A NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY

v.

HARKISHAN (DEAD) THROUGH LRS. & ORS.

(Civil Appeal No. 5170 of 2010)

B JANUARY 27, 2017

[A. K. SIKRI AND R. K. AGRAWAL, JJ.]

Land Acquisition Act, 1894 – s. 11A – Land acquisition proceedings – Notification u/s. 4 r/w. s. 17 issued in January 1991 – Declaration u/s. 6 r/w. s. 17 in January 1992 – Land-owners (respondents) challenged emergency provision – During pendency of the litigation possession of the land was taken over by the State and award (dated August 17, 1996) was passed – Finally the acquisition was upheld by Supreme Court – However, liberty was granted to file representation – Land-owners filed representation for release of Land u/s. 48(1) which was rejected by State by order dated December 3, 1999 – Land-owners again challenged the order dated December 3, 1999 – This challenge also failed as the cases were dismissed by Supreme court in the year 2003 – Thereafter, in 2004, land-lords challenged the award dated August 7, 1996 on the ground that it was passed beyond the period of limitation as prescribed u/s. 11A – High Court agreed to the plea and directed to issue fresh notifications u/ss. 4 and 6 and thereafter to make award u/s. 11 in order to cure the defect – On appeal, held:The land-lords having failed to challenge the award in the Ist and IInd round of litigation, the petition filed in the year 2004 challenging the award, is barred by the doctrine of laches and delays as also by the provisions under Or. II, r. 2 CPC – Also as the urgency provision u/s. 17 was upheld by Supreme court and possession of the land was taken u/s. 17(1), s. 11A would not get attracted – Code of Civil Procedure, 1908 – Or. II, r. 2 – Delay/Laches.

G **Allowing the appeal, the Court**

HELD: 1. In the first round of litigation, when acquisition was challenged by the respondents, they failed in their attempt. At that time, not only declaration under Section 6 of the Act had been passed, the writ petitions were also dismissed by the High Court on August 24, 1995. Thereafter, possession of the land

was taken on November 18, 1995. Subsequently, the award was also passed on August 17, 1996. This Court passed the judgment dated July 15, 1998 thereby affirming the judgment of the High Court. No doubt, event of the passing of the award dated August 17, 1996 had taken place during pendency of the appeals in this Court. Fact remains that this was not questioned at the time of arguments advanced by the parties. The entire gamut of controversy was gone into by the court and the only permission which was given to the respondents was to make a suitable representation before the appropriate State authorities under Section 48(1) of the Act. [Para 10] [581-E-G]

2. When the respondents made the representation, it was dealt with and rejected by the State Government vide order dated December 03, 1999. At that time, award had been passed. However, in the second round of writ petitions preferred by the respondents, they chose to challenge only Office Order dated December 03, 1999 vide which their representation under Section 48 of the Act had been rejected and it never dawned on them to challenge the validity of the award on the ground that the same was not passed within the prescribed period of limitation. Thus, in the second round of litigation also, the respondents failed in their attempt, inasmuch as, this Court put its imprimatur to the rejection order dated December 03, 1999 vide its judgment dated March 12, 2003. At that time, even the possession of land had been taken. If the respondents wanted to challenge the validity of the award on the ground that it was passed beyond the period of limitation, they should have done so immediately and, in any case, in the second round of writ petitions filed by them. Filing fresh writ petition challenging the validity of the award for the first time in the year 2004 would, therefore, not only be barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908, but would also be barred on the doctrine of laches and delays as well. [Para 11] [581-H; 582-A-D]

3. There is yet another serious infirmity in the impugned judgment. In the instant case, the land was acquired by invoking urgency clause under Section 17 of the Act and dispensing with the requirement of filing the objections under Section 5A of the Act. This action on the part of the Government was upheld by

A **this Court in the first round of litigation. Once possession is taken under Section 17(1) of the Act, Section 11A is not even attracted and, therefore, acquisition proceedings would not lapse on failure to make award within the period prescribed therein. [Para 12] [582-E-F]**

B *Satendra Prasad Jain & Ors.* v. *State of Uttar Pradesh & Ors.* **(1993) 4 SCC 369 : 1993 (2) Suppl. SCR 336;** *Awadh Bihari Yadav & Ors. v. State of Bihar & Ors.* **(1995) 6 SCC 31 : 1995 (3) Suppl. SCR 197 – relied on.**

C *Ved Prakash & Ors.* v. *Ministry of Industry, Lucknow & Anr.* **(2003) 9 SCC 542 – referred to.**

Case Law Reference

(2003) 9 SCC 542	**referred to**	**Para 1**
1993 (2) Suppl. SCR 336	**relied on**	**Para 12**
D **1995 (3) Suppl. SCR 197**	**relied on**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5170 of 2010.

From the Judgment and Order dated 30.06.2009 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 55426 of
E 2004.

Ravindra Kumar, Adv. for the Appellant.

R. P. Bhatt, Sr. Adv., Aditya Sharma, Anil Kumar Sharma, K. S. Rana, Advs. for the Respondents.

The Judgment of the Court was delivered by

F **A. K. SIKRI, J.** 1. This appeal has a chequered history. Matter pertains to the acquisition of the land of the respondents, which was acquired way back in the year 1990. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') proposing to acquire the land of the respondents, as well as some other persons,
G was issued on January 05, 1991. It was followed by declaration under Section 6 issued on January 07, 1992. Even award, thereafter, was pronounced on August 17, 1996. The acquisition proceedings were challenged by the respondents by filing writ petition in the High Court, which was dismissed by the High Court, and the appeal there against was dismissed by this Court also on July 15, 1998. In this first round of
H litigation, while dismissing the appeal, this Court left open a little window

for the respondents herein by permitting them to make a representation to the State Government under Section 48(1) of the Act. The respondents, thus, made a representation for release of the land, which was considered by the State Government. The State Government, however rejected the same vide orders dated December 03, 1999. Second round of litigation started when this rejection was again challenged by the respondents by filing writ petitions. This time again attempts of the respondents failed as the writ petitions were dismissed by the High Court and those orders were affirmed by this Court vide judgment dated March 12, 2003, reported as ***Ved Prakash & Ors.*** v. ***Ministry of Industry, Lucknow & Anr.***[1].

2. Undeterred by the aforesaid dismissals, the respondents started third round of litigation by approaching the High Court by way of another writ petition filed in the year 2004. This time, the validity of the award passed in the year 1996 was challenged on the ground that the said award was not passed within the period of two years as prescribed under Section 11A of the Act and, therefore, acquisition proceedings lapsed. In this attempt, the respondents have succeeded before the High Court inasmuch as vide its judgment dated June 30, 2009, the High Court has accepted the aforesaid contention of the respondents thereby allowing the writ petitions and directing the Collector to issue fresh notifications under Sections 4 and 6 of the Act and thereafter make an award under Section 11 of the Act which, according to the High Court, will cure the defect that has crept in on account of delay in making the award beyond the period prescribed under Section 11 of the Act. It is this judgment which is assailed by the New Okhla Industrial Development Authority, at whose behest the land in question was acquired.

3. Neat question of law which is raised is that the petition filed in the year 2004, after having lost twice, was not even maintainable as it suffered from unexplained delays and latches and was also barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908. For proper appreciation of this submission, we recount the events in some detail hereinafter.

4. A notification dated January 05, 1991 was issued under the provisions of Section 4(1) read with Section 17 of the Act, invoking urgency provisions, to acquire about 790 bighas (496 acres) of land in village Chalera Banger, Tehsil Dadri, District Gautam Budh Nagar, including the land belonging to the respondents herein, i.e. khasra No.

[1](2003) 9 SCC 542

279 (measuring 2-13-10 bigha) and khasra No. 280 (measuring 2-6-10 bigha). The aforesaid notification was followed by issuance of declaration dated January 07, 1992 under Section 6 read with Section 17 of the Act. The respondents herein filed a writ petition before the High Court of Judicature at Allahabad challenging the acquisition on the ground that the emergency provision, thereby depriving them of their right to file objections under Section 5A of the Act, was illegal. This writ petition, along with certain other writ petitions, was dismissed by the High Court by common judgment dated August 24, 1995. Possession of the acquired land was taken over by the State Government and handed over to the appellant on November 18, 1995.

5. Aggrieved with the judgment dated August 24, 1995, the respondents approached this Court by filing Special Leave Petition (Civil) No. 1874 of 1996, in which leave was granted and numbered as Civil Appeal No. 3263 of 1998. While this appeal was pending, in which there was no stay, the State Government went ahead to complete the acquisition process. An award dated August 17, 1996, in respect of all the acquired land vide declaration dated January 07, 1992, was passed by the Additional District Magistrate (Land Acquisition), Ghaziabad.

6. The aforesaid appeal came up for final hearing in the year 1998. By a common judgment dated July 15, 1998 passed in a batch of civil appeals, lead case being Civil Appeal No. 3261 of 1998 (which batch included Civil Appeal No. 3263 of 1998 that was filed by respondent Nos. 1 to 3 herein), this Court, while dismissing the appeals, granted liberty to the respondents to file a representation under Section 48(1) of the Act. Thus, acquisition was upheld, but at the same time, permission to file a representation was given. Relevant portion of the order, which is material for deciding this appeal, is reproduced below:

> "Section 4 Notification in the present cases is dated 5th January, 1991. It is followed by Section 6 Notification dated 7th January, 1992. In between the appellants went to the High Court and got status quo order since 31st March 1992. Results is that till today even after the expiry of 6 years and more, the land acquisition proceedings qua the appellants' lands have remained stagnant. It is also to be kept in view that the impugned notification under Section 6 of the Act was issued for the purpose of planned development of District Ghaziabad through NOIDA and by the said notification, 496 acres of land spread over hundreds of plot

numbers have been acquired. Out of 494.26 acres of land under acquisition, only the present appellants owning about 50 acres, making a grievance about acquisition of their lands have gone to the Court. Thus, almost 9/10th of the acquired lands have stood validly acquired under the land acquisition proceedings and only dispute centers round 1/10th of these acquired lands owned by the present appellants. It is a comprehensive project for the further planned development in the district. We are informed by learned senior counsel Shri Mohta for NOIDA that a lot of construction work has been done on the undisputed land under acquisition and pipelines and other infrastructure have been put up. That the disputed lands belonging to the appellants may have stray constructions spread over different pockets of his huge complex of lands sought to be acquired. That if notification under Section 4(1) read with Section 17(4) is set aside qua these pockets of lands then the entire development activity in the complex will come to a grinding halt and that would not be in the interest of anyone.

...That we cannot permit upsetting the entire apple cart of acquisition of 500 acres only at the behest of 1/10th of landowners whose lands are sought to be acquired. We may also keep in view the further salient fact that all the appellants have filed references for additional compensation under Section 18 of the Act."

7. Respondent Nos. 1 to 3, pursuant to the liberty granted by this Court, filed representation dated August 28, 1998 before the State Government. This representation was ultimately decided vide order dated December 03, 1999. By that order, the State Government rejected the representation filed by respondent Nos. 1 to 3.

8. The respondents, and other similarly situated persons, whose representations had met the same fate, felt dissatisfied with the rejection. As a result, a number of writ petitions were filed by the erstwhile land owners challenging the order dated December 03, 1999 passed by the State Government whereby their representations had been rejected. All the writ petitions were clubbed together and dismissed by a common order passed by the High Court. Dissatisfied landowners, whose lands were acquired, again approached this Court. A number of special leave petitions were filed challenging the aforesaid dismissal of the writ petitions wherein leave was granted. Civil Appeal No. 999 of 2001 was treated

A as the lead case. All the civil appeals, special leave petitions and the contempt petitions were dismissed by this Court by a common judgment dated March 12, 2003.

9. A perusal of this judgment would show that focus of this Court was on the validity of Office Order dated December 03, 1999 passed by
B the State Government vide which representations of the respondents and others under Section 48(1) of the Act had been dismissed and after examining the matter at length, this Court concluded that there was no infirmity in the order of the State Government rejecting the representations on the ground that it was not feasible to release the lands of the respondents and others from acquisition under Section 48(1)
C of the Act. The court referred to its earlier judgment dated July 15, 1998 wherein challenge to the acquisition laid by the respondents was repelled but an opportunity was given to the respondents to make a representation under Section 48(1) of the Act. Extensively quoting from the earlier judgment, the Court found that all the aspects which the State Government
D was supposed to consider, as per the directions given in the earlier judgment, were duly dealt with and considered by the State Government and there was no reason to interfere with the same. We would also like to reproduce some of the discussion contained in the said judgment:

> "19. The 1976 Act provides for the constitution of an authority
E for the development of certain areas in the State. A notification was published in the Gazette dated 17-4-1976 under the Act declaring the area comprising the villages mentioned in the Schedule called the "New Okhla Industrial Development Area". Village Chalera Bangar is one of the villages included in the Schedule and the lands in question are in the same village. The function of
F the authority under Section 6 of the Act is to acquire the land in the notified area by the agreement or through the proceedings under the Land Acquisition Act, to prepare a plan for the development of the industrial area, to provide infrastructure for industrial, commercial and residential purposes, to regulate the
G erection of buildings and setting up of the industries and to lay down the purpose for which a particular site or plot of land shall be used, namely, for industrial, commercial or residential or for any other specified purpose in such area. Section 8 authorises the authority to issue directions such as the alignment of buildings on any site, the restrictions and conditions in regard to open spaces
H to be maintained in and around buildings and height and character

of buildings and the number of residential buildings that may be erected on any site. Section 9 imposes a ban on erection of buildings in contravention of regulations. As is evident from this section, no person could erect or occupy any building in the industrial development area in contravention of any building regulation made under the Act. Regulation 4 of the Building Regulations shows that no person shall erect any building without obtaining a prior building permit thereof from the Chief Executive Officer in the manner provided.

20. There is no material to show that the constructions and structures said to be existing in the *abadi* area were existing prior to the notification issued on 17-4-1976 as no village map or other documents show the same in the large area of *abadi* claimed by the appellants. Certain provisions of the U.P. Land Revenue Act are already extracted above. Looking to the said provisions, it is clear that field-books, maps, record-of-rights and annual register had to be maintained. There could be resurvey and revision of map and records. The argument was advanced on behalf of the appellants that *abadi* existing long back could not continue to be the same; over the years when families grew, population increased, necessarily corresponding *abadi* area also increased; new constructions and structures came up. If that be so then the same thing could have been reflected in the records and the map maintained under the 1901 Act. Similarly, it is not shown that such structures or constructions were put up with the permission as required under the provisions of the Act and the Regulations. Section 10 of the Act even provides for ordering proper maintenance of site or building if it appears to the authority that the condition or use of any site or building is prejudicially affecting or is likely to affect the proper planning or the maintenance in any part of the industrial development area or the interest of the general public thereto requires that the authority could direct the transferee or occupier of the site or building to take steps within the period specified to maintain a site or building in such manner as may be specified. When the large area of about 496 acres of land was acquired for planned development of industrial area called the New Okhla Industrial Development Area and the object and purpose of the Act is sought to be achieved as provided in the Act, the authority has power to acquire the lands and to give

A necessary direction or take steps to maintain and regulate the sites and buildings in the area. The State authority having elaborately considered the evidence available on record found that the claim of the appellants as to *abadi* is spread over in a scattered manner in a large area apart from being whether that was an *abadi* or not and whether it was existing prior to the issue B of notification in 1976. Having regard to all aspects, the authority found that it was not feasible to release the lands of the appellants from acquisition under Section 48(1) of the Act. As is evident even from the survey report that *boongas*, *bitooras*, thatched huts, thatched sheds etc. occupied a small area but were spread C over a long distance. The photographs show that large area is open land even in the so-called *abadi* area, so an individual assuming could claim some area as *abadi* that could be a small area appurtenant to his residential house or a farm house or any cattle-shed etc. but the appellants claim for large area covering few acres of land as *abadi*, is untenable. All the more so, when it D could not be legitimately claimed or asserted that they were regularly living in those structures of very *kacha* type. The nature of the construction, their age from its appearance etc. give an impression that they were hurriedly planted at later dates only to circumvent the land acquisition proceedings.

E 21. As already stated above, the competent authority in compliance with the directions given by this Court in *Om Prakash case* in the light of observations made therein having considered the evidence placed on record and after hearing the parties, recorded findings and held that it was not feasible to release the lands of the appellants F from acquisition. From the impugned judgment of the High Court it is clear that the High Court kept in view the scope and judicial review in dealing with the impugned order dated 3-12-1999, passed by the competent authority. In *CIT* v. *Mahindra and Mahindra Ltd.* [(1983) 4 SCC 392] this Court, while stating that by now, the parameters of the Court's power of judicial review of administrative G or executive action or decision and the grounds on which the Court can interfere with the same are well settled, proceeded to say further in para 11, thus: (SCC p. 402)

> "11.... Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of H persons, properly informed, could come to or has been arrived

at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same."

In the same decision it is also stated that in examining the validity of an order in such matters the test is to see whether there is any infirmity in the decision-making process and not the decision itself. From this decision it is also clear that when choices are open to the authority it is for that authority to decide upon the choice and not for the court to substitute its view. The High Court keeping in view the scope of judicial review in such matters considered the respective contentions raised before it. On finding that the authority passed the impugned order dated 3-12-1999 on proper consideration of the evidence placed before it and after hearing the parties in the light of the directions given and observations made by this Court in the case of *Om Prakash* did not consider it appropriate to interfere with the impugned order. We do not find any good or valid reason so as to interfere with the impugned judgment of the High Court affirming the order passed by the authority."

10. It becomes clear from the above that in the first round of litigation, when acquisition was challenged by the respondents, they failed in their attempt. At that time, not only declaration under Section 6 of the Act had been passed, the writ petitions were also dismissed by the High Court on August 24, 1995. Thereafter, possession of the land was taken on November 18, 1995. Subsequently, the award was also passed on August 17, 1996. This Court passed the judgment dated July 15, 1998 thereby affirming the judgment of the High Court. No doubt, event of the passing of the award dated August 17, 1996 had taken place during pendency of the appeals in this Court. Fact remains that this was not questioned at the time of arguments advanced by the parties. Even for a moment it is accepted that the subject matter of the civil appeals in the first round of litigation in this Court was validity of notifications issued under Sections 4 and 6 of the Act, what is to be borne in mind is that the entire gamut of controversy was gone into and the only permission which was given to the respondents was to make a suitable representation before the appropriate State authorities under Section 48(1) of the Act.

11. More importantly, when the respondents made the

representation, it was dealt with and rejected by the State Government vide order dated December 03, 1999. At that time, award had been passed. However, in the second round of writ petitions preferred by the respondents, they chose to challenge only Office Order dated December 03, 1999 vide which their representation under Section 48 of the Act had been rejected and it never dawned on them to challenge the validity of the award on the ground that the same was not passed within the prescribed period of limitation. As noted above, in the second round of litigation also, the respondents failed in their attempt, inasmuch as, this Court put its imprimatur to the rejection order dated December 03, 1999 vide its judgment dated March 12, 2003. At that time, even the possession of land had been taken. If the respondents wanted to challenge the validity of the award on the ground that it was passed beyond the period of limitation, they should have done so immediately and, in any case, in the second round of writ petitions filed by them. Filing fresh writ petition challenging the validity of the award for the first time in the year 2004 would, therefore, not only be barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908, but would also be barred on the doctrine of laches and delays as well.

12. There is yet another serious infirmity in the impugned judgment. In the instant case, the land was acquired by invoking urgency clause under Section 17 of the Act and dispensing with the requirement of filing the objections under Section 5A of the Act. This action on the part of the Government was upheld by this Court in the first round of litigation. Once possession is taken under Section 17(1) of the Act, Section 11A is not even attracted and, therefore, acquisition proceedings would not lapse on failure to make award within the period prescribed therein. This is so held in ***Satendra Prasad Jain & Ors.*** v. ***State of Uttar Pradesh & Ors.***[2], which view is affirmed in ***Awadh Bihari Yadav & Ors.*** v. ***State of Bihar & Ors.***[3]

13. For all these reasons, we find fault with the approach of the High Court in entertaining the writ petitions, which were clearly barred in law, and allowing the same. The appeal is, accordingly, allowed setting aside the judgment of the High Court.

No costs.

Kalpana K. Tripathy

Appeal allowed.

[2] (1993) 4 SCC 369

[3] (1995) 6 SCC 31