Syed Maqbool Ali vs State Of U.P. & Anr on 4 April, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2542, 2011 (15) SCC 383, 2011 AIR SCW 3195, 2011 (4) ALL LJ 455, AIR 2011 SC (CIVIL) 1707, (2011) 2 GUJ LH 755, (2011) 3 ALLMR 905 (SC), (2011) 3 CAL LJ 16, (2011) 4 SCALE 766, (2011) 2 LANDLR 308, 2011 (2) KLT SN 127 (SC), 2011 (3) KCCR SN 209 (SC)

Author: R. V. Raveendran

Bench: R.V. Raveendran, A.K. Patnaik

SYED MAQBOOL ALI

v.

STATE OF UTTAR PRADESH & ANR.

(Civil Appeal Nos. 2913-2914 of 2011)

APRIL 04, 2011

[R.V. Raveendran and A.K. Patnaik, JJ.]

[2011] 4 SCR 238

The Order of the Court was delivered by

O R D E R

R. V. RAVEENDRAN J. 1. Leave granted.

2. Certain lands in village Sarai Badli and Ibrahimpur, Danda, Pargana Kora, District Fatehpur, UP, were acquired for construction of a six Kilometre road from Jahanabad to Garhi Jafraganj in the year 1982 and compensation was paid to the land owners in the year 1983.

3. In the year 1996, the appellant submitted a complaint to the Lokayukta alleging that his plots (bearing No.87/5, 88, 90, and 232 in Sarai Badli and plot No.580/5 and 602/1 in Ibrahimpur Danda) were included in the said acquisition; that in 1995 when he got his other lands measured, he found that his plots bearing Nos.27, 57, 58, 450, 451 and 452 (new numbers 103, 90, 93/1, 232/2, 231/2 and 229/5) measuring 0.7068 Hectare had been illegally and unauthorisedly used for constructing the road. On enquiry by the Lok Ayukta, the Addl. District Magistrate (Land Acquisition) informed that there was a possibility of the acquired lands being left out and the road

being constructed in the adjoining lands which were not acquired. On the other hand, the concerned Executive Engineer, PWD, informed the Lok Ayukta that the Khasra numbers in respect of which the appellant alleged encroachment and claimed compensation had never stood in his name and that even for the lands acquired in 1982, the compensation was paid to Mohammed Hussain alias Bhola and others and not to the appellant. The said complaint was however closed on 7.9.1999 as time barred, in view of the delay of 12 years in seeking relief. Thereafter, the appellant approached the High Court in the year 2000 seeking a direction to the respondents to pay compensation in regard to the extra land used and occupied by respondents by diverting the road from its original alignment. The said writ petition was dismissed by order dated 9.7.2007 on the ground that petitioner can have recourse to section 18 of the Land Acquisition Act, 1894 (`Act' for short), if he wanted enhancement of compensation. The review petition filed by the appellant was dismissed on 22.2.2008. The said orders are challenged in these appeals by special leave.

4. The respondents deny any encroachment or unauthorized use. They point out on account of the inordinate delay in approaching the High Court, and the disputes/questions relating to identity of land, boundaries, title etc., the writ petition was not maintainable and liable to be dismissed.

5. The limited question that arises for our consideration is whether the High Court could have dismissed a writ petition seeking a direction to acquire the land and pay compensation (on the ground that his land has been taken over without acquisition) by holding that the remedy lies under Section 18 of the Act. An application seeking reference to court under Section 18 of the Act would lie only where the land-holder is aggrieved by the award made by the Land Acquisition Collector in regard to land acquired under the provisions of the Act, either with reference to quantum of compensation, or the measurements of the land, or the persons shown as being entitled to compensation. An application under section 18 of the Act cannot be filed in regard to a land which was not acquired at all. The remedy of a land holder whose land is taken without acquisition is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a writ petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, malafide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law. The appellant has chosen to follow the second course. The High Court was not therefore, justified in dismissing the writ petition on the ground that the remedy was under section 18 of the Act. The order of the High Court, which is virtually a non-speaking order, apparently proceeded on the basis that appellant was seeking increase in compensation for an acquired land. The matter therefore requires to be reconsidered by the High Court, on merits.

6. But that does not mean that the delay should be ignored or appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. Further the High Court should be satisfied that the case warrants the exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of the India, and that the matter is one where the alternative remedy of suit is not appropriate. For example, if the person aggrieved and the State are owners of adjoining lands and he claims that the State has encroached over a part of his land, or if there is a simple boundary dispute, the remedy will lie only in a civil suit, as the dispute does not relate to any highhanded, arbitrary or unreasonable action of

the officers of the State and there is a need to examine disputed questions relating to title, extent and actual possession. But where the person aggrieved establishes that the State had highhandedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition. When a writ petitioner makes out a case for invoking the extra ordinary jurisdiction under Article 226 of the Constitution, the High Court would not relegate him to the alternative remedy of a civil court, merely because the matter may involve an incidental examination of disputed questions of facts. The question that will ultimately weigh with the High Court is this : Whether the person is seeking remedy in a matter which is primarily a civil dispute to be decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. (See the decisions of this court in ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd - 2004(3) SCC 553 and Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers - 2008(12) SCC 500].

7. High Courts should also be cautious in entertaining writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. It is not uncommon for villagers to offer/donate some part of their lands voluntarily for a public purpose which would benefit them or the community - as for example, construction of an access road to the village or their property, or construction of a village tank or a bund to prevent flooding/erosion. When they offer their land for such public purpose, the land would be of little or negligible value. But decades later, when land values increase, either on account of passage of time or on account of developments or improvements carried out by the State, the land holders come up with belated claims alleging that their lands were taken without acquisition and without their consent. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are liable to be dismissed. Be that as it may.

8. The High Court has not examined any of the relevant questions. The High Court has dismissed the writ petition, after a pendency for seven years, by a short order on a baseless assumption about the existence of a non- existent alternative remedy.

9. We therefore allow these appeals, set aside the orders of the High Court and remit the matter to the High Court for fresh consideration and disposal of the writ petition in accordance with law. Nothing stated above shall be construed as expression of any opinion on the merits of the matter. It is open to the State to contest the matter on all ground available to it.