A.F.R.

Court No. - 4

Case :- WRIT - C No. - 34922 of 2019

Petitioner :- Gajraj
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Durga Prasad Tiwari
Counsel for Respondent :- C.S.C.,Anjali Upadhya

Hon'ble Bala Krishna Narayana,J.
Hon'ble Prakash Padia,J.

Per Hon'ble Prakash Padia,J.

1. The petitioner has preferred the present writ petition with the following main prayer :-

> *"i. Issue a writ order or direction in the Nature of Mandamus commanding the Respondents-Authorities to allot the Aabadi Plot to the extent of 10% in light of Judgment and order dated 21.10.2011 passed by Full Bench of this Hon'ble Court in case of (Gajraj and others Vs. State of U.P. and others)."*

2. The facts in brief as contained in the writ petition are that the petitioner is bhumidhar with transferable rights of Khasra No.339M area 0.0863 hectare situated in revenue Village Sirsa, Pargana-Dadri, Tehsil Dankour, District Gautam Buddh Nagar. A notification under Section 4(1)/17 of the Land Acquisition Act, 1894 (hereinafter referred as Act, 1894) was issued by the State Government on 12.3.2008, which was followed by a notification under Section 6 of the Act, 1894 on 11.7.2008.

3. It is contended in paragraph 7 of the writ petition that the petitioner was under impression that the land in question is being acquired for Industrial Development, therefore, he will receive the compensation through agreement Rules of 1997.

4. It is further argued that in similar matter large number

of writ petitions were filed before this Court, which were ultimately decided by a full Bench of this Court in the case of ***Gajraj and others Vs. State of U.P. and others*** reported in ***2011 (11) ADJ page 1.***

5. One of the plea that was raised before the Full Bench in Gajraj was that the State Government was not justified in dispensing with the provisions of Section 5-A of the Act by invoking the provisions of sub-sections (1) and (4) of Section 17 of the Act. The Full Bench held that the State was not justified in dispensing with the enquiry contemplated under Section 5-A of the Act. Three sets of directions were then issued. Some of the writ petitions that had been filed with unexplained delay and laches were dismissed. The notifications issued in respect of villages where no development had taken place were quashed. However, in respect of some villages where substantial development had taken place, instead of quashing the acquisition proceedings even after accepting the plea that the provisions of Section 17(1) of the Act were wrongly invoked, the Full Bench enhanced the compensation by 64.7% as well as issued directions for allotment of developed abadi plots. The operative portion of the directions issued by the Full Bench in respect of petitions where relief for additional compensation and allotment of developed abadi plot was granted, is as follows:-

> *"482 (3). All other writ petitions except as mentioned above at (1) and (2) are disposed of with following directions:*
>
> *(a) The petitioners shall be entitled for payment of additional compensation to the extent of same ratio (i.e. 64.70%) as paid for village Patwari in addition to the compensation received by them under 1997 Rules/award which payment shall be ensured by the Authority at an early date. It may be open for Authority to take a decision as to what proportion of*

additional compensation be asked to be paid by allottees. Those petitioners who have not yet been paid compensation may be paid the compensation as well as additional compensation as ordered above. The payment of additional compensation shall be without any prejudice to rights of land owners under section 18 of the Act, if any.

(b) All the petitioners shall be entitled for allotment of developed Abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 square meters. We however, leave it open to the Authority in cases where allotment of abadi plot to the extent of 6% or 8% have already been made either to make allotment of the balance of the area or may compensate the land owners by payment of the amount equivalent to balance area as per average rate of allotment made of developed residential plots.

4. The Authority may also take a decision as to whether benefit of additional compensation and allotment of abadi plot to the extent of 10% be also given to ;

(a) those land holders whose earlier writ petition challenging the notifications have been dismissed upholding the notifications; and

(b) those land holders who have not come to the Court, relating to the notifications which are subject matter of challenge in writ petitions mentioned at direction No.3."

6. It is, therefore, clear that the Full Bench in ***Gajraj (supra)***, instead of quashing the acquisition proceedings under challenge before it in regard to certain villages in which extensive development had taken place, even after holding that providing of opportunity to file objections under Section 5-A of the Act had wrongly been denied to the tenure-holders, protected the acquisition proceedings by directing for payment of additional compensation and for providing certain percentage of developed abadi plot. This benefit was restricted to the tenure holders who had challenged the acquisition proceedings before the Full Bench.

7. However, the Full Bench in paragraph 482(4) also directed that the Authority may take a decision as to whether the benefit of additional compensation and allotment of 10% abadi plot be given to those tenure-holders whose petitions challenging the acquisition proceedings had earlier been dismissed by the Division Bench of the High Court and to those who had not filed writ petitions challenging the notifications in issue before the Full Bench.

8. Sri Ramendra Pratap Singh, learned counsel appearing on behalf of respondent no.4 contended that the village in question in respect of which petitioner has preferred the present writ petition was never a subject matter in the case of ***Gajraj (supra)*** as such petitioner is not entitled for 10% developed land.

09. No arguments whatsoever has been raised in reply to the aforesaid arguments made by Sri Ramendra Pratap Singh, learned counsel appearing for the respondent no.4.

10. The judgement of the Full Bench passed in the case of ***Gajraj (supra)*** was subject matter before the Supreme Court in the case of ***Savitri Devi Vs. State of U.P. and others*** reported in ***2015 (7) SCC 21.***

11. Sri Ramendra Pratap Singh, learned counsel for the respondent no.4 placed reliance upon paragraphs 44 to 52 of the aforesaid judgment, which are quoted hereinbelow :-

> *"44. We have also to keep in mind another important feature. Many residents of Patwari village had entered into agreement with the authorities agreeing to accept enhanced compensation at the rate of 64.7%. This additional compensation was, however, agreed to be paid by the authorities only in respect of land owners of Patwari village. The High Court has bound the authorities with the*

said agreement by applying the same to all the land owners thereby benefiting them with 64.7% additional compensation. There could have been argument that the authorities cannot be fastened with this additional compensation, more particularly, when machinery for determination for just and fair compensation is provided under the Land Acquisition Act and the land owners had, in fact, invoked the said machinery by seeking reference under Section 18 thereof. Likewise, the scheme for allotment of land to the land owners provides for 5% and 6% developed land in Noida and Greater Noida respectively. As against that, the High Court has enhanced the said entitlement to 10%. Again, we find that it could be an arguable case as to whether High Court could grant additional land contrary to the policy. Notwithstanding the same, the Noida authority have now accepted this part of the High Court judgment after the dismissal of the appeals filed by the Noida authority, and a statement to that effect was made by Mr. Rao.

45. We may point out that while dismissing the appeals of Noida authority, following remarks were made:

"9. Insofar as allotment of 10 per cent of the plots is concerned, the High Court, in exercise of its discretionary power, has thought it fit, while sustaining the notification issued by the authority for protecting them for allotting 10 per cent of the developed plots; and, there again they have put a cap of 2,500 sq.mtrs. In fact, in the course of the order, the High Court has taken into consideration the agreement that was entered into by the authority with the villagers of Patwari and, in some cases, the authority itself has agreed to raise 6 to 8 per cent of the developed plots to the agriculturists. The High Court has also taken into consideration the observations made by this Court in the case of Bondu Ramaswamy Vs. Bangalore Development Authority, 2010 (7) SCC 129, where this Court has gone to the extent of directing the authorities to allot 15 per cent of the

developed plots. In our view and in the peculiar facts and circumtances of these cases, since the relief that is given to the respondents/agriculturists is purely discretionary relief by the Court in order to sustain the notification issued by the authorities, we do not find any good ground to interfere with the impugned judgment(s) and order(s) passed by the High Court, at the instance of the petitioners/appellants/ authorities, namely, NOIDA and Greater NOIDA.

10. This order shall not be treated as a precedent in any other case."

46. Thus, we have a scenario where, on the one hand, invocation of urgency provisions under Section 17 of the Act and dispensing with the right to file objection under Section 5A of the Act, is found to be illegal. On the other hand, we have a situation where because of delay in challenging these acquisitions by the land owners, developments have taken in these villages and in most of the cases, third party rights have been created. Faced with this situation, the High Court going by the spirit behind the judgment of this Court in Bondu Ramaswamy and Others (supra) came out with the solution which is equitable to both sides. We are, thus, of the view that the High Court considered the ground realities of the matter and arrived at a more practical and workable solution by adequately compensating the land owners in the form of compensation as well as allotment of developed Abadi land at a higher rate i.e. 10% of the land acquired of each of the land owners against the eligibility and to the policy to the extent of 5% and 6% of Noida and Greater Noida land respectively.

47. Insofar as allegation of some of the appellants that their abadi land was acquired, we find that this allegation is specifically denied disputing its correctness. There is specific averment made by the NOIDA Authority at so many places that village abadi land was not acquired. It is mentioned that abadi area is what was found in the survey

conducted prior to Section 4 Notification and not what is alleged or that which is far away from the dense village abadi. It is also mentioned that as a consequence of the acquisition, the Authority spends crores and crores of rupees in developing the infrastructure such as road, drainage, sewer, electric and water lines etc. in the unacquired portion of the village abadi. During the course of hearing, Chart No. 2 in respect of each village of Greater Noida was handed over for the consideration of this Court, wherein the amount spent by the Authority on the development, including village development (which is the unacquired village abadi), has been given in Column No. 4 thereof. It has been the consistent stand of the NOIDA Authority that prior to the issuance of Section 4 Notification under the Land Acquisition Act, 1894, survey was conducted and the abadi found in that survey was not acquired. In fact, affidavits in this respect have also been filed not only in this Court but also in the High Court. We have mentioned that there has been a long gap between acquisition of the land and filing of the writ petitions in the High Court by these appellants challenging the acquisition. If they have undertaken some construction during this period they cannot be allowed to take advantage thereof. Therefore, it is difficult to accept the argument of the appellants based on parity with three villages in respect of which the High Court has given relief by quashing the acquisition.

48. To sum up, following benefits are accorded to the land owners:

48.1. increasing the compensation by 64.7%;

48.2. directing allotment of developed abadi land to the extent of 10% of the land acquired of each of the land owners;

48.3 compensation which is increased at the rate of 64.7% is payable immediately without taking away the rights of the land owners to claim higher compensation under the machinery provided in the Land Acquisition Act wherein the matter would be examined on

the basis of the evidence produced to arrive at just and fair market value.

49. This, according to us, provides substantial justice to the appellants.

50. Conclusion 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.

51. We may record that some of the appellants had tried to point out certain clerical mistakes pertaining to their specific cases. For example, it was argued by one appellant that his land falls in a village in Noida but wrongly included in Greater Noida. These appellants, for getting such clerical mistakes rectified, can always approach the High Court.

52. The Full Bench judgment of the High Court is, accordingly, affirmed and all these appeals are disposed of in terms of the said judgment of the Full Bench."

12. Learned counsel for the petitioner submitted that the decision taken by NOIDA not to allot 10% abadi land to tenure holders whose acquisition were covered by the Full Bench in Gajraj but had not filed petitions to challenge the acquisition proceedings is arbitrary as there is no rationale in not granting this benefit to persons who had not filed writ petitions, particularly when such persons have been granted the additional compensation of 64.70%.

13. Sri Raghvendra Pratap Singh, learned counsel appearing for NOIDA has, however, submitted that the Full Bench in Gajraj had left it open to the Authority to take a decision as to whether additional compensation and 10% abadi land had to be given to such persons who had not filed writ petitions. His submission is that the Authority

after carefully examining the financial position and the land available with the Authority took a conscious decision to provide 64.70% additional compensation to such persons who had not filed writ petitions to challenge the acquisition proceedings but in view of the paucity of land available with the Authority, 10% abadi land was being provided to only such persons who had filed writ petitions and not to those who had not filed writ petitions. Learned counsel submitted that this policy decision does not suffer from any arbitrariness which may call for interference by the Court under Article 226 of the Constitution.

14. We have carefully considered the submissions advanced by learned counsel for the parties.

15. It is as a consequence of the Full Bench decision in Gajraj and the decision rendered by the Supreme Court in Savitri Devi that the Authority was required to examine as to whether it would pay additional 64.70% compensation as also 10% abadi land to land owners who had not filed writ petitions to challenge the acquisition proceedings. It is on a consideration of various factors that the Authority took a conscious decision to pay only 64.70% additional compensation to such land owners who had not filed writ petitions. The Authority also decided not to allot 10% abadi land to such persons.

16. After the aforesaid judgement of the Supreme Court the matter was again taken up before a Division Bench of this Court in the case of ***Mange @ Mange Ram Vs. State of U.P. and others*** reported in ***2016 (8) ADJ 79 (DB).*** In the aforesaid case it was held that the action of the respondents in not giving additional developed abadi lands to the petitioner is neither arbitrary nor discriminatory. The

relevant paragraphs of the aforesaid judgement namely ***Mange @ Mange Ram (supra)*** are reproduced hereinbelow :-

> “12. The Full Bench in order to save the acquisition proceedings had issued the direction for payment of additional compensation and for allotment of developed abadi plots in the extenuating facts and circumstances of the case. The Supreme Court acceded to the said consideration holding that the Full Bench was justified in issuing such directions in the peculiar facts and circumstances of the case and in order to save the acquisition proceedings from the vice of arbitrariness. The Supreme Court while affirming the decision of the Full Bench categorically held that the said decision would not be treated to form a precedent for future cases. The Supreme Court held:
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> > "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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> 13. Thus, we are of the opinion that the ratio decendi of the Full Bench cannot be applied to similarly situated persons. The said benefit given by the Full Bench cannot be extended to the petitioners, even though they may be similarly situated and their land had been acquired under the same notification.
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> 14. We are of the view that the action of the respondents in not giving additional developed abadi land to the petitioners is neither arbitrary nor discriminatory, especially when there is no evidence to dispute the fact that the respondents have no developed land with them for allotment.
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> 15. In the light of the aforesaid, no relief can be granted to the petitioner. All the writ petition fails and are dismissed.”

17. It needs to be remembered that the Full Bench in Gajraj had issued specific directions for providing 64.70% additional compensation and 10% abadi land to such persons who had filed writ petitions but in regard to such tenure holders who had not challenged the acquisition

proceedings, left it open to the Authority to take a decision to provide 64.70% additional compensation as also to allot 10% abadi land. The petitioners do not have a vested right to claim 64.70% additional compensation and 10% abadi land. They were entitled to receive compensation in terms of the award made by the Special Land Acquisition Officer under section 11 of the Act. This additional compensation of 64.70% and 10% abadi land was granted by the Full Bench in Gajraj to save the acquisition as it had found that dispensing with the enquiry under section 5-A of the Act was not justified. The petitioner admittedly had not filed any writ petition to challenge the acquisition proceeding and had slept over his rights. The Authority, however, in view of the directions contained in paragraph 482(4) of the judgment rendered by the Full Bench in Gajraj, took a decision to provide only 64.70% additional compensation. This policy in our opinion does not suffer from any arbitrariness. The Full Bench had drawn a distinction between those who had filed writ petitions and those who had not. The petitioner cannot be permitted to contend that the same benefit should be given to them as was provided to those who had filed writ petitions.

18. Against the aforesaid judgement a S.L.P. was preferred before the Supreme Court in the case of ***Khatoon and Ors. Vs. The State of U.P.*** reported in ***(2018) 14 SCC 346.*** The same was rejected by the Supreme Court on the ground that the appellants have neither any legal right nor any factual foundation to claim the relief of allotment of additional developed abadi plot. The relevant portion of the judgement is reproduced hereinbelow :-

> "16. In other words, the case of the appellants (writ petitioners) before the High Court was that the reliefs,

which were granted to the landowners by the Full Bench in Gajraj's case (supra) be also granted to the appellants because their lands were also acquired in the same acquisition proceedings in which the lands of the writ petitioners of Gujrat's case (supra) was acquired. In effect, the relief was prayed on the principles of parity between the two landowners quo State.

17. It is, however, pertinent to mention that so far as the direction of the High Court to award additional compensation payable at the rate of 64.70% was concerned, the same was already implemented by the State by paying the compensation to all the landowners including the appellants without any contest.

18. In this view of the matter, the only question before the High Court in the appellants' writ petitions that remained for decision was as to whether the appellants are also entitled to claim the relief of allotment of developed abadi plot to the extent of 10% of their acquired land subject to maximum of 2500 Sq.M.in terms of the judgment in Gajraj's case and Savitri Devi's case.

36. Therefore, the only question that now survives for consideration in these appeals is whether the appellants are entitled to get the benefit of second direction issued by the High Court in the case of Gajraj (supra), namely, allotment of developed abadi plot to the appellants.

37. In our considered opinion, the appellants are not entitled to get the benefit of the aforementioned second direction and this we say for the following reasons.

38. First, the High Court in the case of Gajraj (supra) had, in express terms, granted the relief of allotment of developed abadi plot confining it only to the landowners, who had filed the writ petitions. In other words, the High Court while issuing the aforesaid direction made it clear that the grant of this relief is confined only to the writ petitioners [see condition No. 3(a) and (b)].

39. Second, so far as the cases relating to second category of landowners, who had not challenged the acquisition proceedings (like the appellants herein) were concerned, the High Court dealt with their cases separately and accordingly issued directions which are contained in condition No. 4(a) and (b) of the order.

40. In condition No. 4(a) and (b), the High Court, in express terms, directed the Authority to take a decision

on the question as to whether the Authority is willing to extend the benefit of the directions contained in condition No. 3(a) and (b) also to second category of landowners or not.

41. In other words, the High Court, in express terms, declined to extend the grant of any relief to the landowners, who had not filed the writ petitions and instead directed the Authority to decide at their end as to whether they are willing to extend the same benefit to other similarly situated landowners or not.

42. It is, therefore, clear that it was left to the discretion of the Authority to decide the question as to whether they are willing to extend the aforesaid benefits to second category of landowners or not.

43. Third, as mentioned supra, the Authority, in compliance with the directions, decided to extend the benefit in relation to payment of an additional compensation at the rate of 64.70% and accordingly it was paid also. On the other hand, the Authority declined to extend the benefit in relation to allotment of developed abadi plot to such landowners.

44. Fourth, it is not in dispute, being a matter of record, that when the Authority failed to extend the benefit regarding allotment of additional abadi plot to even those landowners in whose favour the directions were issued by the High Court in the case of Gajraj (supra) and by this Court in Savitri Devi (supra), the landowners filed the contempt petition against the Authority complaining of non-compliance of the directions of this Court but this Court dismissed the contempt petition holding therein that no case of non-compliance was made out.

45. In our view, the appellants have neither any legal right and nor any factual foundation to claim the relief of allotment of additional developed abadi plot. In order to claim any mandamus against the State for claiming such relief, it is necessary for the writ petitioners to plead and prove their legal right, which should be founded on undisputed facts against the State. It is only then the mandamus can be issued against the State for the benefit of writ petitioners. Such is not the case here.

46. Indeed, when the landowners, in whose favour the order was passed by the High Court for allotment of such plot, could not get the plot then, in such event, there arise no occasion for the appellants herein to claim such relief for want of any factual and legal basis in their favour.

47. One cannot dispute that the Act does not provide for

grant of such reliefs to the landowners under the Act. Similarly, there is no dispute that the State paid all statutory compensation, which is payable under the Act, to every landowner. Not only that every landowner also got additional compensation at the rate of 64.70% over and above what was payable to them under the Act.

48. The reliefs in the case of Gajraj (supra) were granted by the High Court by exercising extraordinary jurisdiction under Article 226 of the Constitution and keeping in view the peculiar facts and circumstances arising in the case at hand. They were confined only to the landowners, who had filed the writ petitions. Even this Court in Savitri Devi's case (supra) held that the directions given be not treated as precedent for being adopted to other cases in future and they be treated as confined to that case only.

49. That apart, there is no basis for the appellants to press in service the principle underlined in Article 14 in such cases for the simple reason that firstly, Article 14 does not apply to such cases; and secondly, there is no similarity between the case of those landowners, who filed the writ petitions and the present appellants, who did not file the writ petitions. Though the High Court, in Gajraj's case (supra) decided the rights of both categories of landowners but the cases of both stood on a different footing. It is for these reasons, the appellants were not held entitled to take benefit of condition No. 3 (a) and (b) of the case of Gajraj (supra) which was meant for the writ petitioners therein but not for the appellants. However, the appellants were held entitled to take the benefit of only condition No. 4 (a) and (b) of the said judgment and which they did take by accepting the additional compensation payable at the rate of 64.70%.

50. In our view, therefore substantial justice was done to all the landowners including the appellants, as observed in para 49 of Savitri Devi's case (supra).

51. In our opinion, therefore, there is no case made out by the appellants for grant of any relief much less the relief of allotment of additional developed abadi plot. If we entertain the appellants' plea for granting them the relief then it would amount to passing an order contrary to this Court's directions contained in para 50 of the order passed in Savitri Devi's case (supra).

52. In the light of the foregoing discussion and on examining the appellants' case from any angle, we find no merit in the appeals, which fail and are accordingly dismissed."

19. It is to be noted at this juncture that earlier also a Full

Bench of this Court in the case of ***Ravindra Kumar Vs. District Magistrate, Agra and others*** reported in ***2005 (1) UPLBEC 118*** has held that land acquisition act is itself a self contained code. Any other provision providing for further benefit has not been mentioned in the Land Acquisition Act. In that case the petitioner had claimed employment in the State Government over and above the compensation paid which the Court declined. The paragraph 22 of the aforesaid judgement is reproduced below hereinbelow :-

> "22. There is no provision under the Land Acquisition Act under which the Circular dated 28.12.1974 could be issued. Whatever compensation has to be given for acquisition of the land is provided under the Land Acquisition Act itself which is a self-contained Code. Any G.O. providing for any further benefit not mentioned in the Land Acquisition Act would be inconsistent with the intention of Parliament as contained in the Land Acquisition Act. Hence any such GO. would be violative of the Land Acquisition Act and would hence be invalid. Such a G.O. will also violate Article 16 of the Constitution as already mentioned above."

20. In the facts and circumstances of the case, petitioner is not entitled for the benefit as has been provided by the Full Bench of this Court in the case of Gajraj (supra) as well as by the Supreme Court in the case of Savitri Devi (supra). A Division Bench of this Court in the case of Mange @ Mange Ram (supra) has already held that the persons like the petitioner are not entitled for the 10% developed land. The aforesaid judgement passed in the case of Mange @ Mange Ram (supra) was also affirmed by the Supreme Court in the case of Khatoon (supra). In the case of Khatoon (supra) it has been specially held by the Supreme Court that the petitioners have neither any legal right nor any factual foundation to claim the relief of allotment of

additional developed abadi land.

21. In view of the facts and circumstances of the case as stated above it is clear that the petitioner is not entitled for the reliefs as claimed by him in the present case. This being the case in the present case, 10% developed land as claimed by the petitioner cannot be allowed as the petitioner is no legal right to claim such 10% developed land.

22. The writ petition is misconceived and it is accordingly dismissed.

Order Date :- 31.10.2019
Pramod Tripathi