

1.

Neutral Citation No. - 2023:AHC:186711-DB

Court No. - 21

Case :- WRIT - C No. - 21621 of 2023

Petitioner :- Rajendra Kumar And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sanjay Kumar Mishra

Counsel for Respondent :- C.S.C.,Ankur Agarwal,Kaushalendra Nath Singh

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Donadi Ramesh, J.

1. The personal affidavit of respondent No.3 filed in compliance of our previous order is taken on record.

2. Heard Sri Shiv Kumar Mishra holding brief of Sri Sanjay Kumar Mishra learned counsel for the petitioners, Sri Rajeev Gupta, learned Additional Chief Standing Counsel for the State-respondents and Sri Ankur Agarwal for respondent No.5. With consent of counsel for the respondents, the instant petition is being disposed of finally as they state that they are already in receipt of instructions from the respondents and do not intend to file any affidavit.

3. The prayer made in the instant petition is for quashing of the order dated 04.03.2023 passed by Additional District Magistrate (Land Acquisition), Gautam Budha Nagar by which the representation of the petitioners for expunging the name of NOIDA from the revenue records and entering their name in place of NOIDA, has been rejected and for a writ of mandamus directing the respondents to mutate their name in the revenue records over Khasra No. 517M area 0.3290 Hectare, Khasra

2.

No.518M area 0.1520 hectare, Khasra No. 519 area 0.1640 hectare, Khasra No. 520 area 0.1640 hectare of the Revenue Village Salarpur Khadar Pargana & Tehsil Dadari District Gautam Budh Nagar.

4. The aforesaid land of the petitioners was acquired under the provisions of the Land Acquisition Act, 1894 (for short 'the Act'). Notification under Section 4 read with Section 17(1) of the Act was issued on 11.09.2008 and notification under Section 6 was issued on 30.09.2009. The aforesaid notifications were subjected to challenge in **Rajendra Estate Pvt. vs. State of U.P. and others** (Civil Misc. Writ Petition No. 66604 of 2009) before this Court. The writ petition was dismissed by order dated 24.09.2010. However, in Civil Appeal No. 6353 of 2013, the Supreme Court reversed the judgement of this Court and quashed the notifications dated 11.09.2008 and 30.09.2009. The operative part of the judgement of the Supreme Court is as follows :-

"In the result, the appeal is allowed, the impugned order is set aside and Notifications dated 11.09.2008 and 30.09.2009 are quashed. However, it is made clear that the State Government shall be free to acquire the land by following the procedure prescribed under the Act."

5. The specific case of the petitioners is that the respondents had not made any award in respect of the land which was subject matter of the notifications, which were quashed by the Supreme Court. The petitioners represented to the respondents to expunge the name of NOIDA which came to be entered in pursuance of the notifications

3.

dated 11.09.2008 and 30.09.2009 issued under the Land Acquisition Act, 1894 as the aforesaid notifications had been quashed by the Supreme Court and to enter their name in place of NOIDA. However, by impugned order dated 04.03.2023, Additional District Magistrate (Land Acquisition), Gautam Budh Nagar has rejected the representation solely on the ground that petitioners were not party to the Civil Appeal No. 6353 of 2013 and would thus, not be entitled to benefit of the said judgement.

6. The contention of learned counsel for the petitioners is that once the notifications under Section 4 and 6 of the Land Acquisition Act were quashed by the Supreme Court, the same also did not survive in respect of the land of the petitioners. Moreover, the respondents have also not made any award in respect of the land of the petitioners which also leads to the conclusion that even the respondents have accepted the legal position that the benefit would accrue to all the tenure holders including the petitioners herein. It is also submitted that even if it is assumed that the notifications had not been quashed qua the petitioners, since no award has been made till date, therefore, by virtue of Section 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short referred to as 'the Act 2013'), the proceedings had lapsed.

7. Sri Rajeev Gupta, learned Additional Chief Standing Counsel appearing on behalf of the State-respondents and Sri Ankur Agarwal

4.

learned counsel appearing for respondent No.5 admit that no award has been made in respect of the land of the petitioners so far. Sri Ankur Agarwal, who has placed on record the instructions received by him from NOIDA Authority states that the NOIDA is following the judgement of the Supreme Court in **Rajendra Estate Pvt. Ltd.** and has initiated steps for fresh acquisition of the land of the petitioners and certain other land in respect of which the notifications were quashed, by sending a proposal on 19.01.2019 through Additional District Magistrate (Land Acquisition), Gautam Budh Nagar followed by reminders dated 07.04.2021 and 03.09.2021. However, no reply has been received from him so far.

8. Before we proceed further, it is relevant to note that the same notifications which were quashed by the Supreme Court in **Rajendra Estate Pvt. Ltd.** were later on upheld by the Full Bench of this Court in **Gajraj vs. State of U.P. and others**, and other connected cases reported in 2011(11) ADJ 1. The judgement in **Gajraj** was upheld by the Supreme Court in **Savitri Devi vs. State of U.P. and others, (2015) 7 SCC 21**, but it appears that the judgement in **Rajendra Estate Pvt. Ltd.** was not placed before the Supreme Court. The position which thus emerges is that on one hand there is a judgement which hold acquisition proceedings to be illegal but the latter judgement in **Savitri Devi** upholds the same notifications.

9. As the NOIDA Authority and the State have taken the stand that they have followed the judgement in **Rajendra Estate Pvt. Ltd.**, therefore no award was made, the consequence would be that the acquisition have lapsed, even if we assume for argument sake that the notifications under Section 4 and 6 did survive in respect of the other land, not covered by the judgement in **Rajendra Estate Pvt. Ltd.** Section 24(1)(a) of the Act, 2013 stipulates that where no award under Section 11 of the Land Acquisition Act, 1894, is made, then all provisions of the Act 2013 relating to determination of compensation would apply. Assuming that the notifications under Section 4 and 6 survive even after the judgement in Rajendra Estate Pvt. Ltd. in respect of the land of the petitioners but since no award was made under the old Act, therefore, Section 24(1)(a) would get attracted and the respondents were under mandate of law to make award under the provisions of the new Act. This would attract Section 25 of the Act 2013, which prescribes a time limit of twelve months failing which the entire acquisition proceedings are deemed to have lapsed.

10. In **Executive Engineer, Gosikhurd Project Ambadi, Maharashtra Vidarbha Irrigation Development Corporation vs. Mahesh and others, 2022(2) SCC 772**, the Supreme Court has held that although under Section 25 of Act 2013, the starting point of limitation is twelve months from the date of publication of notification under Section 19 of the Act 2013, but in the context of Section 24(1) of

6.

the Act 2013, there would be no notification under Section 19 of the Act 2013. The notification under Section 6 of the 1894 Act is no different and serves the same purpose. Consequently, it was held that in cases covered by clause (a) of Section 24(1) of the Act 2013, the limitation period for passing/making an award under Section 25 of the Act 2013 would commence from 1st January 2014, that is, the date when the Act 2013 came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1st January 2014. The conclusion drawn in this regard in paragraphs 20 and 40 of the said judgement are extracted below :-

“Para 20 A rational approach so as to further the object and purpose of Sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24(1) of the 2013 Act there would be no notification under Section 19, but declaration under Section 6 of the 1894 Act. When the declarations under Section 6 are valid as on 1st January 2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of Section 24(1)(a) of the 2013 Act, declarations under Section 6 of the 1894 Act are no different and serve the same purpose as the declarations under Section 19 of the 2013 Act. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1st January 2014, that is, the date when the 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1st January 2014.....”.

" Para 40(i) Section 25 of the 2013 Act would apply to the awards made and published under Section 24(1)(a) of the 2013 Act.

(ii) The limitation period for passing/making of an award under Section 24(1)(a) in terms of Section 25 of the 2013 Act would commence from 1st January 2014, that is, the date when the 2013 Act came into force.

(iii) Period during which the Court order would inhibit action on the part of the authorities to proceed with the making of the award would be executed while computing the period under Section 25 of the 2013 Act."

11. Concededly, in the instant case, more than two years has expired since the date of commencement of the Act 2013. It is not the case of the respondents that there was any impediment in pronouncing the award on account of any stay order by any court of law. Consequently, the proceedings have lapsed as the award was not made within twelve months from the date of commencement of the Act.

12. By the above reasoning also, we arrive at the same conclusion, that is, the acquisition having been rendered void in law.

13. As noted above, the NOIDA itself has taken the aforesaid stand as it has sent a fresh proposal for acquisition. It is stated to be pending before Additional District Magistrate (Land Acquisition), Gautam Budh Nagar. Therefore, we are of the opinion that the impugned order rejecting the prayer of the petitioners for mutation of their name in the revenue record in place of NOIDA, is not sustainable in law and is

8.

hereby quashed.

14. The writ petition is allowed. The respondents are directed to expunge the name of NOIDA from the revenue records in relation to the land of the petitioners and to mutate their name in place of NOIDA within four weeks from the date of receipt of true attested copy of the instant order.

15. However, the respondents are free to acquire the land by following the procedure prescribed under law as was also left open by the Supreme Court while deciding the case of **Rajendra Estate Pvt. Ltd.**

Order Date :- 26.9.2023
skv

(Donadi Ramesh, J.) (Manoj Kumar Gupta, J.)