A.F.R.

Court No. - 1

Case :- LAND ACQUISITION No. - 67 of 2010

Petitioner :- Dinesh Kumar & Others
Respondent :- State Of U.P.,Thru. Prin. Secy., Revenue, & Others
Counsel for Petitioner :- Vivek Raj Singh,A.K. Bajpai,Ishwar Dutt Shukla,Manish Jauhari,Mohd. Rafi Khan,Mohit Jauhari,Santosh Kumar Mehrotra
Counsel for Respondent :- C.S.C.,Madan Mohan Pandey,Mukund Tewari,Namit Sharma

Hon'ble Vikram Nath,J.
Hon'ble Abdul Moin,J.

(Per Hon'ble Abdul Moin, J.)

1. Heard Sri Vivek Raj Singh learned counsel for the petitioners, Sri Madan Mohan Pandey and Sri Mukund Tewari, learned counsels representing respondent-Lucknow Development Authority as well as Sri Shishir Chauhan learned Brief Holder for the State-respondents and perused the original records produced before us by Sri Chauhan.

2. By means of the present petition, the petitioners have prayed for the following relief:-

> *"1. Issue a writ, order or direction in the nature of certiorari quashing the notification no.2992/9- AA-3-2000-74LA – 96 Lucknow dated 5th September, 2000 under Section 4 and notification no.657/IX-A-3-2001-74L.A./96 Dated Lucknow February, 2001 under section 6 of the Land Acquisition Act, 1894 in respect of Khasra No.242 situated at Village Makhdumpur, Gomti Nagar Vistar, Lucknow as contained in Annexure No.3 and 4 to the Writ Petition.*
>
> *2. If the Hon'ble Court is not pleased to grant the first relief as prayed hereinabove, then the Hon'ble Court may kindly be pleased to set-aside the Award*

dated 21.10.2008 in regard to Khasra Plot No.242 measuring 2 Bigha 12 Biswa 14 Biswansi situated in Village Makhdumpur, Gomti Nagar Vistrar, Lucknow.

3. Issue any other relief which this Hon'ble Court may deem just and equitable in the facts and circumstances of the present case be granted in in favour of the petitioners.

4. The cost of the present petition be allowed in favour of the petitioners."

3. During pendency of the petition, the petitioners preferred an application seeking amendment in the writ petition which was allowed by this Court vide order dated 17.12.2014. By means of the said amendment, certain facts and grounds were sought to be amended which pertain to the petitioners' seeking benefit of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 2013 Act). However, at the time of arguments, the petitioners have filed a supplementary affidavit dated 7.3.2018 by which it has been indicated that the petitioners do not wish to press their plea of Section 24(2) of the 2013 Act in the instant proceedings and that they pray that their plea regarding challenge to the impugned orders/notifications on other legal grounds which existed in the year 2010 i.e. at the time of filing of the instant writ petition be heard. Consequently, we are proceeding to hear the matter on the grounds taken by the petitioners in the writ petition except on the facts and grounds of Section 24(2) of the 2013 Act.

4. The case set forth by the petitioners are that they are joint owner of the land bearing Khasra No.242 comprising an area of 0.6670 hectare (2 bighas, 12 biswas and 14 biswansis) situated at Village Makhdumpur, Gomti Nagar Extension, Lucknow. On 5.9.2000 the State Government issued notification under Section

4 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as the 1894 Act) in the official gazette for acquiring 1146.75 Acres of land in Village Makhdumpur, Gomti Nagar Extension, Lucknow and the adjoining area for Amar Saheed Path, Gomti Nagar Extension Scheme, Lucknow which included the land of Khasra No.242 of the petitioners. After publication of the said Section 4 notification in the official gazette, the same was also published in two daily newspapers on 7.9.2000 and 11.9.2000. Copy of the said gazette notification under Section 4 of the 1894 Act is Annexure-3 to the writ petition. Vide notification dated 16.2.2001, the declaration under Section 6 read with Section 17 of the 1894 Act was issued for the aforesaid land and the same was published in the official gazette on 16.2.2001 declaring that the land mentioned in the schedule is needed for public purpose of Amar Saheed Path, Gomti Nagar Extension Scheme, Lucknow. The same was also published in two daily newspapers on 17.2.2001. Copy of the said notification under Section 6 of the 1894 Act is Annexure-4 to the writ petition.

5. The petitioners contend that a proclamation of Section 6 of the 1894 Act was also made in the area on 2.6.2001. The petitioners further contend that the token possession of the land of the petitioner of Khasra No.242 was taken by the respondents and the same was handed over to the Lucknow Development Authority on 11.7.2002 more particularly to the Executive Engineer of the Lucknow Development Authority. Copy of the possession certificate is Annexure-5 to the petitioner. The petitioners, however, submit that they continued to remain in possession of land of Khasra No.242. They came to know that an award dated 21.10.2008 had been made in regard to the land of the petitioners only when on 3.12.2010 the respondent No.5 came to demolish the boundary wall constructed around the plot

of the petitioners. The petitioners contend that as per Section 11A of the 1894 Act the Collector should have made the award under Section 11 of the 1894 Act within a period of two years from the date of publication of the declaration under Section 6 of the 1894 Act and as no award was made within that period, the entire proceedings for acquisition of the land stand lapsed. The petitioners contend that the declaration under Section 6 of the 1894 Act was made on 16.2.2001 and the proclamation was made on 2.6.2001 and consequently the award in all circumstances should have been made by 1.6.2003 and as the award was made after 7 years i.e. on 21.10.2008, consequently the entire proceedings of acquisition stand lapsed and thus the action on the part of the respondent in now trying to take over the possession of the land of the petitioners is patently arbitrary and illegal. It is also the case of the petitioners that over their land of Khasra No.242 a school in the name of D.A.P. is running and Samadhi of the father of the petitioners is also established. They contend that the part layout plan of Vasant Khand, Gomti Nagar Extension Housing Scheme issued by the Lucknow Development Authority clearly mentions that the School is running on the land of the petitioners in Khasra No.242 and also indicates that the Samadhi of Mr. Ayodhya Prasad is situated on the said land. It is also the case of the petitioners that their mother applied for adjustment of the plot of the school in the acquisition in question and that proceedings for adjustment of the plot were initiated by the State Government, yet the award dated 21.10.2008 has been issued. Consequently, the petitioners, on the basis of Section 11A of the 1894 Act have prayed before this Court for the reliefs which have already been quoted above which pertain to quashing of notifications under Sections 4 and 6 of the 1894 Act as well as praying for setting aside the award dated 21.10.2008 with regard to Khasra No.242.

7. Upon filing of the writ petition before this Court, this Court vide order dated 20.12.2010 directed that no demolition of the building shall take place.

8. In order to challenge the award dated 21.1.2008 as well as the notifications under Section 4 and 6 of the 1894 Act, the petitioners have placed reliance over the judgments of the Hon'ble Supreme Court in the case of ***Kunwar Pal Singh vs. State of U.P. and others*** reported in ***(2007)5 SCC 85***, ***Banda Development Authority vs. Moti Lal Agarwal*** reported in ***2011(5) SCC 394***, ***Dahyabhai Ranchhoddas Dhobi vs. State of Gujarat and others*** reported in ***(2010)7 SCC 705*** as well as two judgments of this Court in the case of ***Sushil Kumar vs. State of U.P. and others*** reported in ***1999(1) AWC 764*** and an unreported judgment ***Writ-C No.64718 of 2008 In re: Veer Singh and others vs. State of U.P. and others*** decided on **4.3.2016**.

9. During pendency of the writ petition itself, two impleadment applications were filed, the first by Vijayendra Singh and another vide C.M. Application No.49885 of 2012 and another by Ms. Rita Singh vide C.M. Application No.32117 of 2016 both praying for being impleaded in the writ petition on the ground that they were allotted residential plots in Gomti Nagar Extension Scheme, Lucknow but the physical possession of the plots have not been handed over to them and upon making inquiries they came to know that Sector-4 of the Gomti Nagar Extension Scheme is under dispute in the present writ petition and on account of the interim order it was not possible to hand over the possession of the plots to them and hence the necessity of their impleadment. A quite large number of petitions came to be filed by similarly situated plot allottees with which we need not be concerned.

Suffice to mention that this Court vide order dated 10.8.2015 modified the interim order granted earlier by this Court to the extent that an area of 106 square meters, on which school has been constructed as per allegations made by the petitioners, shall not be disturbed. The said modified order dated 10.8.2015 was challenged by the petitioners by filing ***Special Leave Petition (Civil) No.025114-025114 of 2015*** but the same was dismissed on ***7.9.2015***. However, this fact was never disclosed to this Court rather it was concealed.

10. It has also been contended by the petitioners that as only token possession of the land was taken by the respondents on 11.07.2002 and the structures on the said land were standing, consequently, the respondents should have followed the principles of law laid down by the Apex Court in the case of ***Banda Development Authority vs. Moti Lal Agarwal and others*** reported in ***2011(5) SCC 394*** for taking possession of the land and the said procedure not having been followed, it would be deemed that the petitioners continue to be in legal possession of their land of Gata/Khasra No.242.

11. On the other hand Sri Mukund Tiwari, learned counsel appearing for respondent No.5-Lucknow Development Authority along with Sri Shishir Chauhan, learned Brief Holder for the State-respondents have taken a preliminary objection that the notifications under Sections 4 and 6 of the 1894 Act had been issued on 5.9.2000 and 16.2.2001 respectively, yet the writ petition has been filed in the year 2010 and consequently the same deserves to be dismissed on the ground of delay and laches. In support of the said argument, learned counsels have placed reliance over the judgments of the Hon'ble Supreme Court in the case of ***Aflatoon and others vs. Lt. Governor of***

Delhi and others reported in ***(1975)4 SCC 285***, ***Hari Singh and others vs. State of U.P. and others*** reported in ***(1984)2 SCC 624, P. Chinnanna and others vs. State of A.P. and others*** reported in ***(1994)5 SCC 486***, ***State of T.N. and others vs. L. Krishnan and others*** reported in (1996)1 SCC 250, ***Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others*** reported in ***(1996)11 SCC 501***, ***Municipal Council, Ahmednagar and another vs. Shah Hyder Beig and others*** reported in ***(2000)2 SCC 48***, ***Banda Development Authority (supra***), ***Mutha Associates and others vs. State of Maharashtra and others*** reported in ***(2013)14 SCC 304*** and ***New Okhla Industrial Development Authority vs. Harkishan (dead) through legal representatives and others*** reported in ***(2017)3 SCC 588***.

12. The learned counsels further argued that token possession had admittedly been taken of the aforesaid land on 11.7.2002 and the award was published on 21.10.2008, yet as the notifications under Sections 4 and 6 of the 1894 Act were issued along with Section 17 of the 1894 Act by invoking the urgency clause, as would be apparent from a perusal of the said notifications, as such the provisions of Section 11A of the 1894 Act shall not be applicable. In support thereof reliance has been placed by the learned counsels upon the judgments of Hon'ble Supreme Court in the case of ***Satendra Prasad Jain and others vs. State of U.P. and others*** reported in ***(1993)4 SCC 369***, ***Awadh Bihari Yadav and others vs. State of Bihar and others*** reported in ***(1995)6 SCC 31***, ***Pratap and another vs. State of Rajasthan and others*** reported in ***(1996)3 SCC 1***, ***Collector of Land Acquisition and others vs. Andaman Timber Industries*** reported in ***(2014)16 SCC 780***, ***Banda Development Authority (supra)*** and ***New Okhla Industrial Development Authority vs.***

Harkishan (dead) through legal representative and others (supra).

13. So far as the contention on the part of the petitioners of the possession of land not having been validly taken, learned counsels for the respondents have placed reliance over the same judgment upon which the petitioners have also placed reliance i.e. ***Banda Development Authority (supra)*** to contend that no hard and fast rule can be laid down regarding taking of possession of the acquired land and the possession taken on 11.7.2002 by the respondents has to be treated as valid possession of the land by the respondents.

14. Having heard the arguments of the respective parties, it would be convenient to indicate the undisputed facts of the case.

15. Notification under Section-4 read with Sections 17(1) and 17(4) of the 1894, Act was issued on 05.09.2000. The same was never challenged by the petitioners till the filing of the instant petition. Thereafter, the notification under Section-6 read with Section-17 (1) of the 1894, Act was issued on 16.02.2001. Incidentally, the said notification was also never challenged by the petitioners till the filing of the instant writ petition. Admittedly, token possession was also taken by the respondent on 11.07.2002 and the award was published on 21.10.2008 and the compensation admittedly deposited by the LDA on 30.09.2014. The challenge to the notification under Section-4 and Section-6 of the 1894, Act have been made after a period of almost ten years by means of the present writ petition. The reason for raising challenge to the said notifications after almost a decade has been indicated in the writ petition by the petitioners as they coming to know about the award only when the respondent No.5 came to demolish the boundary wall constructed around the plot

on 03.12.2010. At the same time, there are specific averment made in the writ petition that a proclamation of Section-6, notification was made in the area on 02.06.2001 so as to satisfy the requirement of Section-6(2) of the 1894, Act .

16. Be that as it may, the main ground of challenge to the notifications under Sections 4 and 6 of the 1894 Act and the award dated 21.10.2008 is that the award was not issued within a period of two years from the date of publication of the declaration and consequently in terms of Section-11(A) of the 1894 Act, the acquisition of the land shall lapse and that the procedure prescribed for taking possession of land not having been followed, the petitioners continued to be in legal possession of their land. We now proceed to deal with the same.

17. So far as the delay in raising challenge to the notifications under Sections- 4 and 6 of the 1894, Act are concerned, suffice to state that the Apex Court in the case of ***Aflatoon (supra)*** has laid down the principles of law which have been reiterated by the Apex Court from time to time and as recently as in 2017 in the case of ***New Okhla Industrial Development Authority (supra)***. For the sake of convenience, the principle of law enunciated in the case of ***Aflatoon (supra)*** is reproduced as under –

> *9. "Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section -9 were issued to them. In the concluding portion of the judgment in*

Munshi Singh & Others v. Union of India (supra), it was observed :

"In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence, at any stage."

We do not think that the appellants were vigilant."

10. That apart, the appellants did not contend before the High Court that as the particulars of public purpose were not specified in the-notification issued under section. 4, they were prejudiced in that they could not effectively exercise their right under section 5A. As the plea was not raised by the the appellants in the writ petitions filed before the High Court, we do not think that the appellants are entitled to have the plea considered in these appeals."

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the, notification even after the publication of the declaration under s. 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the, public purpose were not specified. A valid notification under s. 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the, acquisition proceedings on the basis that the notification under s. 4 and the declaration under s. 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be, putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Tilokchand Motichand and Others v. H. B. Munshi *and Another(1); and* Rabindranath Bose and Others v. Union of India & Others*."*

"12. From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to co-operative housing societies. To quash

the notification at this stage would disturb the rights of third parties who are not before the Court."

18. Likewise the principle of law in the case of ***New Okhla Industrial Development Authority (supra)*** is also reproduced as under :–

P-3 "Neat question of law which is raised is that the petition filed in the year 2004, after having lost twice, was not even maintainable as it suffered from unexplained delays and latches and was also barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908. For proper appreciation of this submission, we recount the events in some detail hereinafter."

P-12 "More importantly, when the respondents made the representation, it was dealt with and rejected by the State Government vide order dated December 03, 1999. At that time, award had been passed. However, in the second round of writ petitions preferred by the respondents, they chose to challenge only Office Order dated December 03, 1999 vide which their representation under Section 48 of the Act had been rejected and it never dawned on them to challenge the validity of the award on the ground that the same was not passed within the prescribed period of limitation. As noted above, in the second round of litigation also, the respondents failed in their attempt, inasmuch as, this Court put its imprimatur to the rejection order dated December 03, 1999 vide its judgment dated March 12, 2003. At that time, even the possession of land had been taken. If the respondents wanted to challenge the validity of the award on the ground that it was passed beyond the period of limitation, they should have done so immediately and, in any case, in the second round of writ petitions filed by them. Filing fresh writ petition challenging the validity of the award for the first time in the year 2004 would, therefore, not only be barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908, but would also be barred on the doctrine of laches and delays as well.

19. To the same effect are the judgments of the Hon'ble Supreme Court in the case of ***Hari Singh, P. Chinanna, L. Krishna, Municipal Corporation of Mumbai, Shah Haider Begh, Kolutrala Obei Reddy, Motilal Agarwal*** and ***Mutha Associates (supra)*** which for the sake of brevity, we are not reproducing in our judgment.

20. In this regard, we have also summoned the original record from the respondents. From a perusal of the original records, it also comes out that the petitioners were having knowledge about the acquisition of the land on 26.4.2002 itself inasmuch as the original records contains a notice under Section-9(3) of the 1894 Act which bears the receiving of Ramesh Chandra Yadav dated 26.04.2002 in the presence of two independent witnesses. Incidentally, Ramesh Chandra Yadav is the petitioner no. 2 in the instant writ petition. However, this notice under Section 9(3) of the 1894 Act for the disputed piece of land has not been disclosed in the petition, rather it has been concealed. Thus, it is apparent that the petitioners despite knowledge of acquisition of land both admittedly by contending in the writ petition itself that a proclamation of Section 6 of the 1894 Act was made in the area on 2.6.2001 as well as the petitioner No.2 having received the notice under Section 9(3) of the 1894 Act on 26.4.2002 yet having filed the writ petition only in the year 2010 without explaining the delay and laches goes a long way to indicate that the petitioners allowed the gross to grow under their feet and have approached this Court for the reliefs prayed for after almost a decade of the notifications under Sections 4 and 6 of the 1894 Act.

21. Consequently, keeping in view the aforesaid discussions, the writ petition preferred by the petitioners deserves to be

dismissed on the ground of delay and laches itself.

22. However, as we have also heard the case on merits, as such we are proceeding to deal with the grounds of challenge to the said notifications.

23. So far as the notifications under Sections- 4 and 6 of the 1894 Act and the award dated 21.10.2008 are concerned and the ground of challenge to the same of no award having been made within a period of two years and consequently taking into consideration Section 11(A) of the 1894 Act, the acquisition proceedings would lapse, is concerned, learned counsel for the petitioners have vehemently argued that Section-11(A) of the 1894 Act knows of no exception or exclusion and that once admittedly the award under Section 11 was made beyond a period of two years from the date of publication of the declaration, the entire proceedings for the acquisition of the land have lapsed. For considering this argument, we have to consider the provisions of Section-11(A) which for the sake of convenience is reproduced below –

> *"**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, 10984 (68 of 1984), the award shall be made within a period of two years from the 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."

24. Section 11(A) provides that the Collector shall make an 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. Admittedly, in the instant case, the date of the publication of the declaration is 02.06.2001 and even the public notice as provided under Section-6(2) of the 1894, Act was made on 02.06.2001. Consequently, as per the petitioners, the award should have been made at least by 01.06.2003 failing which, in terms of Section 11(A) the proceedings have lapsed. For arguing this proposition, the petitioners have placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Dahya Bhai Ranchondas Dhobi (supra)***.

25. A perusal of the said judgment indicates that the Apex Court while placing reliance on its earlier judgment in the case of ***Department of Telecommunications Vs. Jacob reported in 2003 9 SCC 662*** has held that the period of two years from the date of publication of the declaration prescribed under Section 11(A) has to be calculated from the last date of the series of publications referred to under Section 6(2) of the 1894, Act. There can be no quarrel to the said proposition of law. Consequently, it is argued, by placing reliance on ***Dahya Bhai Ranchondas Dhobi (supra)*** that once the date of proclamation was 2.6.2001 consequently the award should have been made by 1.6.2003 and once the award was not made latest by 01.06.2003, as such the entire proceedings have lapsed.

26. Having considered the arguments raised on the point of Sections-11 and 11A of the 1894 Act what we find is that in the

instant case, the notification under Section 4 of the 1894, Act was made along with Section 17 of the 1894, Act whereby indicating that the provisions of Section 5(A) of the 1894, Act shall not apply.

27. Likewise when the declaration under Section 6 was issued on 16.02.2001, the same was also issued along with Section 17 of the Act meaning thereby that the urgency clause had been invoked by the Government while issuing the notification under Sections 4 and 6 of the 1894, Act and consequently, the possession of the land passed to the Government and stood vested in the Government. Once possession of the land was taken by the Government accordingly keeping in view the law laid down by the Apex Court in the case of ***Satendra Prasad Jain (supra)*** and followed as recently as in the case of ***New Okhla Industrial Development Authority (supra)***, it cannot be said that the proceedings stood lapsed in view of Section-11A of the 1894 Act. The reason for the same has been discussed threadbare by the Apex Court in the case of ***Satendra Prasad Jain (supra)*** wherein the Hon'ble Supreme Court has categorically held that Section 11(A) can have no application to cases of acquisition under Section-17 because the land stands vested in the Government and there is no provision in the Act by which land statutorily vested in the Government can revert to the owner. For the sake of convenience, the law laid down in the case of ***Satendra Prasad Jain (supra)*** is reproduced as under–

> *P.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".

28. Likewise ***New Okhla Industrial Development Authority (supra)*** while reiterating ***Satendra Prasad Jain (supra)*** has held as under :-

P.13"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 11A 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.*[2], which view is affirmed in Awadh Bihari Yadav & Ors. v. State of Bihar & Ors"*

29. Similar proposition of law has been laid down by the Apex Court in the case of ***Avadh Bihari Yadav, Pratap & Another***, ***Allahabad Development Authority***, ***Collector of Land Acquisition and Banda Development Authority (supra)*** which for the sake of brevity, we are not reproducing.

30. The petitioner has, however, placed reliance on the judgment of this Court in the case of ***Sushil Kumar (supra)*** to contend that while considering the provisions of Section 11A and the provision of Section 17(1) of the 1894 Act this Court had held that notification under Sections 4 and 6 of 1894 Act stood lapsed as no award was made within two years of the declaration under Section 6. In our opinion, the said judgment would have no application in the facts of the instant case inasmuch as this Court clearly recorded in the said case that possession of land had not been taken by the State before expiry of two years. In the instant case, it is admitted that token possession had already been taken by the respondents on 11.07.2002 i.e. prior to expiry of two years period of the declaration under Section 6 of the 1984 Act on 16.2.2001.

31. Reliance has also been placed by the petitioners on the judgment of this Court in the case of ***Veer Singh (supra)*** but again the said case is distinguishable inasmuch as in the said case while issuing notification under Sections 4 and 6 of the 1894 Act, Section 17 i.e. the urgency clause had never been invoked. Consequently the said judgment would have no applicability in the facts of the instant case wherein admittedly the provisions of Section-17 were invoked at the time of issue of the notifications under Sections 4 and 6 of the Act 1894.

32. Keeping in view the aforesaid discussions and the fact that the provisions of Section 17 of the 1894 Act had been involved while issuing the notification under Sections 4 and 6 of the 1894 Act, consequently, it is apparent that the grounds of challenge to the notification under Sections 4 & 6 of the 1894, Act on the basis of Sections 11 and 11A shall not be applicable and hence the said ground fails.

33. The petitioner has further argued that as the respondents only took token possession of the land therefore by following the principle of law laid down by Apex Court in the case of ***Banda Development Authority (supra)***, it cannot be said that the possession was taken legally by the respondents and accordingly on this ground alone, the land should revert back to the petitioners. Strong reliance has been placed on Para 37 of ***Banda Development Authority (supra)*** in this regard.

34. For the sake of convenience Para 37 of ***Banda Development Authority (supra)*** is reproduced below:-

> *"37. The principles which can be culled out from the abovenoted judgments are:*
>
> *i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.*
>
> *ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.*
>
> *iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.*
>
> *iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence*

of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/ instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."

35. On the other hand, learned counsel for the respondents have argued while placing reliance on ***Banda Development Authority (supra)*** itself that the Apex Court has clearly laid down in Para 37 (i) that no hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land. Further, by placing reliance on Para 37(iv), it has been argued that as acquisition under the said scheme pertained to a very large tract of land comprising of 1747 Bighas approximately, consequently, keeping in view the principle of law in the case of ***Banda Development Authority (supra)***, it may not be possible for the acquiring authority to take physical possession of each and every parcel of the land and it is sufficient that symbolic possession is taken by preparing appropriate documents in the presence of independent witnesses and getting the signatures on such document, which has been followed by the respondents while taking possession. For this purpose, the respondents have placed reliance on the possession certificate dated 11.07.2002 annexed by the petitioner himself as annexure-5 to the writ petition duly indicating the fact of the respondents having received the possession of the land pertaining to Gata No. 242 which belonged to the petitioners.

36. Thus, keeping in view the discussion made above even the challenge raised pertaining to the possession of the land having

not been taken in accordance with the principles of law laid down in ***Banda Development Authority (supra)*** fails.

37. The last argument raised on behalf of the petitioners pertains to various constructions made over Khasra No. 242 allegedly comprising of a house, boring tubewells, trees, DAP School & Samadhi and strong reliance was placed of the said constructions having been recorded in the award dated 21.10.2008 pertaining to Khasra No. 242.

38. In this regard, the respondents contend that the award has only reproduced the objections that were raised by Ramesh Chandra Yadav one of the land owners for the said land as would be apparent from a perusal of the award and nowhere does it contain the actual status of constructions over the said land. The respondents also contend that even the possession memo does not record any constructions over the said land and consequently, it cannot be said that any constructions were existing on the date when the possession was taken by the respondents else the same would clearly have been recorded.

39. In this regard, we have carefully perused the award dated 21.10.2008 and what we find is that averments pertaining to constructions over Khasra No. 242 as recorded in the award are the objections that were raised by Shri Ramesh Chandra Yadav pertaining to Khasra No. 242. Thus, no benefit can accrue to the petitioners pertaining to the alleged constructions.

40. Even otherwise a perusal of the original records would indicate that in an application moved by the petitioner no. 2 Ramesh Chandra Yadav on 06.05.2002 for release of the land indicates that there is no mention of any school being constructed over the said piece of land. The presence of the

school only comes up in the reply given by the ADM (Land and Acquisition) dated 11.04.2005 wherein upon a query being raised as to whether a school namely DAP School is situated on Khasra No. 242, the reply has been given as “Yes”. What is strange is that a letter addressed to the Housing Minister by Smt. Durga Devi, the mother of the petitioners for adjustment of the DAP School dated NIL was moved and is on record and an endorsement has been made on 18.06.2008 for appropriate action and with the said application, a letter dated 11.04.2010 is also annexed supposedly moved to the Vice Chairman, LDA, Lucknow for de-notification of DAP School. Thus, it is apparent that again petitioners have tried to mislead the Court by contending that the DAP School was existing in the year 2000 but the same is belied and falsified from records and the own application of the petitioners dated 06.05.2002 wherein there is no mention of existence of the DAP School.

41. Apart from the discussions made above by us, what we also find is that the respondents have specifically contended in the supplementary counter affidavit dated 13.10.2004 of the petitioners having made a small construction measuring 12.15 x 8.70 = 105.705 sq. mts. described as DAP School and the petitioners having encroached upon the adjoining plots and having constructed a boundary wall over total area of 9762.33 sq. mts. being more than their original holding of 2-12-14-0 i.e. 3122.33 sq. mts. Consequently what we find is that no construction having been recorded to be existing on the spot when the possession was taken by the respondents on 11.7.2002 would thus indicate that the constructions made by the petitioners were an encroachment subsequent to possession having been taken and consequently the petitioners cannot be allowed to be permitted to plead that because the constructions are existing on

the disputed piece of land, as such they may be given the benefit of the same. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in the case of ***Balwant Narayan Bhagde vs. M.D. Bhagwat and others*** reported in ***(1976)1 SCC 700*** wherein the Hon'ble Supreme Court has held that once the possession of the land was taken by the Government, even if the owner of the land entered upon the land and resumed possession of it the very next moment, such act does not have the effect of obliterating the consequences of vesting. Hence no benefit can be given to the petitioners of their alleged constructions existing over the said land. Further, in the supplementary counter affidavit dated 01.05.2017, it has also been contended by the LDA that over Khasra Plot No. 242, Plots No.- 4B 129 to 4B 134, 4B 226 to 4B 229, 231 to 238 and part of road have been sanctioned and the sanctioned plan has also been annexed as annexure SCA-2 to the said affidavit. It has also been contended that planned development of area has already taken place and would be disturbed in case the land is released in favour of the petitioners.

42. A very relevant aspect of the matter is that the LDA has filed a supplementary counter affidavit dated 05.10.2014 contending that the petitioner no. 2, Ramesh Chandra Yadav has been allotted a plot no. 1/813 having an area of 200 Sq. Mts in Gomti Nagar Extension Scheme under the displaced quota in lieu of construction made over Khasra No. 242. Similarly, Sri Dinesh Kumar, petitioner no. 1 has been allotted a plot no. 6/V having area of 75 Sq. Mts in Gomti Nagar Extension Scheme under the displaced quota in lieu of construction made over Khasra No. 242 and the registered sale deeds have also been executed by the LDA. While filing the supplementary rejoinder affidavit dated 10.05.2015, it has been contended on behalf of petitioners that

the petitioner no. 2 had another plot in Village- Makhdumpur namely Khasra No. 164 upon which house was also standing. The said house was demolished by respondent no. 5 and the entire plot was taken over. It was in lieu of demolition of the house that the petitioner no. 2 was included in the lottery for allotment of plots and was allotted the plot no. 1/847 in Gomti Nagar Extension at a cost of Rs. 5 Lakhs and that the said plot was not given free of cost to petitioner no. 2. Subsequently, the said plot became disputed and the LDA changed the allotment of the said plot. So far as the allotment of plot no. 6/V is concerned, it has been contended that petitioner no. 3 was offered for being included in the lottery but no deed was made in favour of Suresh Kumar which, if made, would have been in lieu of demolition of the house over the plot no. 164. It is further contended that no draw ever took place and no allotment was ever made. Be that as it may, it is apparent that the same award has been accepted by the petitioners for one plot of land but the petitioners are agitating and challenging the award including the notification with respect to another plot of land and this fact was never disclosed by them while filing the writ petition though both the pleadings form part of the notification under Sections 4 and 6 as well as the award dated 21.10.2008.

43. Keeping in view the aforesaid discussions, we are of the opinion that there is no merit in the writ petition and accordingly the same is dismissed both on the ground of delay and laches as well as on merits.

Order Date:- 27.3.2018.
Rakesh/Pachere

(Abdul Moin) (Vikram Nath)