

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.7307 OF 2013
(Arising out of SLP(C)No.17460 OF 2009)

MORADABAD DEVELOPMENT AUTHORITY

.....APPELLANT

VERSUS

STATE OF U.P. & ORS.

.....RESPONDENTS

O R D E R

Leave granted.

This appeal filed against order dated 19.02.2009 passed by the Division Bench of the Allahabad High Court dismissing the writ petition filed by the appellant deserves to be allowed on the short ground that the High Court passed the impugned order without adverting to factual matrix of the case and without considering the question whether the State Government could have invoked Section 48(1) of the Land Acquisition Act, 1894 (for short, 'the Act') for releasing the land of the private respondents after 14 years of the issue of declaration under Section 6(1) and 11 years of pronouncement of the award.

By notification dated 18.9.1991, issued under Section 4(1) read with Section 17 of the Act, the State Government proposed the acquisition of 22.005 acres land situated in the revenue village of Mau, Moradabad. After about 11 months, the State Government made declaration under Section 6(1) read with Section 17(4) of the Act. The Special Land Acquisition Officer passed award dated 10.2.1995. Thereafter, possession of the acquired land is said to have been handed over to the appellant and its name was mutated in the revenue records.

On 30.1.2004, i.e., after more than 12 years, a representation is said to have been made by Ishrat Samshad and four others for grant of exemption of 30 decimal land of Gata No.234 on the ground that the same was in their possession and they had not received compensation. The Vice-Chairman of the appellant opposed the prayer made in the name of Ishrat Samshad and others by stating that possession of the acquired land had already been delivered to the appellant and layout plan had also been prepared. However, the State Government brushed aside the objection of the appellant and issued notification dated 10.04.2006 for release of 30 decimal land.

The appellant challenged notification dated 10.04.2006 in Civil Miscellaneous Writ Petition No.36398 of 2006 which was dismissed by the Division Bench of the High Court. The Division Bench neither adverted to the factual matrix of the case nor considered the legal issues raised in the writ petition and dismissed the same by assuming that possession of the acquired land was still with the private respondents.

We have heard learned counsel for the parties and scrutinized the record. In our opinion, the order under challenge is liable to be set aside on the ground of non-consideration of the important issues raised by the appellant including the one relating to competence of the State Government to exercise power under Section 48(1) of the Act.

Shri P.H.Parekh, learned senior counsel appearing for respondent No.9 made efforts to persuade us to examine the issue raised in the writ petition on merits but we are not inclined to do so because that would result in depriving either party of its legitimate right to avail the remedy of appeal.

In the result, the appeal is allowed, the impugned order is set

aside and the matter is remitted to the High Court for fresh disposal of Civil Miscellaneous Writ Petition No.36398 of 2006. Interim order passed by this Court on 03.08.2009 shall remain operative till the disposal of the writ petition by the High Court.

As a sequel to disposal of the appeal, I.A.No.4 of 2013 is disposed of by giving liberty to the applicant to apply for impleadment in the writ petition pending before the High Court.

.....J.
(G.S.SINGHVI)

.....J.
(V. GOPALA GOWDA)

NEW DELHI;
AUGUST 29, 2013.

ITEM NO.12 COURT NO.2 SECTION XI

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(s).17460/2009

(From the judgement and order dated 19/02/2009 in CMWP No.36398/2006 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

MORADABAD DEVELOPMENT AUTHORITY Petitioner(s)
VERSUS
STATE OF U.P. & ORS. Respondent(s)

(With appln(s) for exemption from filing O.T. and impleadment and with prayer for interim relief and office report)

Date: 29/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. M.P. Shorawala, Adv.
Ms.Jyoti Saxena, Adv.

For Respondent(s) Mr.P.H.Parekh, Sr.Adv.
For RR No.9 Mr.Nasir Ahmed, Adv.
Mr. Mohan Pandey, Adv.
Mr.Vishal Parshad, Adv.

For State of U.P. Mr.Irshad Ahmad, AAG (U.P.)
Mr.Ashutosh Kr.Sharma, Adv.
Mr.Vinay Garg, Adv.
Mr. Gunnam Venkateswara Rao, Adv.

In I.A.4/13 Mr.W.Wasim A.Qadri,Adv.
Mr.Zaid Ali, Adv.
Mr.L.R.Singh, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order.

As a sequel to disposal of the appeal, I.A.No.4 of 2013 is also disposed of.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)