

[2024] 3 S.C.R. 585 : 2024 INSC 210

U.P. Avas Evam Vikas Parishad

v.

Chandra Shekhar And Ors.

(Civil Appeal No. 3855 of 2024)

05 March 2024

[Surya Kant* and K.V. Viswanathan, JJ.]

Issue for Consideration

High Court, if justified in quashing the acquisition in respect of the Khasra on the ground that the tenure holders were not accorded opportunity to submit objections against the proposed acquisition in accordance with s. 29 of the UP Avas Evam Vikas Parishad Adhinyam, 1965.

Headnotes

UP Avas Evam Vikas Parishad Adhinyam, 1965 – s. 29 – Issuance of pre-acquisition notice to tenure-holders – Requirement of – Public notice issued by the Board regarding Housing Scheme, however no notice served on respondents who claimed to be tenure holders but served in favour of other, who claims to be the tenure-holder – High Court quashed the acquisition in respect of Khasra on the ground that the respondent-tenure holders were not accorded opportunity to submit objections against the proposed acquisition in accordance with s. 29 resulting in denial of the valuable right of objections available to them, and non-observance thereto, vitiates the acquisition qua the plot – Correctness:

Held: The 1965 Act mandates issuance of a pre-acquisition notice to such individuals whose land/property falls within the purview of the proposed Scheme – The Board, at best, could have claimed deemed or substantial compliance of audi alteram partem rule provided that Khasra of respondent was expressly notified in the public notice but those were conspicuously missing – No individual notices served on the respondents since they were not recorded as tenure-holders of the subject land immediately before the issuance of a notice u/s. 29 – In the absence of any public or individual notice proposing to acquire Khasra the respondents were denied an effective opportunity to submit objections to oppose the acquisition in question – Impugned

* Author

Digital Supreme Court Reports

judgment holding that the acquisition process qua the Khasra stands vitiated on account of non-compliance with the prescribed procedure, not interfered with – Furthermore, the tenure-holders/ owners of Khasra was still under the acquisition process when 2013 Act came into force, thus, entitled to be paid compensation in accordance with s. 24(1) of the 2013 Act – Appropriate Government to dispense with the procedure contemplated under Chapter II of the 2013 Act since the acquired land has already been utilized for the notified public purpose and would delay the assessment and payment of compensation to the true tenure holders – Prescribed Authority to accord an opportunity to submit objections u/s. 15 of the 2013 Act and, thereafter, pass an award as per s. 24(1) of the 2013 Act – Whosoever is found entitled to the compensation after the decision in the title suit, the appellant-Board would release the compensation to them within the stipulated period – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s. 24(1). [Paras 16, 17, 19-21]

List of Acts

U.P. Avas Evam Vikas Parishad Adhinyam, 1965; Land Acquisition Act, 1894; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

List of Keywords

Acquisition; Tenure holders; Opportunity to submit objections against the proposed acquisition; Pre-acquisition notice; Audi alteram partem rule; Non-compliance with the prescribed procedure; Compensation.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.3855 of 2024

From the Judgment and Order dated 07.10.2015 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WP No.97 of 2014

Appearances for Parties

Vishwajit Singh, Sr. Adv., Abhishek Kumar Singh, Pankaj Singh, Ms. Vibha Bhat, Ms. Anamika Yadav, Advs. for the Appellant.

Sanyat Lodha, Lavam Tyagi, Shaurya Sahay, Shobhit Dwivedi, Advs. for the Respondents.

U.P. Avas Evam Vikas Parishad v. Chandra Shekhar And Ors.**Judgment / Order of the Supreme Court****Judgment****Surya Kant, J.**

1. Leave granted.
2. The appellant-U.P. Avas Evam Vikas Parishad (Board) is aggrieved by the judgment dated 07.10.2015, passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, whereby acquisition in respect of Khasra No.673 (mentioned as plot No. 673 in the impugned judgment), situated within the revenue estate of village Hariharpur, Tehsil and District Lucknow, has been quashed on the ground that the respondent-tenure holders were not accorded opportunity to submit objections against the proposed acquisition in accordance with Section 29 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (in short, 'the 1965 Act').
3. The 1965 Act was enacted by the State legislature through Act No.1 of 1966 and has, thereafter, been re-enacted by U.P. Act No.30 of 1974, to provide for the establishment, incorporation and functioning of a Housing and Development Board in Uttar Pradesh.
4. Section 28 of the 1965 Act contemplates that when any Housing or Improvement Scheme is framed, the Board shall prepare a notice depicting the boundaries of the area comprised in that Scheme; the details of the land proposed to be acquired and the date by which the objections to the Scheme are to be invited. Such notice is required to be published weekly for three consecutive weeks in the Gazette and two daily newspapers having circulation in the area comprised in the Scheme, at least one of which shall have to be a Hindi newspaper.
5. Section 29 of the 1965 Act provides that the Board shall serve a notice in such form on such persons or classes of persons in the prescribed manner for executing the Scheme.
6. Section 30 of the 1965 Act enables the person on whom a notice under Section 29 has been served to make an objection in writing to the Board against the Scheme or the proposed acquisition or levy, etc. After consideration of such objections, and when the prior sanction from the State Government is obtained, the Scheme shall be notified under Section 32 of the 1965 Act, and it shall come into force therefrom.

Digital Supreme Court Reports

7. Section 55 of the 1965 Act confers power to acquire land for implementation of the Scheme under the Act, and it reads as follows:

“55. Power to acquire land.- (1) Any land or any interest therein required by the Board for any of the purposes of this Act, may be acquired under the provisions of the Land Acquisition Act, 1894 (Act No. I of 1894), as amended in its application to Uttar Pradesh, which for this purpose shall be subject to the modification specified in the Schedule to this Act.

(2) If any land in respect of which betterment fee has been levied under this Act is subsequently required for any of the purposes of this Act, such levy shall not be deemed to prevent the acquisition of the land under the Land Acquisition Act, 1894 (Act No. I of 1894).”

8. In purported exercise of its powers under Section 28 of the Act, the appellant-Board issued a notice on 17.07.2004 (Annexure P-1) giving a description of the Scheme called as the Sultanpur Road Bhoomi Vikas Evam Grahsthan Yojna at Lucknow. The said notice vividly described the lands/properties which were to fall within the Scheme, the map of the area, particulars of the Scheme and the details of the land which was proposed to be acquired was notified to be available in the Office of the Housing Commissioner. It was further stipulated that the objections to the Scheme shall also be received by the Office of the Housing Commissioner (Land Acquisition Section) within 30 days from the date of publication of the said notification.
9. It is a matter of record that Khasra No.673 at village Hariharpur did not find any mention in the aforesaid notification dated 17.07.2004.
10. The case of the respondents is that Khasra Nos.672 and 673 were mutated in their favour on 10.10.1999, as can be seen from the entries in the revenue record, a copy whereof has been placed on record as Annexure P.6.
11. It is also not in dispute that the tenure holding/ownership of Khasra No.673 was later on changed in favour of one Chandrika S/o Harishchandra, Guruprasad S/o Jawahir, and the entries to this effect were reportedly made in the revenue record on 13.08.2003 and 09.02.2004.

U.P. Avas Evam Vikas Parishad v. Chandra Shekhar And Ors.

12. While the respondents pleaded that the entries in the revenue record were altered fraudulently behind their backs in collusion and connivance with Chandrika and others and the statutory procedure envisaged to make such changes was not followed, the case of the Board is that the notice proposing to acquire the subject-land was issued to Guruprasad, in whose favour the entries subsisted on the date immediate prior to the issuance of Notification under Section 28 of the 1965 Act. In other words, the appellant's stand is that they were not obligated to serve any notice on the respondents as they were not amongst the interested persons as per the entries in the revenue record, and that such a notice was duly served on the persons who were recorded as the tenure-holders as per the revenue record.
13. The question whether the appellant-Board ought to have served individual notice upon the respondents under Section 29 of the 1965 Act, has been answered by the High Court vide the impugned judgment in favour of the respondents for two sets of reasons. Firstly, the High Court, with regard to the entries made in favour of Chandrika and others, has observed as follows:

"It has been brought to our notice by the learned Standing Counsel, on the basis of enquiry, which has been held by the respondents, that surprisingly the name of Chandrika has been found to be recorded in khatas of three villages to the extent of area 9.64 hectares. The entry of Chandrika in respect of khatas of three villages is not to be confined to this extent only, but the authorities are obliged to make further enquiry in respect of such entries prevailing in Sadar Tehsil in district Lucknow.

It is to be noted that not only Chandrika whose name has been recorded in clandestine manner, but there may be other persons, whose names have also been recorded in the like manner and the poor farmers do not come to know that some name has been entered on the eve of acquisition and that too without any knowledge to them. If the name of any person has to be recorded in the khata, then it is incumbent upon the Tehsildar to give notice and hear the recorded tenure holder personally and thereafter make any change in the khata of the recorded tenure holder.

Digital Supreme Court Reports

The novel method adopted in entering the name of Chandrika in so many khatas itself throws doubt upon the manner in which, the entry in the name of Chandrika has been made. This is a serious matter and it requires thorough enquiry.

The Secretary, Board of Revenue himself or his nominee was directed to conduct an enquiry into the matter. The Secretary, Board of Revenue or his nominee does not mean that the Secretary, Board of Revenue will not supervise the enquiry personally. It is incumbent upon the Secretary, Board of Revenue to supervise the enquiry personally and call the officers and also to scrutinize the facts and the evidence 'collected by the officers and thereafter take action in accordance with law.'

[Emphasis applied]

14. Thereafter, the High Court proceeded on the premise that the effect of no notice having been served on the respondents entails denial of the very valuable right of objections available to them. That limited opportunity is akin to Section 5A of the Land Acquisition Act, 1894, and non-observance thereto, vitiates the acquisition process *qua* plot No. 673 and the same cannot sustain.
15. We have heard learned Senior Counsel appearing on behalf of the appellant as well as learned counsel appearing on behalf of the respondents and carefully perused the material placed on record.
16. The 1965 Act mandates issuance of a pre-acquisition notice to such individuals whose land/property falls within the purview of the proposed Scheme. On a liberal reading to such provision, the appellant, at best, could have claimed deemed or substantial compliance of *audi alteram partem* rule provided that Khasra No. 673 was expressly notified in the public notice dated 17.07.2004. Unfortunately, Khasra Nos. 672 and 673 are conspicuously missing in the public notice dated 17.07.2004. No individual notices were indisputably served on the respondents for the reason that they were not recorded as tenure-holders of the subject land immediately before the issuance of a notice under Section 29 of the 1965 Act. In the absence of any public or individual notice proposing to acquire Khasra No.673, we find merit in the cause espoused on behalf of the respondents.

U.P. Avas Evam Vikas Parishad v. Chandra Shekhar And Ors.

17. Nevertheless, we are equally conscious of the fact that there is a combative title dispute between the respondents on one hand, and Chandrika and others on the other. We, therefore, decline to hold or declare the respondents to be the true tenure-holders of the subject land. All that we say is that in the absence of any public or individual notice proposing to acquire Khasra No. 673, the observations made by the High Court to the extent that the respondents have been denied an effective opportunity to submit objections to oppose the acquisition in question, appears to be correct and based upon the record. That being so, the impugned judgment to the extent it holds that the acquisition process *qua* Khasra No.673 stands vitiated on account of non-compliance with the prescribed procedure, does not call for any interference.
18. Having held so, the question that falls for further consideration is as to what should be the future course of action for the appellant-Board, so that neither the public interest to utilize the subject-land for the Scheme that has been substantially developed is frustrated nor the true tenure holders are deprived of the adequate compensation for their land. It may be seen from Section 55 of the 1965 Act that the compensation for the acquired land was required to be assessed in accordance with the provisions of the Land Acquisition Act 1894, which stood repealed w.e.f. 01.01.2014 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”). Section 55 of the 1965 Act cannot be given effect unless it is declared by way of a deeming fiction that instead of 1894 Act which now stands repealed, the compensation shall be assessed in accordance with the provisions of the 2013 Act. We hold accordingly. Since the acquisition could not attain finality before 01.01.2014, we are of the considered opinion that the Acquiring Authority/Board are obligated to pay compensation to the ex-propriated owners, as is to be assessed in accordance with Section 24(1) of the 2013 Act.
19. Consequently, we hold that the tenure-holders/owners of Khasra No.673, which was still under the acquisition process when 2013 Act came into force, shall be entitled to be paid compensation in accordance with Section 24(1) of the 2013 Act.
20. We may hasten to add that the procedure prescribed under Chapter-II of the 2013 Act, mandates to carry out the Social Impact Assessment

Digital Supreme Court Reports

Study in certain situations. The adherence to such a cumbersome procedure in the instant case will be an exercise in futility for two reasons. Firstly, a major part of the acquired land has already been utilized for the notified public purpose. Secondly, the study referred to above, will delay the assessment and payment of compensation to the true tenure-holders/owners of Khasra No.673. Consequently, we direct the appropriate Government to dispense with the procedure contemplated under Chapter II of the 2013 Act. The Prescribed Authority is permitted to accord an opportunity to submit objections under Section 15 of the 2013 Act and, thereafter, pass an award as per Section 24(1) of the 2013 Act. The Prescribed Authority/Collector shall give notice to the respondents as well as to other persons who claim interest in Khasra Nos.672 and 673, within a period of six weeks. The objections, if any, shall be filed within four weeks and on consideration of such objections, the Collector shall be obligated to pass an award on or before 30.06.2024.

21. We further direct that the awarded amount shall be kept in a nationalized bank in the FDR where it can fetch the maximum rate of interest. The FDR shall be renewed from time to time till the title dispute between the respondents and other claimants is resolved by a court of competent jurisdiction. Whosoever is found entitled to, the appellant-Board shall release the compensation to them as early as possible but not later than four weeks after the final adjudication of the title dispute.
22. The parties shall maintain *status quo* regarding the nature of the land, creation of third-party rights or any encumbrance over the subject-land until the award is passed, as directed above. On the passing of the award and deposit of the compensation amount, the appellant-Board shall be at liberty to utilize the said land for the notified Scheme and/or for any other public purpose in accordance with law.
23. Ordered accordingly.
24. The appeal stands disposed of in the above terms. No order as to costs.