2022 INSC 532

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3762 OF 2022
(Arising out of SLP (Civil) No. 5863 of 2020)

NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY ..... APPELLANT

v.

RAVINDRA KUMAR & ORS. ..... RESPONDENTS

WITH

CIVIL APPEAL NO. 3781 OF 2022
(Arising out of SLP (Civil) No. 15759 of 2020)

CIVIL APPEAL NO. 3782 OF 2022
(Arising out of SLP (Civil) No. 15760 of 2020)

CIVIL APPEAL NO. 3783 OF 2022
(Arising out of SLP (Civil) No. 15761 of 2020)

CIVIL APPEAL NO. 3779 OF 2022
(Arising out of SLP (Civil) No. 8336 of 2020)

CIVIL APPEAL NO. 3780 OF 2022
(Arising out of SLP (Civil) No. 8337 of 2020)

CIVIL APPEAL NO. 3778 OF 2022
(Arising out of SLP (Civil) No. 8335 of 2020)

CIVIL APPEAL NO. 3777 OF 2022
(Arising out of SLP (Civil) No. 8334 of 2020)
CIVIL APPEAL NO. 3773 OF 2022
(Arising out of SLP (Civil) No. 8332 of 2020)

CIVIL APPEAL NO. 3774 OF 2022
(Arising out of SLP (Civil) No. 8333 of 2020)

CIVIL APPEAL NO. 3768 OF 2022
(Arising out of SLP (Civil) No. 8321 of 2020)

CONMT.PET.(C) No. 237/2021 in
CIVIL APPEAL NO. 3782 OF 2022
(Arising out of SLP (Civil) No. 15760 of 2020)

CIVIL APPEAL NO. 3765 OF 2022
(Arising out of SLP (Civil) No. 3531 of 2020)

CIVIL APPEAL NO. 3772 OF 2022
(Arising out of SLP (Civil) No. 6761 of 2020)

CIVIL APPEAL NO. 3776 OF 2022
(Arising out of SLP (Civil) No. 6762 of 2020)

CIVIL APPEAL NO. 3764 OF 2022
(Arising out of SLP (Civil) No. 29444 of 2019)

CIVIL APPEAL NO. 3769 OF 2022
(Arising out of SLP (Civil) No. 721 of 2020)

CIVIL APPEAL NO. 3770 OF 2022
(Arising out of SLP (Civil) No. 6379 of 2020)

CIVIL APPEAL NO. 3771 OF 2022
(Arising out of SLP (Civil) No. 2086 of 2020)

CIVIL APPEAL NO. 3775 OF 2022

(Arising out of SLP (Civil) No. 7763 of 2020)

CIVIL APPEAL NO. 3767 OF 2022
[Arising out of SLP (Civil) No.8818 OF 2022]
(D.No.44718 of 2019)

CIVIL APPEAL NO. 3766 OF 2022
(Arising out of SLP (Civil) No. 2081 of 2020)

AND

CIVIL APPEAL NO. 3763 OF 2022
(Arising out of SLP (Civil) No. 27568 of 2019)

J U D G M E N T

ABHAY S. OKA, J.

Special Leave Petitions

1. Leave granted.

2. This group of appeals arise out of a common judgment and order dated 13th September 2019 of a Division Bench of the High Court of Judicature at Allahabad. Some of the appeals are filed by Noida Industrial Development Authority (for short, 'the acquiring body'). The other appeals are filed by the original writ

petitioners before the High Court who are claiming to be the owners of the acquired lands.

3. The State Government issued a notification dated 7th November 2007 under Section 4 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act'). By the said notification, the State Government notified its intention to acquire 108.233 hectares of lands in Village Begumpur, Pargana Dankaur, Tehsil Sadar, District Gautam Budh Nagar. The purpose of the acquisition was the planned industrial development through New Okhla Industrial Development Authority (NOIDA). The State Government invoked the urgency clause under sub-section (1) of Section 17 of the 1894 Act and also passed an order under sub-section (4) of Section 17 for dispensing with an enquiry under Section 5A of the 1894 Act. On 17th March 2008, a declaration under Section 6 of the 1894 Act was issued by the State Government.

4. The possession of the area of 7.559 hectares was taken over by the State Government on 7th June 2008. The possession of the remaining area of 100.64 hectares of the acquired lands was taken over on 15th June 2013. Two separate awards were made on 12th January 2011 and 31st December 2013 respectively.

Under the award dated 12th January 2011, to those who agreed to accept compensation as per the Uttar Pradesh (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997 (for short, the 'Karar Niyamawali'), different rates were fixed. The normal tenure holders who accepted the compensation under the Karar Niyamawali were paid compensation at the rate of Rs.870/- per square meter. To the ancestral tenure holders who agreed to accept the compensation as per the Karar Niyamawali, compensation at the rate of Rs.1,000/- per square meter was paid. For the other tenure holders who declined to receive the compensation as per the Karar Niyamawali, market value at the rate of Rs.135.28/- per square meter was offered together with 30% solatium under sub-section (2) of Section 23 of the 1894 Act and interest at the rate of 12% under sub-section (1A) of Section 23 of the 1894 Act. Under the Award dated 31st December 2013, the same rate of Rs.135.28/- per square meter along with solatium and interest was offered to those who refused to accept the compensation by agreement in accordance with the Karar Niyamawali. However, in the case of normal tenure holders who agreed to accept compensation as per the Karar Niyamawali, compensation at the

rate of Rs.1,490/- per square meter was paid. Similarly, to the ancestral tenure holders who agreed to accept the compensation as per the Karar Niyamawali, compensation was paid at the rate of Rs.1,295/- per square meter.

5. It appears that from 2011 to 2014, the writ petitions subject matter of these appeals, were filed before the High Court by the owners/persons interested for challenging the acquisition proceedings and in particular, the application of urgency clause. In the impugned judgment and order, the High Court recorded a finding that the action of the State Government of invoking the urgency clause under Section 17 of the 1894 Act was illegal. However, the High Court did not quash and set aside the declaration made under Section 6 of the 1894 Act and the awards. The High Court held that for balancing individual rights with the public interest, the relief should be moulded for the reason that substantial development work was carried out on the acquired lands. Therefore, the High Court held that those land owners/persons interested who have not accepted the compensation as per Karar Niyamawali should be paid compensation payable in accordance with the provisions of the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act'). The High Court further directed that the market value as per the provisions of the 2013 Act shall be determined on the date of the judgment. However, the High Court held that those who have accepted the compensation by an agreement under the Karar Niyamawali were not entitled to any relief.

6. In support of the petitions filed by the acquiring body, it was submitted by Shri Ravindra Kumar, the learned senior counsel that the writ petitions suffered from gross delay and laches. It was submitted that though after invoking the urgency clause under Section 17, the declaration under Section 6 of the 1894 Act was issued in 2008, the petitions were belatedly filed by the land owners from 2011 to 2014. The learned senior counsel submitted that in none of the writ petitions, there was any explanation for such a long delay. He submitted that it was too late in the day for the writ petitioners who had challenged the urgency clause to invoke the jurisdiction of the High Court under Article 226 of the Constitution. He pointed out the reasons given by the High Court for holding that the urgency clause could not have been invoked. He would argue that the said reasons are

erroneous. He submitted that the reliance placed by the High Court on the decision of this Court in the case of **Radhey Shyam (Dead) thru LRs. and others** v. **State of U.P. and others**[1], is completely misplaced as in that case, the land owners were able to establish the prejudice caused to them as a result of the failure to hold an enquiry under Section 5A of the 1894 Act. He submitted that most of the land owners had accepted the compensation and only few of the land owners had filed writ petitions very belatedly. He submitted that issuing a direction to pay compensation as per the 2013 Act by taking the market value as on the date of the judgment of the High Court is completely illegal. He would, therefore, submit that the impugned judgment deserves to be set aside.

7. The land owners who had not received compensation under the Karar Niyamawali have supported the impugned judgment by submitting that the order passed by the High Court is very equitable which balances the rights of the land owners with the rights of the acquiring body. The land owners who have accepted compensation under the Karar Niyamawali, in support of their appeals, submitted that the High Court ought not to have made a

1 (2011) 5 SCC 553

distinction between those who have accepted the compensation and those who have not accepted the compensation especially after recording a finding that the invocation of the urgency clause and the order dispensing with enquiry under Section 5A was illegal. Their submission is that such arbitrary distinction ought not to have been made by the High Court.

8. A submission was made on behalf of the land owners by relying upon a decision of this Court in the case of **Radhey Shyam**[1] by contending that once it is held that the action of invoking sub-section (1) read with sub-section (4) of Section 17 of 1894 Act is illegal, the acquisition cannot be sustained at all. It is pointed out that the view taken in the case of **Radhey Shyam**[1] was followed by this Court in the case of **Garg Woollen Private Ltd.** v. **State of U.P. & Ors.**[2]

9. The learned counsel appearing for the land owners also relied upon a decision of Bench of three Judges of this Court in the case of **Savitri Devi etc.** v. **State of U.P. & Ors.**[3] by which a direction was issued to enhance the market value by 64.7%. Moreover, directions were issued to make allotment of developed

2 (2012) 11 SCC 784
3 (2015) 7 SCC 21

land to the extent of 10% of the land acquired to each land owners.

10. We have given careful consideration to the submissions. We have already referred to the factual position which is not disputed. Though the declaration under Section 6 of the 1894 Act was made on 17th March 2008, the writ petitions were filed in the year 2011 and thereafter. As narrated earlier, the possession of a part of the acquired land was taken over on 7th June 2008 and the possession of the remaining land was taken over on 15th June 2013. There is a finding of fact recorded by the High Court that many land owners agreed to accept the compensation under the Karar Niyamawali. Moreover, substantial work of development was carried out by the acquiring body on the acquired lands.

11. The first question which arises for our consideration is whether the High Court committed an error by not setting aside the acquisition after recording a finding that the orders by which sub-section (1) and sub-section (4) of Section 17 of the 1894 Act were invoked were illegal. We may note here that after invoking the urgency clause and dispensing with an enquiry under Section

5A of the 1894 Act, Section 6 declaration was issued on 17th March 2008. All the writ petitions filed by the owners were belatedly filed after more than 3 to 4 years from the date of declaration under Section 6. It is true that the High Court was right in holding that the urgency clause could not have been invoked in the facts of the case. However, a finding of fact has been recorded by the High Court that after the possession of the acquired land was handed over to the acquiring body, the same has been developed and allotted to third parties. A very large area of 108.233 hectares owned by the various individuals was acquired. However, only 11 persons claiming to be the land owners belatedly filed writ petitions. Taking note of these facts, the High Court, for balancing the private interests of the land owners with the public interest, declined to quash the acquisition proceedings. The High Court passed an order directing that the compensation payable shall be in terms of the provisions of the 2013 Act on the date of its judgment. Writ jurisdiction under Article 226 of the Constitution of India is always discretionary. It is an equitable remedy. It is not necessary for the High Court to correct each and every illegality. If the correction of illegality is likely to have unjust results, High Court would normally refuse to

exercise its jurisdiction under Article 226. While maintaining the acquisition proceedings, the High Court granted a substantial relief to the land owners by directing payment of compensation under the 2013 Act which is higher than the compensation payable under the 1894 Act. This approach cannot be faulted.

12. The second question which arises is whether the High Court ought to have granted relief of higher market value and allotment of developed land in accordance with the decision of this Court in the case of **Savitri Devi**[3]. In paragraph 50 of the said decision, this Court observed thus:

> "**50**. Keeping in view all these peculiar circumstances, we are of the opinion that these are not the cases where this Court should interfere under Article 136 of the Constitution. **However, we make it clear that directions of the High Court are given in the aforesaid unique and peculiar/specific background and, therefore, it would not form precedent for future cases**."
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> *(emphasis added)*

It appears from the facts of the said case that in the three villages subject matter of the appeals, no development had taken place on the acquired lands. In the cases in hand, we are dealing with a completely different fact scenario and therefore, reliance

on the said decision will not help the land owners. The decision in the case of **Savitri Devi**[3] was limited to the peculiar fact situation of the case.

13. In the case of **Sahara India Commercial Corporation Limited and Others** v. **State of Uttar Pradesh and Others**[4], this Court found that invocation of urgency clause under Section 17 was invalid and illegal. This Court moulded the relief and directed payment of compensation in terms of the 2013 Act by treating the relevant date as the date of its judgment. Therefore, we find no error in the approach of the High Court when it directed payment of market value computed as per the 2013 Act to those land owners who have not accepted the compensation under Karar Niyamawali by taking the date of the judgment as a deemed date after following the 2013 Act. The High Court has done the balancing act by saving the acquisition proceedings while granting the aforesaid monetary relief to the land owners.

14. The third question is whether the relief of the grant of market value in terms of the 2013 Act could have been denied to the land owners who had accepted the compensation by

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4 (2017) 11 SCC 339

agreement in terms of the Karar Niyamawali. The High Court has given reasons for adopting the said approach. The main reason is that without any grievance, the land owners voluntarily accepted the compensation by an agreement in terms of the Karar Niyamawali. After lapse of considerable time thereafter, the land owners chose to file writ petitions in the High Court. After having acquiesced to the action of the Government by accepting the compensation under an agreement, the land owners were not justified in making a grievance at a belated stage. Therefore, we find no error with the view taken by the High Court in relation to those land owners who had accepted compensation under Karar Niyamawali.

Contempt Petition (C) No.237 of 2021

15. In the Contempt Petition (Civil) No.237 of 2021 filed by the appellants in Civil Appeal arising out of Special Leave Petition (Civil) No. 15760 of 2020, the appellants have alleged that in violation of interim order passed by this Court on 28th January 2021, the acquiring body started construction. In the counter filed by the acquiring body, the allegations made in the contempt petition have been denied. In any case, now we are confirming

the impugned judgment. Therefore, there is no necessity of initiating any action on the basis of the contempt petition.

<u>All the matters</u>

16. We, therefore, find no error in the impugned judgment. Accordingly, the appeals are dismissed. The contempt petition is disposed of.

……………………………..J
(AJAY RASTOGI)

……………………………..J
(ABHAY S. OKA)

New Delhi;
May 09, 2022.