

**Court No. - 3**

**Case :-** WRIT - C No. - 14226 of 2017

**Petitioner :-** Ramesh Chanra Gupta

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Vidya Prakash Singh

**Counsel for Respondent :-** C.S.C., Shivam Yadav

**Hon'ble Krishna Murari, J.**

**Hon'ble Ravindra Nath Kakkar, J.**

Heard Sri V.P. Singh, learned counsel for the petitioner and Sri Shivam Yadav for respondent no. 3, New Okhla Industrial Development Authority.

By means of this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a mandamus directing the respondents for providing additional compensation to the extent of 64.7% and developed abadi land to the extent of 10% of their acquired area in view of the Full Bench in the case of ***Gajraj Singh and others vs. State of U.P. and others; 2011(11) ADJ 1.***

Petitioner is owner and 'bhumidhar' with transferable rights of Khasra nos. 208, 201, 205/1-Ka, 207/1-Ka, 200, 202 and 204, total area 1.4220 hectare situate in village Chotpur, Pargana Dadri, district Gautam Budh Nagar. The said plots were subject matter of acquisition by the State for planned development by Greater NOIDA. Notification under Section 4 of the Land Acquisition Act, 1894 (for short the 'Act') was issued on 24.07.2007 which was followed by a declaration under Section 6 of the Act on 17.03.2008. Award was made and the compensation determined was duly accepted by the petitioner.

It is admitted position that the land acquisition notification was not challenged by the petitioner.

The core question which arises for consideration in this petition is whether the benefit of the directions issued by the Full Bench in the case of ***Gajraj Singh (Supra)*** for providing additional compensation to the extent of 64.70% and developed abadi plot to the extent of 10% of the land acquired is liable to be extended to such tenure holders also whose land were not acquired by the notifications under challenge in the case of ***Gajraj Singh (Supra)***.

In the case of ***Gajraj Singh (Supra)***, various notifications issued under the Act acquiring different tracts of land situate in different villages were clubbed together. The Full Bench disposed of the writ petitions with the following directions :

*"481. As noticed above, the land has been acquired of large number of villagers in different villages of Greater Noida and Noida. Some of the petitioners had earlier come to this Court and their writ petitions have been dismissed as noticed above upholding the notifications which judgments have become final between them. Some of the petitioners may not have come to the Court and have left themselves in the hand of the Authority and State under belief that the State and Authority shall do the best for them as per law. We cannot lose sight of the fact that the above farmers and agricultures/owners whose land has been acquired are equally affected by taking of their land. As far as consequence and effect of the acquisition it equally affects on all land losers. Thus land owners whose writ petitions have earlier been dismissed upholding the notifications may have grievances that the additional compensation which was a subsequent event granted by the Authority may also be extended to them and for the aforesaid, further spate of litigation may start in so far as payment of additional compensation is concerned. In the circumstances, we leave it to the Authority to take a decision as to whether the benefit of additional compensation shall also be extended to those*

with regard to whom the notifications of acquisition have been upheld or those who have not filed any writ petitions. We leave this in the discretion of the Authority/State which may be exercised keeping in view the principles enshrined under Article 14 of the Constitution of India.

482. In view of the foregoing conclusions we order as follows:

1. The Writ Petition No. 45933 of 2011, Writ Petition No. 47545 of 2011 relating to village Nithari, Writ Petition No. 47522 of 2011 relating to village Sadarpur, Writ Petition No. 45196 of 2011, Writ Petition No. 45208 of 2011, Writ Petition No. 45211 of 2011, Writ Petition No. 45213 of 2011, Writ Petition No. 45216 of 2011, Writ Petition No. 45223 of 2011, Writ Petition No. 45224 of 2011, Writ Petition No. 45226 of 2011, Writ Petition No. 45229 of 2011, Writ Petition No. 45230 of 2011, Writ Petition No. 45235 of 2011, Writ Petition No. 45238 of 2011, Writ Petition No. 45283 of 2011 relating to village Khoda, Writ Petition No. 46764 of 2011, Writ Petition No. 46785 of 2011 relating to village Sultanpur, Writ Petition No. 46407 of 2011 relating to village Chaura Sadatpur and Writ Petition No. 46470 of 2011 relating to village Alaverdipur which have been filed with inordinate delay and laches are dismissed.

2(i) The writ petitions of Group 40 (Village Devla) being Writ Petition No. 31126 of 2011, Writ Petition No. 59131 of 2009, Writ Petition No. 22800 of 2010, Writ Petition No. 37118 of 2011, Writ Petition No. 42812 of 2009, Writ Petition No. 50417 of 2009, Writ Petition No. 54424 of 2009, Writ Petition No. 54652 of 2009, Writ Petition No. 55650 of 2009, Writ Petition No. 57032 of 2009, Writ Petition No. 58318 of 2009, Writ Petition No. 22798 of 2010, Writ Petition No. 37784 of 2010, Writ Petition No. 37787 of 2010, Writ Petition No. 31124 of 2011, Writ Petition No. 31125 of 2011, Writ Petition No. 32234 of 2011, Writ Petition No. 32987 of 2011, Writ Petition No. 35648 of 2011, Writ Petition No. 38059 of 2011, Writ Petition No. 41339 of 2011, Writ Petition No. 47427 of 2011 and Writ Petition No. 47412 of 2011 are allowed and the notifications dated 26.5.2009 and 22.6.2009 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to deposit of compensation which they had received under agreement/award before the authority/Collector.

2(ii) Writ petition No. 17725 of 2010 Omveer and others Vs. State of U.P. (Group 38) relating to village Yusuffpur Chak Sahberi is allowed. Notifications dated 10.4.2006 and 6.9.2007 and all consequential actions are quashed. The petitioners shall be entitled for restoration of their land subject to return of compensation received by them under agreement/award to the Collector.

2(iii) Writ Petition No.47486 of 2011 (Rajee and others vs. State of U.P. and others) of Group-42 relating to village Asdullapur is allowed. The notification dated 27.1.2010 and 4.2.2010 as well as all subsequent proceedings are quashed. The petitioners shall be entitled to restoration of their land.

3. All other writ petitions except as mentioned above at (1) and (2) are disposed of with following directions:

(a) The petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for village Patwari in addition to the compensation received by them under 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for Authority to take a decision as to what proportion of additional compensation be asked to be paid by allottees. Those petitioners who have not yet been paid compensation may be paid the compensation as well as additional compensation as ordered above. The payment of additional compensation shall be without any prejudice to rights of land owners under section 18 of the Act, if any.

(b) All the petitioners shall be entitled for allotment of developed Abadi plot to the extent of

10% of their acquired land subject to maximum of 2500 square meters. We however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of abadi plot to the extent of 10% be also given to;

(a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and

(b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned at direction No.3.

5. The Greater NOIDA and its allottees are directed not to carry on development and not to implement the Master Plan 2021 till the observations and directions of the National Capital Regional Planning Board are incorporated in Master Plan 2021 to the satisfaction of the National Capital Regional Planning Board. We make it clear that this direction shall not be applicable in those cases where the development is being carried on in accordance with the earlier Master Plan of the Greater NOIDA duly approved by the National Capital Regional Planning Board.

6. We direct the Chief Secretary of the State to appoint officers not below the level of Principal Secretary (except the officers of Industrial Development Department who have dealt with the relevant files) to conduct a thorough inquiry regarding the acts of Greater Noida (a) in proceeding to implement Master Plan 2021 without approval of N.C.R.P. Board, (b) decisions taken to change the land use, (c) allotment made to the builders and (d) indiscriminate proposals for acquisition of land, and thereafter the State Government shall take appropriate action in the matter."

From the observations quoted above, it follows that Full Bench held that land holders who had challenged the notification would be entitled additional compensation to the extent of 64.7% in addition to the compensation already received. It was further held that land owners would also be entitled for allotment of developed abadi land to the extent of 10% of their acquired area. In paragraph 482(4) of the judgment, the Full Bench directed that the authority will take a decision as to whether the benefit of additional compensation and allotment of developed abadi plot to the extent of 10% is liable to be given to those land owners whose writ petitions had been dismissed earlier as well as those land owners who had not approached this Court and challenged the acquisition proceedings.

Based on the aforesaid directions, the respondent authority took a decision in its Board meeting of paying additional compensation to the extent of 64.7% to all land owners whether they had challenged the notifications or not. In terms of the directions contained in paragraph 482(4) of the judgment, NOIDA Authority took a decision not to allot abadi plot to the extent of 10% to those land owners who had not approached the writ court and had not questioned the acquisition proceedings. This decision of the authority was based on the fact that such huge area of developed abadi land was not available so as to allot it to all such persons who did not approach the Court.

The aforesaid decision rendered by the Full Bench in the case of **Gajraj Singh (Supra)** was subject matter of challenge before the Hon'ble Apex Court in the case of **Savitri Devi vs. State of U.P. & others, 2015(7) SCC 21**. The Full Bench judgement of this Court in the case of **Gajraj Singh (Supra)** was affirmed by the Hon'ble Apex Court. Thus, the directions of the Full Bench contained in paragraph 482(4) to the authority to consider payment of additional compensation and allotment of developed abadi plot to those land owners who had not

challenged the acquisition proceedings or whose writ petitions were earlier dismissed was affirmed. It may be relevant to quote the following from the judgement of the Hon'ble Apex Court in the case of **Savitri Devi (Supra)** relevant to the controversy raised in this petition :

*"46. Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5-A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the landowners, developments have taken in these villages and in most of the cases, third party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in Bondu Ramaswamy and Others (2010) 7 SCC 129 came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the landowners in the form of compensation as well as allotment of developed abadi land at a higher rate i.e. 10% of the land acquired of each of the landowners against the eligibility and to the policy to the extent of 5% and 6% of Noida and Greater Noida land respectively.*

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... ..

*56. Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution. However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/specific background and, therefore, it would not form precedent for future cases." (emphasis supplied)*

It is contended that when the benefit has been extended under the judgement to even such petitioners whose writ petitions were earlier dismissed, there is no rationale or justification to discriminate the petitioner on the ground that the acquisition under which their land was acquired was not subject matter of challenge. It is also submitted that the respondents being the instrumentality of the State should act fairly and denying the benefit to the petitioners of 64.7% additional compensation and 10% developed abadi plot is discriminatory and arbitrary, as such, writ of mandamus is liable to be issued commanding them to extend the same benefit to the petitioners as well.

In effect, the contention of the learned counsel for the petitioner is that irrespective of the fact whether notification issued under section 4(1) of the Act acquiring the land of the petitioner was put to challenge or not, he is entitled to be given the same benefit as has been extended to identically situated persons who challenged the notification.

A perusal of the Full Bench judgement in the case of **Gajraj Singh (Supra)** goes to show that in order to save the acquisition proceedings, direction for payment of additional compensation and allotment of developed abadi plot was issued in peculiar facts and circumstances, particularly, the fact that extensive development had taken place even though the Full Bench found that opportunity to file objection under Section 5A Act had been wrongly denied to the tenure holders. However, the benefit extended to the land owners in lieu of saving the acquisition proceedings, even though the same were found to be illegal and liable to be quashed, was restricted to the acquisition proceedings challenged before it.

However, the question of extending the benefits of additional compensation and allotment of developed abadi plot to such land holders whose challenge to the land acquisition notification already stood dismissed or such land holders who did not approach this Court challenging the land acquisition notification though the said notifications were subject matter of challenge before the Full Bench, was left open to be decided by the authority. As already noticed above, in pursuance of the aforesaid directions, the authority took a decision in its Board meeting for making payment of additional compensation to the extent of 64.7% to all land holders

whether they had put challenge to the land acquisition notifications or not. However, in respect of allotment of abadi plot to the extent of 10%, the authority took a decision not to extend the benefit to such land holders who had not approached the writ court and had not questioned the acquisition proceedings.

In the case in hand, the petitioner's land was acquired by means of notification dated 24.7.2007. Equally admitted fact is that the petitioner accepted the award and did not come forward to challenge the land acquisition proceedings. Not only that, notification dated 24.07.2007 whereunder Khasra nos. 208, 201, 205/1-Ka, 207/1-Ka, 200, 202 and 204, total area 1.4220 hectare of the petitioner situate in village Chotpur, Pargana Dadri, district Gautam Budh Nagar. was acquired was not subject of matter of challenge before the Full Bench.

In view of above facts and discussions, it is clear that the relief which was granted by the Full Bench in the case of **Gajraj Singh (Supra)** affirmed by the Hon'ble Apex Court in the case of **Savitri Devi (Supra)** cannot be made applicable to the acquisition proceedings which were not assailed and were not subject matter of adjudication before the Full Bench in the case of **Gajraj Singh (Supra)**. Thus, we are of the considered opinion that the ratio dicendi of the Full Bench does not stand attracted in the case of the petitioner and he cannot claim parity with those tenure holders who were before the Full Bench in the case of **Gajraj Singh (Supra)**. The petitioner is thus not entitled to the relief claimed in this petition.

Writ petition fails and accordingly stands dismissed.

However, in the facts and circumstances, there shall be no order as to costs.

**Order Date :- 6.4.2017**

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