that Division Bench has committed an error of fact by observing that the land in question was acquired vide notification dated 27.2.1990 issued under Section 4(1) read with Section 17(1) of the 1894 Act, which was followed by the declaration

issued under Section 6 of the said Act.

If the petitioner

genuinely believed that the Division Bench had committed an error in recording the facts of the case, then the only course available to him was to seek review of the impugned judgment. However, the fact of the matter is that no such application was filed by him.

We are also of the view that the learned Single Judge committed serious error by directing that the name of the petitioner be entered in the revenue records and the application filed by him for raising construction be decided by assuming that the land had not been acquired and the Division Bench of the High Court rightly set aside the order passed by him.

The reasons assigned by the Division Bench of the High Court for holding that the acquired land cannot be released under Section 143 of the 1950 Act and the only source for release of the acquired land can be traced in Section 48 of the 1894 Act is consistent with the law laid down by this Court.

The special leave petition is accordingly dismissed. The petitioner shall pay costs of Rupees one lakh to respondent No.1 for thrusting unwarranted litigation upon it.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

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ITEM NO.8/1

COURT NO.7

SECTIONXI

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

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.7839 OF 2007

(from the judgment and order dated 28.3.2007 in Special
No.433 of 2002 of the HIGH COURT OF JUDICATURE AT ALLAHABAD)

Appeal

PREM LATA & ANOTHER

Petitioner(s)

VERSUS

NEW OKHLA INDUSTRIAL DEVELOPMENT
AUTHORITY & OTHERS

Respondent(s)

(With prayer for interim relief and office report)
Contempt Petition(C) No.145/2011 in SLP(C) No.7839/2007
(with appln(s) for exemption from filing OT)

Date: 11/10/2011 These Petitions was called on for hearing today.

CORAM :

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

For Petitioner(s) Mr. Amit Sharma, Adv.
Mr. Rahul Jain, Adv.
Mr.Kunal Cheema, Adv.
Mr. Anupam Lal Das,Adv.(Not present)

For Respondent(s) Mr. Ravindra Kumar, Adv.

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

Feeling aggrieved by the judgment of the Division
Bench of the Allahabad High Court which allowed the Special
Appeal filed by respondent Nos. 1 to 3 and set aside the
order passed by the learned Single Judge in Writ Petition
No.15417 of 2000, Smt. Prem Lata, who is now represented by
her legal representatives, and her husband Lajja Ram Goel
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have filed this petition under Article 136 of the
Constitution.

Smt. Prem Lata and Lajja Ram Goel purchased half
portion of plots bearing Nos.1135, 1136-M and 1137 situated
in village Baraula, Tehsil Dadri, District Gautam Budh Nagar
by registered sale deed dated 1.9.1988.

After about five years, they filed an application
under Section 143 of the U.P.Zamindari Abolition and Land
Reforms Act, 1950 (for short, 'the 1950 Act') for declaring
the three plots as part of Abadi. The same was allowed by
Sub Divisional Magistrate vide order dated 30.08.1993.

Armed with the order of the Sub Divisional
Magistrate, the petitioners succeeded in persuading the
Secretary of the respondent No.1 to issue letter dated
23.9.1995 wherein the concerned officer mentioned that
Khasra Nos.1135, 1136 and 1137 were not included in the

proposal sent on 6.6.1994 for the acquisition of 254.92 acrs land of village Baraula, Tehsil Dadri, District Ghaziabad for planned industrial development.

In the meanwhile, the State Government acquired large junk of land including three Khasra numbers by issuing notification under Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (for short, 'the 1894 Act'), which was followed by declaration issued under Section 6 of the 1894 Act.

The applications made by the petitioners for entering their names in the revenue records by deleting the

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name of respondent No.1 was rejected by Tehsildar, Dadri vide order dated 16.3.2000. The application made by them for permission to raise construction was likewise rejected.

The petitioners then filed Civil Misc. Writ Petition No.15417 of 2000 which was allowed by the learned Single Judge along with Writ Petition No.15391 of 2000.

The Special Appeal filed by respondent Nos. 1 to 3 was allowed by the Division Bench of the High Court which relied upon the judgments of this Court in Smt. Sawarani vs. Inder Kaur, AIR 1996 SC 2823; Balwant Singh & Another vs. Daulat Singh & Others, AIR 1997 SC 2719; and Suman Verma vs. Union of India & Others, (2004) 12 SCC 57 and held that the mutation of a property in the revenue record does not create or extinguish title and that the writ petition filed by the petitioners for correction of mutation entries was not maintainable.

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

In our view, the reasons assigned by the Division Bench of the High Court for setting aside the order of the learned Single Judge are legally correct and the impugned judgment does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

As a sequel of this, the contempt petition is also dismissed.

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(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master