

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 19100 of 2022

Nasir Ali and others Petitioners

Through :- Mr. Surya Prakash Dubey, Advocate

v/s

State of U.P. and others Respondents

Through :- Mr. Hare Ram, Standing Counsel for Respondent
Nos.1 and 2 and Mr. Dharmendra Singh Chauhan,
Advocate for Respondent Nos.3 and 4

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE J.J. MUNIR, JUDGE**

ORDER

1. The three petitioners have come together and instituted the present writ petition, because their distinct and individual causes of action are not different. The causes of action of the petitioners involve common question of facts and law, prompting them to combine against the same set of respondents, against whom they want relief. In substance, the petitioners' prayer is two fold: firstly, that the respondents be commanded by a *mandamus* not to demolish the petitioners' houses, standing over their respective plots of land until consideration of their case by the respondents, canvassed through a representation dated 31.05.2022; and secondly, an order restraining the respondents not to interfere with the

petitioners' peaceful possession over their respective plots of land, except in accordance with law.

2. The facts giving rise to this petition are these: Nasir Ali, the first petitioner is a resident of Village Harungala, Post R.K. University, District Bareilly and currently resides at Village Dohariya, Tehsil and District Bareilly. The second petitioner, Smt. Hasina is a resident of Village Chandpur Bichpuri, Tehsil and District Bareilly and presently resides at Village Dohariya, Tehsil and District Bareilly. The third petitioner, Smt. Taslim Jahan is a resident of Jagatpur, Nai Basti, Talab, Bareilly and presently also resides at Village Dohariya, Tehsil and District Bareilly. The first petitioner purchased a plot measuring 83.61 square meters, located in Village Dohariya from one Anwar Miyan son of Mohd. Taqi Painter through a registered sale deed dated 07.05.2018. The said plot is located in *Khasra* No. 58 of the village. It was purchased by Anwar Miyan from the original recorded owner of the land, Naresh son of Gendan Lal through a registered sale deed dated 18.01.2004. The second petitioner, Smt. Hasina purchased a plot measuring 167.22 square meters, also part of *Khasra* No. 58 of Village Dohariya from Naresh son of Gendan Lal, through a registered sale deed dated 17.11.2011. The third petitioner, Smt. Taslim Jahan purchased a plot measuring 83.61 square meters, part of *Khasra* No. 60 of Village Dohariya from Riyasat Ali and Anis Ahmad, sons of Mohd. Bachchan, through a registered sale deed dated

30.07.2019. Riyasat Ali and Anis Ahmad, vendors of petitioner No. 3, had in turn purchased the land from one Lal Bahadur through a registered sale deed dated 11.10.2010. It is asserted that the name of Lal Bahadur continues to be recorded in the revenue records, relating to *Khasra* No. 60.

3. It is the petitioners' case that they are in continuous and uninterrupted possession of their respective plots, whereon they have raised their residential houses in the years 2018, 2011 and 2019, respectively. The petitioners live in the said houses along with their families. It is also asserted that the name of Naresh, son of Gendan Lal, the original owner of *Khasra* No. 58, whose rights ultimately petitioners Nos. 1 and 2 had purchased, continues to be recorded in the revenue records. The land comprising the plots of each of the three petitioners, two located in *Khasra* No. 58 and one in *Khasra* No. 60 of Village Dohariya, Tehsil and District Bareilly, shall hereinafter be collectively referred to as 'the land in dispute'.

4. It is common ground between parties that a notification under Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') was issued on 3rd June, 2004. The aforesaid notification under Section 4(1) was followed by a declaration under Section 6(1) read with Section 17(4) of the Act of 1894, which came to be issued by the State Government on 4th July, 2005. The two notifications aforesaid were issued by the State

Government in order to acquire land for the purpose of development of a residential colony, going by the name *Ram Ganga Nagar Awasiya Yojna, Bareilly*. The aforesaid project was to be executed by the Bareilly Development Authority, Bareilly (for short, 'the B.D.A.'). It is to be noticed here that *vide* the two notifications issued under the Act of 1894, a total area of 259.361597 hectares of lands in the Villages of Ahirola, Chandpur Bichpuri, Manohar alias Ramnagar and Dohariya came to be acquired by the State Government for the purpose of development by the B.D.A. It is also not in issue between parties that the two land acquisition notifications under reference were challenged before this Court through a number of writ petitions, which were tagged and heard together with Writ-C No. 17542 of 2010, Sharawan Kumar and others v. State of U.P. and others as the leading case. The said batch of writ petitions was heard and dismissed *vide* judgment and order dated 06.09.2016 passed by this Court. This Court upheld the acquisition. The judgment of this Court dated 06.09.2016, above referred, was challenged by means of a petition for Special Leave to Appeal being SLP (Civil) No. 25147 of 2016, Piyush Kumar Agarwal and others v. State of U.P. and others. The Special Leave Petition was also dismissed by the Supreme Court *vide* order dated 09.01.2017. The parties, therefore, appear to be *ad idem* that the acquisition of the land in dispute was upheld up to the Supreme Court.

5. The Special Land Acquisition Officer (Joint Organization), Bareilly proceeded to make an award in respect of the acquired land at Village Dohariya, Tehsil and District Bareilly. It is the petitioners' case that possession of the land in dispute has not been taken from any of them nor any compensation paid. The residential houses still stand on the land in dispute and the petitioners are living there peaceably. The petitioners also hold electricity connections in their names and pay water tax to the Municipal Authorities. The petitioners say that on 15.03.2022, and thereafter in quick successions, on 20.04.2022 and 26.04.2022, some officials of the B.D.A. came over to their homes and harassed the petitioners with the intention of extorting money. They threatened the petitioners with illegal demolition of their houses. The petitioners were told that their houses would be demolished by the B.D.A.

6. It is in the aforesaid circumstances that the present writ petition has been instituted.

7. Heard Mr. Surya Prakash Dubey, learned Counsel for the petitioners, Mr. Hare Ram, learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2 and Mr. Dharmendra Singh Chauhan, learned Counsel appearing on behalf of respondent Nos. 3 and 4.

8. It is submitted by the learned Counsel for the petitioners that the B.D.A. and its officials are acting in a most arbitrary and

illegal manner. They are out to demolish the petitioners' houses without recourse to legal proceedings for the purpose. It is emphasized that the land was acquired for the *Ram Ganga Nagar Awasiya Yojna, Bareilly*, and at present the petitioners' houses stand over the land in dispute, including its vicinity. It is urged that the purpose of acquisition was to provide residential apartments and not to destroy preoccupied houses. It is suggested that in case the constructions raised are not found in accordance with law, the petitioners' case be considered for compounding. It is also said that compensation, which has not been paid, may also be directed to be adjusted against the compounding charges for the constructions. It is urged that the petitioners' constructions, that may not be found to be in violation of the law, may be exempted from acquisition on the ground that the residential houses already exist there and the purpose of the acquisition was ultimately to provide housing. It is also pointed out that the purpose of acquisition has failed since the proposed residential scheme has not at all been implemented. The development, if any, has taken place in chunks with no uniformity.

9. It is argued that the B.D.A. have no business under the circumstances to demolish the petitioners' houses and forcibly take possession of their land, which they have lawfully purchased through registered sale deeds. It is also urged that though the State Government had acquired the land for the purpose of development as

a residential colony, the B.D.A. is now commercializing the scheme and constructing schools, shopping malls, parks and allotting plots for industries, after illegally taking possession of properties of poor villagers and ordinary men, like the petitioners. It is emphasized that the land in dispute with the individual plots of the three petitioners are very small, whereon their humble dwelling units exist. Demolishing those dwelling units and taking forcible possession, amounts to depriving the petitioners of their right to roof and shelter, besides an infraction of their constitutional right under Article 300-A of the Constitution.

10. The learned Standing Counsel appearing for the State and Mr. Chauhan, learned Counsel appearing for the B.D.A. have strongly opposed the motion to admit this petition to hearing. They submit in one voice that this petition is misconceived. It is argued that the land in dispute is acquired land of the B.D.A., where the petitioners are rank-trespassers and encroachers. It is within the respondents' right to expel them and abate the encroachment.

11. We have carefully considered the submissions made at the Bar and perused the record.

12. We must at once say that the submissions advanced by the petitioners are only to be noticed and rejected. Each of the three petitioners or their immediate predecessors-in-title have secured the land in dispute through registered sale deeds, all of which were

executed after 3rd June, 2004, that is to say, the date on which the notification under Section 4(1) read with Section 17(1) of the Act of 1894 was issued. There is hardly any cavil about the law that any sale deed of a land executed by its owner after the issue of a notification under Section 4(1) of the Act of 1894 is void. It confers no title on the transferee. At best, it may afterwards confer on the transferee a right to stake his claim to compensation in the owner's stead. No interest whatsoever is created in the transferee by a conveyance executed after the issue of a notification under Section 4(1) of the Act of 1894.

13. Here, what this Court finds is that the notification under Section 4(1) of the Act of 1894 was issued invoking the provisions of Section 17(1) and the declaration under Section 6(1) invoked Section 17(4). The two notifications aforesaid were issued on 3rd June, 2004 and 4th July, 2005. Since Section 17(1) was invoked, it is evident that the inquiry under Section 5-A of the Act of 1894 was dispensed with and immediate possession was taken on ground of urgency. The land in dispute along with all those covered by the notification and the declaration under Sections 4(1) and 6(1), respectively, would stand vested in the State, free from all encumbrances. The sale deeds, therefore, that the petitioners claim to confer title on them, are all void. The petitioners' act in raising constructions over the land in dispute, which is acquired land of the State, entrusted to the B.D.A. for development, is a naive and reckless act. The petitioners cannot

capitalize on their own wrong by invoking equities to create title, where nothing but a void transaction stares them in the face.

14. In regard to the validity of sale deeds executed after issue of a notification under Section 4(1) of the Act of 1894, that is followed by a declaration under Section 6(1), reference may be made to the decision of the Supreme Court in **Meera Sahni v. Lieutenant Governor of Delhi and others, (2008) 9 SCC 177**. In **Meera Sahni** (*supra*), it has been held:

17. When a piece of land is sought to be acquired, a notification under Section 4 of the Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. A number of decisions of this Court have recognised the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.

18. In *U.P. Jal Nigam v. Kalra Properties (P) Ltd.* [(1996) 3 SCC 124] it was stated by this Court that : (SCC p. 126, para 3)

“3. ... Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well-settled law that after the notification under Section 4(1) is published in the gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property.”

19. In *Sneh Prabha v. State of U.P.* [(1996) 7 SCC 426] it is stated as under : (SCC p. 430, para 5)

“5. ... It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder.”

20. The said proposition of law was also reiterated in *Ajay Krishan Shinghal v. Union of India* [(1996) 10 SCC

721] and *Star Wire (India) Ltd. v. State of Haryana* [(1996) 11 SCC 698].

15. Though, there is already a reference to it in the decision of the Supreme Court in **Meera Sahni** (*supra*), the *locus classicus* on the point is the enunciation of the law in **U.P. Jal Nigam, Lucknow through its Chairman and another v. Kalra Properties (P) Ltd., Lucknow and others, (1996) 3 SCC 124**, where it has been held:

3. ... It is settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification under Section 4(1) was published on 24-3-1973, possession of the land admittedly was taken on 5-7-1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17(4) was exercised dispensing with the enquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification under

Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6 was published.

16. This Court finds that in the garb of relief sought against demolition and dispossession, otherwise than in accordance with law, read together with the pleas raised in the writ petition, what the petitioners intend to do, is to efface the acquisition that has attained finality and its validity affirmed right up to the Supreme Court. For one, the petitioners cannot be permitted to do in a direct and insidious manner what they cannot achieve directly under the law.

17. That apart, the petitioners being purchasers subsequent to the issue of a notification under Section 4(1) of the Act of 1894, followed by a declaration under Section 6(1), where land has vested in the State under Section 17(2), free from all encumbrances. They cannot be permitted to question that acquisition in an indirect manner, as they are not permitted to challenge it directly, being purchasers

subsequent to the issue of Section 4(1) notification. About the right of purchasers, who take under conveyances after the issue of a notification under Section 4(1) of the Act of 1894, the Supreme Court repelled the existence of any such rights in subsequent purchasers in **Shiv Kumar and another v. Union of India and others, (2019) 10 SCC 229**, reiterating a steady line of precedent. **Shiv Kumar** (*supra*) was also a case where an unauthorized colony had come up and its members, who were the petitioners, claimed that they were in actual physical possession of the subject land despite passing of the award. The Government of N.C.T. had provisionally regularized the unauthorized colony, after the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force w.e.f. 01.01.2014. The settlers in the unauthorized colony claimed that since the State or their Authorities never took actual physical possession, the acquisition had lapsed. It was in the context of the aforesaid facts that in **Shiv Kumar**, it was held by their Lordships of the Supreme Court:

8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the policy.

18. In aid of the second relief, which the petitioners claim, it is argued that the petitioners are in settled possession and have

constructed residential houses, where their families live. The respondent Authorities, including the B.D.A., are threatening them with forcible dispossession, otherwise than in accordance with law. It is argued that even a trespasser in settled possession cannot be dispossessed or evicted, except in accordance with law. This injunction of the law, in the submission of the learned Counsel for the petitioners, applies in a case where the trespasser is sought to be dispossessed by the true owner as well. For a general proposition of law, the submission may be sound, but in case of the land acquisition by the State, where after the issue of notifications under Section 4(1) of the Act of 1894 read with Section 17(1) and a declaration under Section 6(1) read with Section 17(4), land has vested under Section 17(2) in the State, free from all encumbrances, every person in occupation of such land is a trespasser, liable to ejectment by the State. The aforesaid principle has been authoritatively laid down by the Constitution Bench of the Supreme Court in **Indore Development Authority v. Manoharlal and others**, AIR 2020 SC 1496. A Division Bench of this Court in **Shyoraj Singh and another v. State of U.P. and others**, 2021 SCC OnLine All 873, following the principle laid down by the Supreme Court in **Indore Development Authority** (*supra*) has held:

“20. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme

Court in Indore Development Authority Vs. Manoharlal and others AIR 2020 SC 1496. It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical

possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on

the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner." (emphasis supplied)

19. In the present case, the petitioners are nobodies so far as the land in dispute is concerned. They are trespassers on State land, of which possession had already been taken in proceedings for acquisition. Merely because in the large tract of land acquired for a big scheme, some remote corner has remained unguarded, would not entitle the petitioners to claim on the basis of void sale deeds, even the semblance of a right based on possession. The assertion of the right to possession over such acquired land of the State is inherently so illegal that it cannot be regarded as a settled possession of the occupier, which can only be removed through the judicial process.

20. In the circumstances, there is no force in this writ petition. It **fails** and is **dismissed**.

Allahabad
29.07.2022
Anoop

(J.J. Munir, J.)

(Rajesh Bindal, C.J.)

Whether the order is speaking :

Yes/No

Whether the order is reportable :

Yes✓/No