

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).13742/2011

(From the judgement and order dated 13/04/2011 in CMWP No. 34700/2010 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

HARI DAS AGARWAL AND ORS. Petitioner(s)

VERSUS

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

(With appln(s) for permission to place addl. documents on record and with prayer for interim relief and office report)
WITH SLP(C) NO. 13805 of 2011
(With appln.(s) for exemption from filing c/c of the impugned judgment and exemption from filing O.T. and with prayer for interim relief and office report)

Date: 16/05/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
(VACATION BENCH)

For Petitioner(s) Mr.U.U.Lalit, Sr.Adv.
Mr. Satya Mitra Garg,Adv.
Mrs.Manju Aggarwal, Adv.

Mr.Jawaharlal Gupta, Sr.Adv.
Mr. Piyush Sharma, Adv.

For Respondent(s) Mr.Rajiv Dutta, Sr.Adv.
Ms.Jyoti Saxena, Adv.
Mr. M.P. Shorawala,Adv.

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

These petitions are directed against order dated 13.04.2011 passed by the Division Bench of the Allahabad High Court whereby the writ petitions filed by the petitioners for grant of a declaration that the acquisition of their land will be deemed to

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have lapsed on account of non-passing of award within the period prescribed under Section 11A of the Land Acquisition Act, 1894 (for short, "the Act") were dismissed.

The petitioners are owners of the plots of land situated at village Sungrakh Bangar, Pargana and Tehsil Mathura, District Mathura. By Notification dated 13.07.2006 issued under Section 4(1) read with Section 17(1) and (4) the Government of Utta

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Pradesh proposed the acquisition of 67.829 hectares of land including the land of the petitioners for the Housing Scheme of Mathura-Vrindaban Development Authority. This was followed by declaration dated 26.7.2007 issued under Section 6 read with Section 17(1). Simultaneously, Collector, Mathura was authorised to take possession after 15 days of the issue of notice under Section 9(1) of the Act. Accordingly, possession of the acquired land was taken on 10.11.2007.

In the meanwhile, a batch of writ petitions with the title case Smt. Manju Lata Agarwal vs. State of Uttar Pradesh and others (Civil Writ Petition No.2251/2007) filed for quashing the acquisition proceedings were dismissed by the Division Bench of the Allahabad High Court vide its order dated 20.9.2007. SLP(C)No.18497 of 2007 filed against the order of the High Court was dismissed by this Court on 08.10.2007.

After three years, the petitioners filed fresh writ petitions for grant of a declaration that the acquisition proceedings will be deemed to have lapsed because of the respondents' failure to pass an award within two years from the date of last publication of the
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declaration issued under Section 6.

The Division Bench of the High Court, after a thorough consideration of the points urged before it, declined to entertain the petitioners' prayer.

We have heard Shri U.U.Lalit and Shri Jawaharlal Gupta, learned senior counsel appearing for the petitioners and carefully perused the record. Shri Lalit argued that the respondents' failure to pass an award should be treated as sufficient for quashing the acquisition proceedings more so because compensation was not offered to the petitioners in terms of Section 17(3A) of the Act. He further submitted that the judgment of this Court in

Satendra Prasad Jain and others vs. State of U.P. and others (1993)

4 SCC 369 referred to in the impugned order is distinguishable on facts.

Shri Jawaharlal Gupta, learned senior counsel submitted that the special leave petitions should be entertained because two contradictory orders have been passed by the coordinate Benches of the High Court. He referred to order dated 21.10.2010 passed in

Civil Miscellaneous Writ Petition No.57925 of 2008 Megh Singh vs.

State of U.P. and others whereby the acquisition proceedings

initiated under Section 4 read with Section 17 were quashed on the ground of violation of Section 11A and submitted that the issues

raised in these special leave petitions require consideration

because S.L.P.(C) No.4282/2011 filed by Aligarh Development

Authority against the order passed by the High Court in

Megh Singh's case has been entertained.

Shri Gupta also relied upon the

judgment of three Judge Bench in Yusufbhai Noormohmed Nendoliya

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vs. State of Gujarat and another (1991) 4 SCC 531 and argued that

failure of the competent authority to pass award within the time

prescribed under Section 11A is sufficient for grant of a

declaration that the acquisition has lapsed.

We have given serious thoughts to the arguments advanced by

the learned senior counsel but have not felt convinced. The

petitioners have not disputed that possession of the land was taken

on 10.11.2007. Therefore, mere non passing of an award within two

years cannot justify a declaration that the acquisition has lapsed.

A reading of the impugned order shows that majority of the land

owners have accepted the compensation.

Annexure CA-19 produced

before the High Court revealed that total area of the acquired land

is 67.829 hectares and the land owners of an area measuring 56.2905

hectares have accepted the amount of compensation.

Therefore, it

is not possible to accept the submission of the learned senior

counsel that there has been non-compliance of Section 17(3A).

The judgment in Yusufbhai Noormohmed Nendoliya's case (supra)

has no bearing on these petitions.

In that case, the land had not

been acquired under Section 4 read with Section 17 of the Act.

Therefore, the observations made in the judgment in the context of

Section 17 cannot be made basis for recording a finding that the

acquisition proceedings will be deemed to have lapsed due to non-

compliance of Section 11A.

In Satendra Prasad Jain's case (supra),

another three Judge Bench considered the question whether the

acquisition made under Section 4(1) read with Section 17(1) will be

deemed to have lapsed on the grounds that the award was not passed

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in terms of Section 11A and that compensation was not paid in terms

of Section 17(3A). After noticing the relevant statutory

provisions, the Court held:

"15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

16. Further, Section 17(3A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.

17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3A) required that

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it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated June 27, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."

The aforesaid judgment has been followed in *Awadh Bihari Yadav vs. State of Bihar* (1995) 6 SCC 31, *Pratap vs. State of Rajasthan* (1996) 3 SCC 1, *Allahabad Development Authority vs. Nasiruzzaman* (1996) 6 SCC 424 and *Government of A.P. vs. Kollutla Obi Reddy* (2005) 6 SCC 493.

In Civil Appeal No.3604 of 2011, *Banda Development Authority, Banda vs. Moti Lal agarwal and others*, decided on 26.4.2011, this Court considered the question as to what should be the mode of taking possession of the acquired land, referred to the earlier judgments in *Balwant Narayan Bhagde vs. M.D. Bhagwat* (1976) 1 SCC 700, *Balmokand Khatri Educational and Industrial Trust vs. State of Punjab* (1996) 4 SCC 212, *P.K. Kalburqi vs. State of Karnataka* (2005) 12 SCC 489, *NTPC vs. Mahesh Dutta* (2009) 8 SCC 339, *Sita Ram Bhandar Society vs. Govt. of NCT, Delhi* (2009) 10 SCC 501 and *Omprakash Verma vs. State of Andhra Pradesh* (2010) 13 SCC 158 and culled out the following principles:

i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

ii) If the acquired land is vacant, the act of the

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concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the

building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."

In the aforesaid judgment, the Court also relied upon the judgment in Satendra Prasad Jain vs. State of U.P.(supra) and other precedents on the subject and held that the acquisition proceedings cannot be deemed to have lapsed due to non-compliance of Section 11A of the Act.

In our view, the petitioners' case is squarely covered by the ratio of Satendra Prasad Jain v. State of U.P. (supra) and other judgments to which reference has been made hereinabove.

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In the result, the special leave petitions are dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master