



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.8083 of 2011

**U.P. AVAS EVAM VIKAS PARISHAD THROUGH
HOUSING COMMISSIONER & ANR.**

... Appellant (s)

Versus

NOOR MOHAMMAD & ORS.

... Respondent(s)

WITH

Civil Appeal No.8072 of 2011

J U D G M E N T

V. Ramasubramanian, J.

1. U.P. Avas Evam Vikas Parishad, which is a statutory authority of the State of Uttar Pradesh for housing and development, has come up with the present appeals, challenging the orders of the High Court of Judicature at Allahabad, setting aside a Notification cancelling a

previous Notification issued under Section 48(1) of the Land Acquisition Act, 1894 for the release of the land of the respondents herein from acquisition.

2. We have heard Shri Vishwajit Singh, learned counsel appearing for the appellants and Mr. Krishnam Mishra and Mr. Anand Varma, learned counsel appearing for the respondents.

3. A Notification dated 25.07.1964 was issued by the State Government under Section 36 of the United Provinces Town Improvement Act, 1919 (hereinafter referred to as "*the U.P. Act*") for the acquisition of land of a total extent of acre 1.85 in Village Mirzapur, Tehsil-Sadar, District Gorakhpur for the public purpose of providing housing/residential accommodation. This notification is akin to Section 4(1) of the Land Acquisition Act, 1894.

4. The above notification was followed by another notification dated 17.06.1967 under Section 42 of the U.P. Act, which is equivalent to Section 6 of the Land Acquisition Act, 1894. It appears that the emergency clause was invoked and the enquiry dispensed with, before the declaration was made. The possession of the entire land except one

piece bearing plot No.292/2 measuring an extent to 0.028 acres, was taken over by the State Government on 24.07.1970 and an award was also passed on 30.03.1971.

5. From the year 1983, the land owners made attempts to get the lands released from acquisition, but fortune fluctuated in a see-saw battle.

6. Eventually by a Notification dated 7.04.2003 issued in exercise of the powers conferred by Section 49(1) of the U.P. Avas Evam Vikas Parishad Adhinyam, 1965 read with Section 48(1) and 49(1) of the Land Acquisition Act, 1894, the land was exempt from acquisition. But within a couple of years, the Government issued another notification dated 15.09.2005 cancelling the notification dated 07.04.2003 on the ground that the land owners had played fraud by making false representations, while seeking the release of the land.

7. Challenging the said Notification dated 15.09.2005, the original land owners filed a writ petition in W.P (C) No.64727 of 2005 and the purchaser of one part of the land from the original owners filed another writ petition in W.P No.50151 of 2008. Both these writ petitions were

allowed by Division Bench of the High Court by an Order dated 31.08.2010, holding that once the acquired land is released from acquisition, by way of Notification, the Government can reclaim the land only by initiating a fresh process of acquisition. Aggrieved by the said order, the Housing and Development Authority has come up with the above appeals.

8. Before we address the rival contentions for consideration, it may be necessary to bring on record the background in which the original Notification dated 07.04.2003 under Section 48(1) of the Land Acquisition Act was passed and the reasons for the issue of the latter notification dated 15.09.2005 cancelling the previous one. This background as well as the reasons are stated very pithily in the second Notification dated 15.09.2005 and, hence, it is reproduced as follows:

“ Land in Village Mirzapur/Betiahtata, Gorakhpur was acquired under the provisions of U.P. Town Improvement Act, 1919 for the Betiahata South Scheme , Gorakhpur of the U.P. Avas Evam Vikas Parishad and later on 8.6.1965, it was transferred to the U.P. Avas Evam Vikas Parishad for planned development of the area. The State Government issued Notification u/s 17 of the Land Acquisition Act, 1894 vide no. 93Ka/37-19(1)(16)-66 dated 13.1.1970.

An application dated 28.2.83 along with a letter addressed to the Chief Secretary dated nil in connection with Khasra no. 257 (rakba

0.51 Acre), Khasra no. 254 (rakba 0.30 Acre) , Khasra no. 255/1 (rakba 0.18 Acre), Khasra no. 255/2 (rakba 0.18 Acre), Khasra no. 291/1 (rakba 0.31 Acre), Khasra no. 291/2 (rakba 0.31 Acre), Khasra no. 292/1 (rakba 0.03 Acre), Khasra no. 292/2 (rakba 0.03 Acre) total rakba 1.85 acre land, sent by applicants Smt. Shakuran w/o Late Rojan, Shri Noor Mohd., Shri Shafti Mohd., Shri Ramjan Mohd. all sons of sons of Late Salarbux Mohalla Tetiahata South (New Avas Vikas Colony), Post Office Sadar, Dist. Gorakhpur was received by the Government on 23.1.84 by which the applicants brought to the notice of the government that the aforesaid plots belonged to them which have been acquired by the Parishad. There exist 17 or 18 cemeteries of their forefathers and they earn their livelihood by way of vegetation/horticulture on the said land. There are 20 members in their family and none of them have their own house and that they would live there by making houses on the land. After due consideration on the applications received from applicants, the government issued G.O. no. 472/37-2-85-3 HB(108)/83 dated 30.01.85 thereby exempting the aforesaid khasras from acquisition with the condition that the landowners will not sell out the land. Following the aforesaid G.O., the Housing Commissioner, U.P. Avas Evam Vikas Parishad wrote a letter to the government requesting for cancellation of the aforesaid G.O. dated 30.01.85 and accordingly, Amendment Order dated 27.6.85 was issued by the Government whereby cancelling the earlier G.O. dated 30.1.85 in which it was specifically mentioned that the layout map of the Yojana may be modified, while excluding the Mazaars, if any exists on the disputed land.

Subsequent to the aforesaid order, the applicants filed writ petition no. 19757 /1985 in the Hon'ble High Court. In compliance of the orders of the Hon'ble High Court, after giving serious thoughts to the joint representation of the applicants, the same was rejected on 21.12.91. The applicants again filed writ petition no. 5002/1992 before the Hon'ble High Court in which the Hon'ble High Court passed "dismissed as withdrawn" order on 19.5.99.

Thereafter, the government reviewed the representations submitted by the applicants from time to time. In their representations, the applicants had primarily stated that they were poor unemployed persons. None of their family members was in government service. The aforesaid land was the only source of their livelihood and they

earn their livelihood by way of vegetation/horticulture on the said land. There are 20 members in their family and none of them have their own house and that they would live there by making houses on the land. Cemeteries of their forefathers exist on the land and as per the general policy of the Government, such land should not be acquired. In view of the facts contained in the representation and after due consideration, Notification no.1049/9-Aa-2-2003-3 HB (AB)/83 dated 7 April 1983 was issued for exempting Khasra no. 257 (rakba 0.51 Acre), Khasra no. 254 (rakba 0.30 Acre), Khasra no. 255/1 (rakba 0.18 Acre), Khasra no. 255/2 (rakba 0.18 acre), Khasra no. 291/1 (rakba 0.31 Acre), Khasra no.291/2 (rakba 0.31 Acre), Khasra no. 292/1 (rakba 0.03 Acre), Khasra no. 292/2 (rakba 0.03 Acre) total rakba 1.85 acre land from acquisition. After passing of the Notification, it came to the notice of the government from various sources that the aforesaid exempted land was being used for commercial purposes and the land-mafias were buying and selling the land after raising illegal constructions on it. In view of the complaints, inquiry was got conducted from the Housing Commissioner and the up-to-date status of the land was sought. The Housing Commissioner submitted his inquiry report thereby informed as under:-

- a) 1.00 Acre {out of total 1.17 Acre land of Khasra no. 254 (rakba 0.30 acre), khasra no. 255 (rakba 0.36 acre), khasra no. 257 (rakba 0.51 acre)} was sold out on 23.4.2003 through Agreement Deed.
- b) 5220 sq.ft. land from Khasra no. 255 was sold through registry on 29.4.2004 to Shri Shravan s/o Jaket, Dist. Deoria.
- c) 2370 sq.ft. land from Khasra no. 254 was sold through registry on 16.9.2004 to Shri Bajrang Prasad Gupta s/o Shri Mahavir Prasad.
- d) 9000 sq.ft. land from Khasra no. 254 and 255 was sold through registry on 21.9.2004 to Smt. Lalita Chhabaria v1/o Shri Hari Prasad Chhabaria.
- e) Entire rakba 0.51 of Khasra no. 257 was sold through registry n 16.9.2004 to Smt. Vartika Singh w/o Shri Krishna Singh and Shri Brijesh Kumar Singh s/o Shri Shiv Poojan Singh.

From the above, it is evident that the facts placed by the applicants before the Government, on the basis of which their land was released from acquisition vide Notification dated 7.4.2003, were misleading and false. The applicants are in the process of selling the land after dividing it in small plots and they neither using the land for earning their livelihood by way of doing vegetation nor for any other purpose. Therefore, after due consideration, the Governor of Uttar Pradesh has been pleased to approve cancellation of the aforesaid Notification no. 1049/9-Aa-2-2003-3 HB (AB)/83 dated 7 April, 1983 issued in respect of releasing the aforesaid land from acquisition.”

9. The main ground on which the High Court set aside the second Notification dated 15.09.2005 was that once a Notification is issued under Section 48(1) of the Land Acquisition Act, 1894, the land gets released from acquisition and that, therefore, the only way the State Government could retrieve the land is to initiate the process of acquisition afresh. This reasoning is based upon two premises, namely, **(i)** that while there is a provision under Section 48(1) of the Land Acquisition Act for the withdrawal of the land from acquisition, there is no provision in the Act for cancellation of a Notification under Section 48(1); and **(ii)** that once a Notification under Section 48 (1) of the Land Acquisition Act is issued, the land gets vested in the original owner and that therefore, divesting cannot take place without following the process

of acquisition as enunciated in the Statute.

10. But insofar as the first contention is concerned, Section 21 of the General Clauses Act, 1897 is a complete answer. It reads as follows:-

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-
Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

11. Therefore, the power to issue Notification would include a power to rescind the Notification. This position was not contested by the respondents, when their attempts to have the land released from acquisition, proved unsuccessful on earlier occasions. As a matter of fact, on the application presented by the respondents on 28.02.1983, the Government issued a letter dated 30.01.1985 requesting the Parishad to initiate necessary action for exemption of the land, subject to the condition that the land owners will not sell the land. This condition was stipulated in view of the fact that the request of the respondent was based on religious sentiments due to the alleged

existence of cemeteries of about 20 of their forefathers on the acquired land. But the proposal mooted by the State Government on 30.01.1985 was opposed by the Parishad on the ground that there was no mention about any cemeteries, when the land owners filed objections to the acquisition. In the light of such objections, the Government issued proceedings dated 27.06.1985 withdrawing the earlier proposal dated 30.01.1985.

12. Therefore, the land owners filed a writ petition in Civil Miscellaneous writ Petition No.19757 of 1985, seeking a direction to the Government and to the Parishad not to dispossess them. This Writ Petition was disposed of by an Order dated 30.09.1988, permitting the land owners to file a representation to the Government within one month and directing the State Government to consider the said representation.

13. Pursuant to the said order, the land owners made a representation dated 10.10.1988. But the same was rejected by the State Government by an Order dated 21.12.1991, pointing out that the land already stood vested in the Parishad and that Parishad has already become the owner.

14. Challenging the Order of rejection dated 21.12.1991, the land owners filed a fresh writ petition in W.P. (C) No.5002 of 1992. But the said writ petition was dismissed as withdrawn, on 9.04.1999. Thereafter, a fresh representation was made on 29.05.1999. It was reiterated in the said representation that there are cemeteries and Mazaars of the forefathers of the land owners and that regular religious programmes were being conducted in the acquired land. It is on the basis of the said representation that the Notification dated 7.04.2003 was issued under Section 48(1).

15. Therefore, it is clear that the land owners were actually playing hide and seek by pleading religious sentiments, leading to the issue of the Notification dated 7.04.2003 under Section 48(1). In other words the Notification under Section 48(1) was invited by the land owners by making false representations. The land owners have actually played fraud upon the Government and secured the Notification dated 7.04.2003. Hence, they cannot be allowed to contend that the land can be acquired only through a fresh process of acquisition.

16. The learned counsel for the respondents-land owners contended

that Section 21 of the General Clauses Act, does not confer an overarching power on the Government to rescind a notification conferring vested rights in immoveable property, especially when such a power is not contemplated by the Land Acquisition Act, 1894. The right to property, though not a fundamental right, is held to be a Constitutional right and a human right and that, therefore, according to the counsel for the respondents, the same cannot be taken away by taking recourse to Section 21 of the General Clauses Act.

17. In support of the aforesaid contention, Mr. Anand Varma learned counsel for the respondents relies upon the decision of this Court in ***Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. vs. CIT***¹, wherein it was held as follows:

“21. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order...”

18. The learned counsel for the respondents also relied upon the

1 (2018) 4 SCC 494

decision in ***H.C. Suman vs. Rehabilitation Ministry Employees Co-Operative House Building Society Ltd. New Delhi and Ors.***², wherein it was held that a substantial right created in favour of a party, which is enforceable in law cannot be taken away by a subsequent order under general power of rescindment available under the General Clauses Act.

19. But the decision in ***Industrial Infrastructure Development Corporation (supra)*** arose out of an order passed under Section 12-A of the Income Tax Act, 1961, which was admittedly a quasi judicial order. In paragraphs 19 and 20 of the said decision, this Court pointed out that ***“the functions exercisable by CIT under section 12-A are neither legislative nor executive but essentially quasi-judicial in nature”*** and that ***“an order under section 12-A of the Income Tax Act does not fall in the category of orders mentioned in Section 21, which would be in the nature of Notification/Rules/bye-laws”***.

20. But a proceeding under section 48(1) of the Land Acquisition Act is

2 (1991) 4 SCC 485

administrative in nature as can be seen from the language employed.

Section 48 of the Act reads as follows:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. –

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

What is provided in Section 48(1) is the power/liberty to withdraw from acquisition. It is an administrative act. Therefore, the reliance on the decision in ***Industrial Infrastructure Development Corporation*** (*supra*) is misplaced.

21. For the very same reason, the decision in ***H.C.Suman***, is also of no assistance to the respondents in as much as the first notification of the Lt. Governor, which was sought to be withdrawn by the subsequent notification, was issued pursuant to a quasi-judicial order passed by the Lt. Governor on a statutory appeal. The quasi judicial order created a

vested right which was given effect through a notification. Therefore, this Court held in para 35 of the decision in **H.C.Suman** that the vested right created by a quasi-judicial order cannot be taken away by taking recourse to the general power of rescindment available under the General Clauses Act. Hence the reasoning contained in the said decision cannot be applied to the case on hand.

22. While a Notification for acquisition issued under Section 4(1) of the Land Acquisition Act seeks to take away an individual's right to property, a Notification under Section 48(1) is actually the reverse or opposite. It confers benefit upon an individual and hence it is not supposed to be preceded by any enquiry. The essence of an order which is quasi-judicial in nature is that it is preceded by an opportunity of hearing to the party affected thereby. A notification under Section 48(1) does not warrant any notice or opportunity of hearing, to the original land owners. If at all any person will be aggrieved by the Notification under Section 48(1), it will be the beneficiary of the acquisition, which in this case is the Parishad, and not the land owners. Therefore, we can

understand if the Parishad makes out a grievance that their rights were taken away by the notification under Section 48(1) especially after the land vested in them.

23. Therefore, we reject the argument that a Notification under Section 48(1) is a quasi-judicial order. As a consequence, we reject the argument that the Government cannot fall back upon Section 21 of the General Clauses Act to rescind an order under Section 48(1).

24. Coming to the second limb of the argument that the Notification under Section 48(1) has created a vested right and that the same cannot be taken away unilaterally by a subsequent Notification for cancellation, we have to state that the first Notification was secured by the respondents by false representations and by playing fraud. When the respondents wanted to ward off the acquisition, they claimed that there were cemeteries of their forefathers, but after the first notification was issued, they started selling the land to third parties, who cannot and do not share the same religious sentiments with the respondents. We have already extracted the second Notification dated 15.09.2005 which contains the list of sales made by the land owners. The enquiry

conducted by the Housing Commissioner has revealed that the land mafia has taken over the land. It is trite to point out that an order secured by fraud and misrepresentation will not confer any vested right and that, therefore, the land owners cannot pitch their claim either on the basis of vesting or on the basis of Article 300A.

25. Interestingly, Sh. Anand Varma, learned counsel for the respondents relied upon the decision of this Court in ***Mutha Associates and Ors. vs. State of Maharashtra and Ors.***³, in support of his contention that even if the impugned notification is taken to be administrative in nature, the same should be preceded by an opportunity of hearing to the land owners. But the decision in ***Mutha Associates*** (supra) is actually a double-edged weapon insofar as the respondents are concerned. In that case, this Court held that even for the exercise of the power of withdrawal under Section 48(1) of the Land Acquisition Act, an opportunity had to be given necessarily to the beneficiary. In fact two principles could be culled out from ***Mutha***

3 (2013) 14 SCC 304

Associates. They are: **(i)** that the publication of the Notification under Section 48, is necessary just as the publication of notifications under Sections 4 and 6 are mandatory; and **(ii)** that the beneficiary should be heard before the withdrawal of land from acquisition.

26. In this case, the Notification dated 7.04.2003 does not appear to have been preceded by an opportunity of hearing to the beneficiary, namely, U.P. Avas Evam Vikas Parishad. Therefore, the withdrawal of such an illegal notification, which was secured by fraud, cannot be found fault with.

27. Therefore, in fine, all the contentions of the respondents- land owners are liable to be rejected and the appeals liable to be allowed. Accordingly both the appeals are allowed, the impugned orders of the High Court are set aside and the writ petitions filed by the respondents are dismissed. Since the acquisition has been complete in all respects the appellant-Parishad may proceed to implement the public purpose for which the land was acquired. There will be no order as to costs.

.....J.
(Hemant Gupta)

.....J
(V. Ramasubramanian)

DECEMBER 16, 2021
NEW DELHI.