

**A.F.R.****Court No.39****Case :-** WRIT - C No. - 10282 of 2017**Petitioner :-** Manpal Singh**Respondent :-** State Of U.P. & 2 Others**Counsel for Petitioner :-** Anshul Kumar Singhal, Manish Goyal**Counsel for Respondent :-** C.S.C., Anjali Upadhyaya**Hon'ble Dilip Gupta, J.****Hon'ble Siddhartha Varma, J.**

A notification dated 24 July 2008 under Section 4(1) read with Section 17 of the Land Acquisition Act, 1894<sup>1</sup> was issued for acquisition of 105.5600 hectares of land situated in Village-Chipiyana Khurd alias Tigri, Pargana & Tehsil Dadri for planned industrial development in District Gautam Budh Nagar through Greater Noida Industrial Development Authority<sup>2</sup>. This was followed by a declaration made on 29 January 2009 under Section 6 of the Act. The award was also made on 27 August 2011 by the Additional District Magistrate (Land Acquisition), Greater Noida<sup>3</sup>. This petition has been filed for a direction upon the respondents to declare that the acquisition proceedings have lapsed by virtue of operation of Section 11-A of the Act. Further reliefs that have been sought are for quashing the award dated 27 August 2011 made by the ADM and for not only restoring the name of the petitioner in the revenue records but also restraining the State respondents from dispossessing the petitioner from the land admeasuring 100 sq. yards

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1 the Act

2 Greater Noida

3 the ADM

situated in Khasra Plot No.57, Village-Chipiyana Khurd, Tehsil Dadri, District Gautam Budh Nagar.

The petitioner claims to have purchased 100 sq. yards of land situated in Khasra Plot No.57 from Leeladhar by a registered sale deed dated 17 January 2006. It is stated that the name of the petitioner was entered in the revenue records on 30 January 2014. It has further been stated that the total area of Khasra Plot No.57 was 0.7305 hectares, out of which 0.4770 hectares was acquired by the State in 2002-03 and the remaining area of Khasra Plot No.57 was subsequently acquired by issuance of the notification dated 24 July 2008 under Section 4(1) of the Act. The petitioner claims that the aforesaid acquisition proceedings initiated on 24 July 2008 were assailed by certain tenure-holders in **Writ Petition No.41017 of 2011** which was decided with a number of Writ Petitions by a Full Bench of this Court in **Gajraj & Ors. Vs. State of U.P. & Ors.**<sup>4</sup>. The said petition was marked in 'Group 27'. The acquisition was upheld by the Full Bench and the petitions were disposed of with certain directions contained in paragraph 482 of the judgment which is reproduced :

“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.”

The petitioner asserts that he had not filed any writ petition to challenge the said acquisition proceedings and the petitioner acquired knowledge of the award only on 24 November 2016 when some documents were filed in Original Suit No.101 of 2014 that had been instituted by Harpyari against the petitioner in the Court of Civil Judge (Senior Division), Ghaziabad for grant of mandatory injunction. It is

stated that an affidavit was filed in said Original Suit on 10 January 2017 that the land had been acquired in the year 2009 and the name of the petitioner had been expunged. Subsequently, the petitioner obtained copies of the records on 20 January 2017 and found that the entries dated 30 January 2014 and 23 May 2014 made in favour of the petitioner in the revenue records had been expunged on 30 May 2015 and 28 December 2016. It is, therefore, asserted that the petitioner came to know only on 24 November 2016 that the award had been made.

Sri Manish Goyal, learned counsel appearing for the petitioner has placed reliance upon Section 11-A of the Act and has submitted that since the award was not made within a period of two years from the date of publication of the declaration under Section 6 of the Act, the entire acquisition proceedings lapse. In support of his contention, learned counsel has placed reliance upon the judgments of the Supreme Court in **Laxmi Devi Vs. State of Bihar & Ors.**<sup>5</sup>, **Laxman Pandya & Ors. Vs. State of U.P. & Ors.**<sup>6</sup> and **Kunwar Pal Singh (dead) through LRs Vs. State of U.P. & Ors.**<sup>7</sup> and also on Division Bench judgments of this Court in **Ram Jiyawan Vs. State of U.P. & Ors.**<sup>8</sup> and **Veer Singh & Ors. Vs. State of U.P. & Ors.**<sup>9</sup>

Learned Standing Counsel appearing for the State respondents and Sri R.P. Singh, learned counsel appearing for Greater Noida have, however, submitted that since the provisions of sub-sections (1) and (4)

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5 (2015) 10 SCC 241

6 (2011) 14 SCC 94

7 (2007) 5 SCC 85

8 AIR 1994 Allahabad 38

9 Writ-C No.64718 of 2008, decided on 4 March 2016

of Section 17 were made applicable, the acquisition proceedings would not lapse under Section 11-A of the Act and in support of this contention, learned counsel for Greater Noida has placed reliance upon the decisions of the Supreme Court in **Satendra Prasad Jain & Ors. Vs. State of U.P. & Ors.**<sup>10</sup>, **Awadh Bihari Yadav & Ors. Vs. State of Bihar & Ors.**<sup>11</sup> and **New Okhla Industrial Development Authority Vs. Harkishan (dead) through LRs. & Ors.**<sup>12</sup>.

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

In order to appreciate the contentions advanced by learned counsel for the parties, it would be appropriate to refer to the relevant provisions of Sections 4(1), 6, 11(1), 11-A and 17 of the Act. They are reproduced below:

**“4. Publication of preliminary notification and powers of officers thereupon:** (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification.

.....

**6. Declaration that land is required for a public purpose:** (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed

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<sup>10</sup> (1993) 4 SCC 369

<sup>11</sup> (1995) 6 SCC 31

<sup>12</sup> Civil Appeal No.5170 of 2010, decided on 27 January 2017

for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made wherever required under section 5A, sub-section (2)

.....

(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration, and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration the appropriate Government may acquire the land in a manner hereinafter appearing.

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**11. Enquiry and award by Collector.** (1) On the day so fixed, or on any of other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he

has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent to the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

.....

**11A Period within which an award shall be made.**

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation. In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

.....

**17.Special powers in cases of urgency.**

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

.....

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1)."

The award made under Section 11 of the Act gives reference of the various dates relating to acquisition proceedings and they are as follows:

24 July 2008	Date of Section 4(1)/17 notification
24 July 2008	Date of publication in Official Gazette
8 August 2008	Date of publication in two newspapers
28 July 2008	Date of causing public notice of the substance of the notification at convenient places in the locality

29 January 2009	Date of publication of Section 6 declaration
29 January 2009	Date of publication in Official Gazette
20 February 2009	Date of publication in two newspapers
18 February 2009	Date of causing public notice of the substance of the notification at convenient places in the locality

7 March 2009	Date of hearing under Section 9
9 March 2009	Date of taking possession
27 August 2011	Date of award under Section 11

Section 11-A of the Act provides that the Collector shall make the award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. The dates referred to above would indicate that the date of publication of the declaration under Section 6 of the Act is 20 February 2009 since it is the last date of the publication and the giving of the public notice. The award was made on 27 August 2011. It is beyond two year years from the date of the declaration under Section 6 of the Act.

The issue that arises for consideration is whether the acquisition proceedings would lapse when the provisions of Section 17 of the Act are made applicable but before that it needs to be remembered that the petitioner purchased land from Leeladhar on 17 January 2006 and the



name of the petitioner was mutated in the revenue records only on 30 January 2014. It was, however, subsequently expunged on 30 May 2015 and the name of Greater Noida was entered.

In the instant case, the fact reveals that the possession was taken by the State on 9 March 2009. Possession can be taken under Section 16 of the Act only when the Collector has made the award under Section 11 of the Act. Section 17(1) of the Act provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government free from all encumbrances. In the instant case, possession could be taken because the provisions of sub-sections (1) and (4) of Section 17 were made applicable. After the notice under Section 9(1) of the Act was issued, objections were heard on 7 March 2009 and possession of 105.5600 hectares of land was taken on 9 March 2009. On such possession having been taken, the land vested in the State free from all encumbrances.

It has, therefore, to be considered whether in such circumstances, the acquisition proceedings would lapse if the award was made beyond two years from the date of publication of the declaration under Section 6 of the Act.

This issue was examined by the Supreme Court in **Satendra Prasad Jain**. After referring to the provisions of Section 11-A and Section 17 of the Act, the Supreme Court observed as follows:

“15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

16. Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.”

This decision was relied upon by the Supreme Court in **Awadh Bihari Yadav** and it was held :

10. .... It was contended that in view of Section 11-A of the Act the entire land acquisition proceedings lapsed as no award under Section 11 had been made within 2 years from the date of commencement of the Land Acquisition Amendment Act, 1984. We are of the view that the above plea has no force. In this case, the Government had taken possession of the land in question under Section 17(1) of the Act. It is not open to the Government to withdraw from the acquisition (Section 48 of the Act). In such a case, Section 11-A of the Act is not attracted and the acquisition proceedings would not lapse, even if it is assumed that no award was made within the period prescribed by Section 11-A of the Act. ....”

The same observations were made by the Supreme Court in **Pratap and Anr. Vs. State of Rajasthan & Ors.**<sup>13</sup> and **Allahabad Development Authority Vs. Nasiruzzaman & Ors.**<sup>14</sup>.

The Supreme Court again examined this issue in **Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors.**<sup>15</sup>. The Allahabad High Court had allowed the writ petition that had been filed to assail the acquisition proceedings on the ground that the award had not been made within the time prescribed under Section 11-A of the Act. It needs to be noticed that the provisions of sub-sections (1) and (4) of Section 17 had been applied. The Supreme Court placing reliance upon its earlier decisions held that since the provisions of Section 17 of the Act had been applied and possession had been handed over to the Development Authority on 30 June 2001, the view taken by the High

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13 (1996) 3 SCC 1

14 (1996) 6 SCC 424

15 (2011) 5 SCC 394

Court that acquisition provisions had lapsed due to non-compliance of Section 11-A of the Act, could not be sustained.

The decisions in **Satendra Prasad Jain** and **Awadh Bihari Yadav** have subsequently been followed by the Supreme Court in **New Okhla Industrial Development Authority** and it has been held :

“12. There is yet another serious infirmity in the impugned judgment. In the instant case, the land was acquired by invoking urgency clause under Section 17 of the Act and dispensing with the requirement of filing the objections under Section 5A of the Act. This action on the part of the Government was upheld by this Court in the first round of litigation. Once possession is taken under Section 17(1) of the Act, Section 11-A is not even attracted and, therefore, acquisition proceedings would not lapse on failure to make award within the period prescribed therein. This is so held in **Satendra Prasad Jain & Ors. v. State of Uttar Pradesh & Ors.**, which view is affirmed in **Awadh Bihari Yadav & Ors. v. State of Bihar & Ors.**”

In view of the aforesaid decisions, it has to be held that once possession of the land admeasuring 105.5600 hectares including that of Khasra Plot No.57 was taken on 9 March 2009, it would vest in the State free from all encumbrances and the acquisition proceedings would not lapse even if the award was not made within two years from the date of publication of the declaration under Section 6 of the Act.

It also needs to be noted that the acquisition proceedings that had been initiated by issuance of the notification dated 24 July 2008 under Section 4(1) of the Act were also considered by the Full Bench in **Gajraj** in 'Group 27'. Issue no.10 in **Gajraj** was whether acquisition under challenge had lapsed under Section 11-A of the Act since the award was

not made within two years from the date of publication of the declaration under Section 6 of the Act. In paragraph 376, the Full Bench observed as follows:

“376. We have considered the submission of the learned counsel for the parties. In Satendra Prasad Jain's case the issue was considered and it was held by the Apex Court that when Section 17 sub Section (1) is applied by reason of urgency, the Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government as laid down in paragraph 15. The said view was reiterated by the Apex Court in Awadh Bihari Yadav and others Vs. State of Bihar and others, 1995, 6 S.C.C. Page 31. The recent judgment of Banda Development Authority (supra) has also occasion to consider the said issue, relying on the decision of Satendra Prasad Jain. The argument on the basis of Section 11-A was repelled. In the present bunch of cases the State Government has invoked urgency clause under Section 17(1) and possession has been taken in all the cases exercising urgency power. The ratio laid down by Satendra Prasad Jain's case is fully attracted and the submission made by the learned counsel for the petitioners on the basis of Section 11-A can not be accepted.”

Learned counsel for the petitioner has, however, placed reliance on the decision of the Supreme Court in **Laxmi Devi**. The notification under Section 4(1) of the Act was issued on 24 July 2008 and the provisions of Section 4/17 were also resorted to. The award under Section 11-A of the Act was not made. The appellant before the Supreme Court had pleaded that the land should revert to the appellant under Section 11-A of the Act since the award under Section 11 had still not been made despite the passage of almost three decades. It is in this context that the Supreme Court observed :

“29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in *Satendra Prasad Jain and Avinash Sharma*. The Appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The *raison d’être* behind the introduction of Section 11A was for the landowners to have a remedy in the event of an award not being passed expeditiously. If *Satendra Prasad Jain* is interpreted to mean that Section 11A will not apply to any acquisition under the urgency provisions, landowners such as the Appellants before us will have no protection, even if they are not paid full compensation for their land for decades. This cannot be in keeping with the legislative intent behind this Section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any other cause can substitute it, especially where the urgency provisions have been invoked.”

In the present case, as noted above, not only possession had been taken on 9 March 2009 but the award was also made on 27 August 2011.

In **Kunwar Pal Singh**, the issue before the Court was regarding the date of publication of the declaration under Section 6 of the Act. This judgment does not decide whether the acquisition proceedings would lapse when the provisions of sub-sections (1) and (4) of Section 17 of the Act are made applicable to the acquisition.

The judgment in **Laxman Pandya**, on which reliance has been placed by learned counsel for the petitioner, would also not be of any benefit to the petitioner. The Supreme Court distinguished the decisions in **Satendra Prasad Jain** and **Awadh Bihar Yadav** for the reason that the possession of the land had not been taken within two years from the

date of publication of the declaration under Section 6 of the Act as is clear from paragraph 17 of the judgment which is reproduced below:-

“17. The High Court was also not justified in applying the ratio of Satendra Prasad Jain Vs. State of U.P. (supra) and Awadh Bihari Yadav v. State of Bihar (supra) for negating the appellants' prayer because in those cases possession of the acquired land was taken within two years of the publication of the declaration issued under Section 6(1) and, as a result of that the acquired land vested in the State Government. In these cases, possession of the acquired land was not taken within two years of dismissal of the writ petitions. Therefore, the land cannot be said to have vested in the State Government.”

In the instant case, possession of the land was taken on 9 March 2009 within two months from the date of publication of the declaration under Section 6 of the Act.

The decision of the Division Bench of this Court in **Ram Jiyawan** also does not help the petitioner because of what has been stated in paragraph 41 of the judgment which is as follows:

“41. In the present petitions the only substantive provision which is alleged to have been violated is Section. 11A. If Section 11A is violated the entire acquisition proceedings will indeed lapse but the relevant facts attracting that provision have not been placed on record by the petitioner. As already noticed Section 11A requires the award to be made within a period of two years from the date of the publication of the declaration. If the award is not made within this period the acquisition lapses. The period of two years is to be calculated from the date of the publication of declaration. In the present case, as already noticed, initially the petitioner pressed this point but subsequently gave up. Accordingly in the present petitions it is not possible to quash the acquisition itself. ....”

The judgment of the Division Bench of this Court in **Veer Singh** would also not help the petitioner because the issue as to whether the acquisition proceedings would lapse if sub-section (1) and (4) of Section 17 are made applicable, was not considered.

Thus, for all the reasons stated above, it is not possible to accept the contention of learned counsel for the petitioner that the acquisition proceedings lapse because the award has not been made within two years from the date of publication of the declaration under Section 6 of the Act.

The writ petition is, accordingly, dismissed.

**Date:07.03.2017**

**SK**

**(Dilip Gupta, J.)**

**(Siddhartha Varma, J.)**