A SATENDRA PRASAD JAIN AND OTHERS

*v.*

STATE OF U.P. AND OTHERS

SEPTEMBER 16, 1993

B [J.S. VERMA, S.P. BHARUCHA AND N. VENKATACHALA, JJ.]

*Land Acquisition Act, 1894—Sections 4, 5, 11A, 17(1) and 17(3A)—Land—Acquisition of—Land statutorily vested in government—Whether can revert to owner—Payment of compensation—Necessity of.*

C

**A notification under Section 4 of the Land Acquisition Act in respect of the land owned by the appellants was issued on 29th July, 1986. The notification stated that the acquisition was for the development and construction of a Mandi and that in view of the urgency of the public purposes Section 17(4) was applied and the provisions of Section 5-A were dispensed**

D **with. On 24th October, 1986 the Section 6 declaration was issued which applied the provisions of Section 17(1) to the land and it was stated that the Collector could, though no award under Section 11 had been made, on the expiration of fifteen days from the date of publication of the notice under Section 9(1), take possession of the land. On 2nd December, 1986**

E **the Section 9(1) notice was published.**

**The appellants in their Writ Petition to the High Court impugned the acquisition proceedings but the same was dismissed by a Division Bench which upheld the acquisition proceedings. On 27th February, 1987 the possession of the land was taken by the first and second respondents**

F **from the appellants and handed over to the third respondent. The Special Leave Petition filed by the appellants in this Court was dismissed.**

**On 13th January, 1989 the third respondent resolved the exclude from acquisition a portion of the land and the resolution stated that this**

G **was because of shortage of funds and because the proposed Mandi site was far away.**

**The appellant filed a writ petition in the High Court on 10th August, 1989 for a Writ of Mandamus to the respondents to direct them to make and publish an award in respect of the said land. On 27th June, 1990 the**

H **Special Land Acquisition Officer wrote to the third respondent recording**

that compensation for the purpose of making an award in respect of the lands had been claimed from the third respondent but that the third respondent had not made the monies available, and that adjusting the time taken in the proceedings before the High Court, the period of two years had expired on 18th January, 1989. A

The High Court dismissed the Writ Petition on 8th February, 1991 on the ground that it was the appellants own case that more than two years had elapsed since the date of issue of the notification under Section 4, that, by reason of Section 11A the entire proceedings for acquisition of the said land had lapsed, that by the mere fact that possession had been taken in pursuance of Section 17(1), the necessity of giving an award, as mandated by Section 11A, within a period of two years from the date of publication of the notification under Section 4 could not be dispensed with. B C

In the appeal to this Court, it was submitted on behalf of the appellant that on taking of possession of the said land under the provisions of Section 17(1) the land vested absolutely in the first respondent and the first respondent had become its owner, that Section 11A had to be interpreted harmoniously with the other provisions of the Act and could not apply whether the proceedings for acquisition of the land had already come to an end by reason of the land having vested in the Government. The appeal was contested on behalf of the respondents by submitting that an award could be made within such time as the court considered reasonable, and that the requirements of Section 17(3A) having not been complied with there was no vesting of the land in the first respondent and that for being kept out of possession of the said land the payment of compensation to the appellants under Section 5 would adequately recompense them. D E F

Allowing the appeal, the Court

HELD : 1. 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. [343-G] G

2. 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. [344-B] H

A 3. 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. [344-A]

4. Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and B there is no provision in the Act by which land statutorily vested in the Government can revert to the owner. [344-C]

5. Section 5 postulates payment of compensation for damage done to land during the course of surveying it and doing all other acts necessary to ascertain whether it is capable of being adapted for a public purpose. C [345-A]

6. Section 17(3A) 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 11A cannot be so construed as to leave the Government holding title to the land D 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. [344-D-E]

In the instant case, even though 80 per cent of compensation contemplated under section 17(3A) was not paid before taking over the possession, that did not mean that the possession was taken illegally or that the land did not thereupon vest in the first respondent. It was at any rate, not open to the 3rd respondent, who had failed to make the necessary monies available and who had been in occupation of the land ever since its possession was taken, to urge that the possession was taken illegally and that, F therefore, the land had not vested in the first respondent and the first respondent was under no obligation to make an award. [344-E-G]

Section 5 had no application to the instant case. [345-A]

The first and second respondents were directed to publish an award G in respect of the land within twelve weeks. [345-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5016 of 1993.

From the Judgment and Order dated 8.2.91 of the Allahabad High H Court in C.M.W.P. No. 18514 of 1989.

Sunil Gupta, R.A. Padmanabhan and Pramod Dayal for the Appellants. A

E.C. Agrawala and R.B. Mishra for the Respondents.

The Judgment of the Court was delivered by

B

**BHARUCHA, J.** Leave granted.

Heard.

This appeal impugns the judgment and order of the Allahabad High Court dismissing the writ petition filed by the appellants. C

The appellants were the owners of land admeasuring approximately 29 bighas situated in Patti Baru, Baraut in Meerut district in the State of Uttar Pradesh. A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act") in respect of the said land D was issued on 29th July, 1986. The acquisition was proposed for the planned development and construction of the Mandi of the Agriculture Market Produce Samiti, Baraut. The notification stated that, in view of the urgency of the public purpose, Section 17(4) of the said Act was applied and the provisions of Section 5-A were dispensed with. On 24th October, 1986 the Section 6 declaration was issued which applied to the said land E the provisions of Section 17(1). It stated that the Collector of Meerut could, though no award under Section 11 had been made, on the expiration of fifteen days from the date of publication of the notice under Section 9(1), take possession of the said land. The Section 9(1) notice was published on 2nd December, 1986. The appellants impugned the acquisition proceedings F by filing a writ petition in the Allahabad High Court (being Writ Petition No. 1841 of 1986). The same was dismissed by a Division Bench on 19th January, 1987. The judgment upheld the acquisition proceedings. It found that there was urgency in the public purpose for which the said land was acquired and that the Krishi Utpadan Mandi Samiti (the third respondent G before us) had the means to construct the market yard and godowns. On 27th February, 1987 the possession of the land was taken by the first and second respondents from the appellants and handed over to the third respondent. A Special Leave Petition filed before this court by the appellants against the aforementioned judgment and order of the Allahabad High Court was dismissed on 19th April, 1987. H

A On 13th January, 1989 the third respondent resolved to exclude from acquisition the land at Patti Baru, including the said land. The resolution stated that this was because of shortage of funds and because the proposed Mandi site was far away from Baraut.

On 10th August, 1989 the appellants filed the writ petition whereon B the impugned judgment and order was made. The writ petition prayed that the respondents, namely, the State of Uttar Pradesh (the first respondents), the Collector, Meerut, (the second respondent) and the Krishi Utpadan Mandi Samiti (the third respondent) be directed by a writ of mandamus to make and publish an award in respect of the said land.

C On 27th June, 1990 the Special Land Acquisition Officer, Meerut wrote to the third respondent recording that compensation for the purpose of making an award in respect of the lands at Baru Patti had been claimed from the third respondent but that the third respondent had not made the monies available. As a result, after adjusting the time taken in the writ D proceedings before the High Court, the period of two years had expired on 18th January, 1989. There was a clear order of the first respondent that in case the award was not declared within two years from the date of publication of the notification under Section 6 the acquisition proceedings would lapse.

E On 8th February, 1991 the writ petition was dismissed by the High Court. The High Court noted that it was the appellants' own case that more than two years had elapsed since the date of issue of the notification under Section 4. In view of this and by reason of the provisions of Section 11A, the entire proceedings for acquisition of the said land had lapsed. The High F Court noted that counsel on behalf of the appellants had relied upon the fact that even in the absence of an award possession of the said land had been taken. The High Court held that by the mere fact that possession had been taken in pursuance of Section 17(1), the necessity of giving an award, as mandated by Section 11A, within a period of two years from the date G of publication of the notification under Section 4 could not be dispensed with.

Learned counsel for the appellants submitted that upon the taking of possession of the said land under the provisions of Section 17(1) the land vested absolutely in the first respondent and the first respondent had H become its owner. It had been held by this court that where possession had

been taken the Government was not at liberty to withdraw from the acquisition either under the provisions of Section 48 or by utilising the provisions of the General Clauses Act. Section 11-A had to be interpreted harmoniously with the other provisions of the said Act and could not apply where the proceedings for acquisition of the land had already come to an end by reason of the land having vested in the Government. A B

Learned counsel for the first and second respondents fairly stated that an award would be made within such time as the court considered reasonable.

Learned counsel for the third respondent supported the reasoning of the judgment under appeal. He also submitted that the requirements of Section 17(3A), namely, the tender of 80 per cent of the estimated compensation for the said land not having been complied with, the taking of possession of the said land from the appellants was illegal and there was, therefore, no vesting thereof in the first respondent. He submitted that for being kept out of possession of the said land the payment of compensation to the appellants under Section 5 would adequately recompense them. C D

Section 4 of the said Act requires the publication of a notification that it appears to the appropriate Government that certain land is needed or is likely to be needed for a public purpose. Thereupon an officer authorised by the Government may enter upon the land to survey it and do all other acts necessary to ascertain whether the land is suitable for the public purpose. Section 5 requires the payment of estimated compensation to the owner for damage done in entering upon the land and doing such acts as are necessary to ascertain whether it can be used for the public purpose. Under the provisions of Section 5-A any person interested in the land may raise objections to the proposed acquisition. Upon considering the report of the Collector who hears such objections, if the Government is satisfied that the land is needed for the public purpose, a declaration to that effect shall be made under the provisions of Section 6. Section 9(1) contemplates the issue of a notice that the Government intends to take possession of the land and it must invite claims for compensation for all interests in the land. The Collector must inquire into the claims under the provisions of Section 11 and make an award of compensation in favour of the persons found interested in the land. Section 16 states that the Collector may, after he has made an award under Section 11, "take possession of E F G H

A the land which shall thereupon vest absolutely in the Government free from all encumbrances." Section 11-A was inserted in the said Act by Act 68 of 1984 and it reads thus:

> "11-A. Period within which an award shall be made-The Collector shall made an award under Section 11 within a period of
> B 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
> C 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."

The provisions of Section 48(1) may also be noted. It states that "the Government shall be at liberty to withdraw from the acquisition of any land
D of which possession has not been taken.

Section 17 provides from cases where there is urgency. The relevant provisions for our purposes read thus :

> E "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 public purpose. Such land shall thereupon vest absolutely in the Govern-
> F ment, free from all encumbrances.
>
> (3-A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),.
>
> G
> (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto,
>
> (b) pay it to them, unless prevented by some one or more of
> H the contingencies mentioned in Section 31, sub-section (2),

and where the Collector is so prevented, the provisions of Section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub- section (3-A) shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(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 5-A 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)."

There are two judgments of this court which we must note. In *Rajasthan Housing Board and others* v. *Shri Kishan and others,* [1993] 2 SCC 84, it was held that Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In *Lt. Governor of Himachal Pradesh* v. *Avinash Sharma,* [1971] 1 SCR 413, it was held that "after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

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

A 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 B 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 C 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.

D 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 E award and the amount of 80 per cent of the estimated compensation.

In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken F but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the Ist respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken G illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.

There is no merit whatsoever in the submission that compensation H can be awarded to the appellants under Section 5. Section 5 postulates

payment of compensation for damage done to land during the course of surveying it and doing all other acts necessary to ascertair whether it is capable of being adapted for a public purpose. Section 5 has no applicable to the instance case. A

In the result, the appeal is allowed. The judgment and order under appeal is set aside. The Rule is made absolute and the first and second respondents are directed by a writ of mandamus to make and publish an award in respect of the said land within twelve weeks from today. B

The third respondent shall pay to the appellants the costs of the appeal quantified in the sum of Rs. 10,000.

C

N.V.K. Appeal allowed.