

**Court No. - 40**

**Case :-** WRIT - C No. - 2208 of 2024

**Petitioner :-** Deepak Sharma

**Respondent :-** State Of Up And 2 Others

**Counsel for Petitioner :-** Vineet Kumar Singh

**Counsel for Respondent :-** Anjali Upadhyya,C.S.C.

**Hon'ble Ashwani Kumar Mishra,J.**

**Hon'ble Syed Qamar Hasan Rizvi,J.**

1. This writ petition has been filed with the prayer to issue a writ of mandamus commanding the respondents not to demolish the construction of petitioner situated on plot no.534 having an area of 0.7510 hectare situated in village Tushyana, Pargana and Tehsil Dadri, District Gautam Buddh Nagar. A further prayer is made to command the respondents not to interfere in the peaceful possession of the petitioner on the aforesaid plot.

2. Facts of the case, as emerge from the record, are that the State Government exercising its power of eminent domain issued a notification under Section 4(1)/17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') on 10.4.2006 for acquisition of the plot in question. Urgency clause was invoked and the inquiry contemplated under Section 5-A of the Act was dispensed with. A declaration under Section 6(1)/17(1) of the Act came to be made on 30.11.2006. The respondents took possession of the entire acquired land of plot no.534 on 2.2.2007. An award in terms of Section 11 of the Act was made by the District Magistrate on 27.4.2010. It is undisputed that by invoking the power of acquisition under the Act the State acquired the entire land of plot no.534 and the acquisition proceedings have attained finality. Neither the award is under challenge nor any of the proceedings undertaken thereunder. The effect of such acquisition proceedings, in the context of prayer made in the writ petition, would be dealt with a little later.

3. Petitioner submits that in the proposal submitted for acquisition it was found that plot no.534 had six shops and a gallery and that by virtue of a provision contained in the Government Order dated 24.4.2010 the petitioner was entitled to lease back of the portion of land which was covered by the Government Order.

4. Sri H.N. Singh, learned Senior counsel for the petitioner also places reliance upon the provisions contained in Greater Noida Industrial Development Rural Abadi Sites (Management and Regularization) Regulation, 2011, in order to submit that petitioner has a right of regularization of rural abadi site which existed before 30.6.2011. Attention of the Court has been invited to Regulation 4 of the 2011 Regulation which contemplates constitution of a committee and the functions of the committee have been defined in Rule 5. According to the petitioner there exists a provision for moving of an application for regularization and the maximum land which can be settled for residential/commercial use have been specified. It is submitted that though such an application was moved by the petitioner but such plea of protection of abadi area is rejected by the Chief Executive Officer. The matter was carried in revision before the State, wherein also the petitioner was non-suited.

5. Writ-C no.18997 of 2023 filed against the revisional order has been allowed and the matter has been remitted back to the State Government for a fresh consideration. It is submitted that the State Government has not reconsidered the matter and in between the authorities are proposing to take physical possession of the petitioner's land. It is also submitted that since the petitioner is in settled possession over the property, as such he cannot be dispossessed except in accordance with law. According to learned Senior counsel, this would require filing of a suit by the development authority for taking possession or for filing of appropriate proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Since this has not been done, the authorities ought to be restrained in the present writ from interfering with the petitioner's possession.

6. Ms. Anjali Upadhya, learned counsel for the respondent-authority, on the other hand, submits that the acquisition proceedings having been concluded, in accordance with law, right, title or interest of the petitioner stands extinguished in the property and, therefore, no writ of mandamus can be issued to protect petitioner's possession over such acquired land. It is also submitted that since the claim of settlement of abadi by virtue of Regulations of 2011 also stands rejected, and the petitioner has not sought any protection in his pending revision before the State Government, he is not entitle to any relief.

7. We have heard learned counsel for the parties and have perused the materials on record.

8. From the facts as have been noticed above it is abundantly clear that land falling part of khasra no.534 stood acquired pursuant to declaration made under Section 6 of the Act. Satisfaction that such land is needed for public purposes has attached finality. Section 17 of the Act of 1894 containing urgency clause has also been invoked while issuing declaration under Section 6 of the Act. Section 17(1) of the Act clearly provides that in case of urgency the State is free to take possession of the land on expiration of fifteen days from the date of notice mentioned under Section 9 of the Act upon payment of 80% estimated compensation. As a consequence such land shall thereupon vest absolutely in the Government free from all encumbrances.

9. As a result of the above statutory scheme, it is clear that when the possession of the land is taken after issuance of notice under Section 9 of the Act, the tenure holder would be extinguished of any right, title or interest over such land. The statutory consequence, as is clearly enumerated in law, cannot be avoided or obstructed by the tenure holder, particularly when the acquisition proceedings itself are not under challenge.

10. We find substance in the contention advanced on behalf of the respondents that once the land has been acquired; possession has been taken on 2.2.2007; and an award has been made under Section 11 of the Act on 27.4.2010 the vesting of a land in the State would be complete. It is otherwise a case of invocation of urgency and, therefore, before award such vesting shall follow if possession is taken after notice under Section 9 of the Act.

11. The position of law in this regard has already been settled by the Constitution Bench of Supreme Court in Indore Development Authority v. Manoharlal and Others (2020) 8 SCC 129. After analyzing the statutory scheme, the Court held as under in para 258 of the judgment:-

*"258. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the 1894 Act that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the State becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon*

*it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner."*

12. Once that be so, we find that no writ of mandamus can be issued against the State or the acquiring body to obstruct the utilization of land which has already vested in the authority free from all encumbrances. No further notice is otherwise required to be issued to the petitioner in the matter.

13. Writ of mandamus can only be issued for performance of a legal obligation on part of the State or its instrumental/authority. No writ of mandamus can be issued for restraining the State/authority from undertaking act which is, in accordance with law. Since the vesting of land is complete in the State consequent upon acquisition of land, it would not be open for the petitioner to claim issuance of a writ of mandamus for restraining the respondents from asserting their right over the acquired land.

14. The argument that petitioner is in settled possession and, therefore, can be dispossessed only as per law is also an argument bereft of merits. As the land has statutorily vested in the State/authority free from all encumbrances, and possession over the land has otherwise been taken in the manner stipulated in law, it would not be necessary for the authority to either institute a suit to take possession or to institute proceedings under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to physically dispossess the petitioner. The acquisition by the State/authority is of a vast tract of agricultural land and it would not be expected that actual physical possession continues with the State on every inch of the land. Taking of possession pursuant to notice under Section 9 of the Act is otherwise not disputed. In such circumstances, the grievance raised that petitioner is being evicted except in accordance with law is devoid of merits and, therefore, rejected.

15. Supreme Court in Land & Building Department through Secretary & Anr. vs. Attro Devi in Civil Appeal No.2749 of 2023 decided on 11.4.2023 has made following observations in para 13:-

*"13. It is also a fact to be noticed and taken care of that large chunk of land is acquired for planned development to take care of immediate need and also keep buffer for future requirements. Such portion of land may be lying vacant also. As has been observed in Indore Development Authority's case (supra) by this Court, the State agencies are not supposed to put police force to protect possession of the land taken after process of acquisition is complete....."*

16. So far as existence of structures on the plot of the petitioner is

concerned, we are of the view that such structures would form part of land acquired under the Act and also vest in the authority free from all encumbrances. The petitioner at best would be entitled to claim compensation for such structures as per the award. Undisputedly, the award has been made on 27.4.2010. Neither the award has been placed before the Court nor there are any pleadings that in the award adequate compensation for structures have not been provided. In the absence of any challenge to the award, we refrain ourselves from expressing anything further in respect of petitioner's right of compensation over such land which has vested in the State/authority free from all encumbrances.

17. So far as the petitioner's claim of protection of his abadi site is concerned, we find that decision by the committee has already taken to reject petitioner's claim and that matter has now been remitted to the State Government. Remedy of the petitioner, in such circumstances, would be to press his revision before the State or to move appropriate application etc. for its expeditious disposal. Merely because the revision is pending we would not be justified in issuing a writ of mandamus to restrain the authority from interfering with petitioner's possession when the land has statutorily vested in the State free from all encumbrances.

18. So far as petitioner's contention that Article 300-A of the Constitution of India is violated is concerned, we find such argument to be misconceived, inasmuch as the protection which the Constitution provides under Article 300-A is that a person would not be deprived of his property except in accordance with law. Since the acquisition herein is in accordance with the provisions of the Act of 1894, the consequence in the nature of vesting of land cannot be treated to be an act violative of Article 300-A.

19. The writ petition is, accordingly, dismissed.

**Order Date :- 20.2.2024**

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