

Court No. - 40

**Case :-** WRIT - C No. - 9580 of 2018

**Petitioner :-** Riyazuddin And Another

**Respondent :-** Union Of India And 3 Others

**Counsel for Petitioner :-** Mohd. Afzal, Kshitij Shailendra

**Counsel for Respondent :-** C.S.C., A.S.G.I., Pranjal Mehrotra

**Hon'ble Amreshwar Pratap Sahi, J.**

**Hon'ble Abhai Kumar, J.**

Heard Sri Pawan Kumar Mishra holding brief of Sri Pranjal Mehrotra, learned counsel for the respondents.

The petitioners before us have assailed the recovery proceedings issued under the orders of the Additional Collector Land Acquisition, Ghaziabad dated 21st November, 2017 and the certificate of recovery issued on 12th January, 2018 coupled with a citation dated 23rd January, 2018 whereby the petitioners have been called upon to repay the entire amount of compensation that was paid to them in lieu of the property that came to be acquired by the National Highway Authority of India Limited i.e. the respondent no. 2 herein.

The present writ petition was entertained and the following interim order was passed on 15th March, 2018.

"Learned counsel for the petitioners is permitted to implead "Sri Riyasat Ali S/o Sri Ahtmam Ali" as respondent No.5 to the writ petition. Necessary impleadment be carried out during the course of the day.

The petitioners are subsequent purchasers of the land, which was subject matter of acquisition by the National Highways Authority of India Ltd.

It is contended that the compensation was received by them and the proceedings initiated for recovering the same is per se illegal and without jurisdiction. Even a subsequent purchaser is entitled to receive compensation. To support the contention, reliance has been placed by the learned counsel for the petitioners on the decision of the Apex Court in the case of V. Chandrashekar Vs. Administrative Officer, reported at 2012 (12) SCC 33 and a Division Bench of this Court in the case of **Surendra Nath Singh Vs. Union of India and others, reported at 2016(2) ADJ 760 (DB)**.

Prima facie, from the argument advanced and perusal of the record, the issue requires scrutiny.

Sri Pranjal Mehrotra, who has accepted notice on behalf of respondent No.2, and learned Standing Counsel appearing for the respondents No.3 and 4, may file counter affidavit on behalf of the respective respondents within six weeks. Petitioner will thereafter file rejoinder affidavit within two weeks.

Issue notice to the newly added respondent No.5, who may also file a counter affidavit.

Petitioner shall take steps for service of notice on respondent no.5 by speed post within a week. Office shall issue notice to the respondent No.5 returnable within six weeks.

List immediately after expiry of the aforesaid period.

Considering the facts, further proceedings in pursuance to the recovery certificate dated 12.01.2018 issued by the Additional Collector (Land Acquisition Joint Organization/Competent Authority, Ghaziabad (Annexure No.2 to the writ petition) as well as recovery citation dated 23.01.2018 issued by Tehsildar, Ghaziabad (Annexure No.3 to the writ petition) shall remain stayed, till further orders of the Court."

Learned counsel for the respondent has invited the attention of the Court to another Division Bench judgment of this Court in the case of **Vipin Agrawal Vs. Union of India & 3 Others in Writ C No. 10958 of 2018 decided on 27th March, 2018** which is extracted hereinunder:-

"This petition seeks to assail the recovery notice dated 21 November 2017 issued by the Additional District Magistrate (Land Acquisition / Competent Authority) for recovery of the amount of compensation paid to the petitioner as the sale deed, on the basis of which the petitioner claimed compensation, was executed on 7 September 2015 much after the publication of the declaration made under Section 3D(1) of the National Highways Act, 1956 (hereinafter referred to as 'the Act') on 7 August 2012.

It is stated that a large tract of land measuring 244013.42 sq. mtrs. was sought to be acquired for the Delhi-Meerut Expressway by the National Highways Authority by issuance of a notification under Section 3A of the Act on 14 September 2011 that was followed by the publication of the declaration made under Section 3D(1) of the Act in the official gazette on 7 August 2012. The award was also made on 22 June 2013 but it was subsequently corrected on 29 June 2013.

The petitioner had claimed compensation on the basis of a sale deed said to have been executed by Riyasat Ali, who was the owner of the plot, on 7 September 2015.

The contention of the learned counsel for the petitioner is that the petitioner is entitled to receive payment of compensation on the basis of the said sale deed and the recovery notice that has been issued is bad in law and deserves to be set aside.

Sri Pranjal Malhotra, learned counsel appearing for the National Highways Authority of India and the learned Standing Counsel for the State-respondents have submitted that the sale deed executed in favour of the petitioner on 7 September 2015 is void ab initio since after the publication of the declaration in the official gazette on 7 August 2012, the land vested absolutely in the Central Government free from all encumbrances.

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

It is not in dispute that the petitioner claims to have purchased land on the basis of a sale deed executed on 7 September 2015. The declaration under Section 3D(1) of the Act was published in the official gazette on 7 August 2012. As noted above, section 3D deals with declaration of acquisition. Sub-sections (1) and (2) of Section 3D are reproduced below: -

"1. Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

2. On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances."

It is, therefore, clear that on receipt of the report, the Central Government declares by notification in the official gazette that the land should be acquired for the purpose mentioned in sub-section (1) of Section 3A. Sub-section (2) of Section 3 provides that on the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances. Thus, on publication of the declaration in the official gazette on 7 August 2012, the land stood vested in the Central Government free from all encumbrances and the erst while owner did not have any right to execute the sale deed in favour of the petitioner. The sale deed was executed by the petitioner is void ab initio and does not confer any right upon the petitioner to receive compensation.

Learned counsel for the petitioner has placed reliance upon a Division Bench of this Court in **Surendra Nath Singh Yadav v. Union of India and Others reported in 2018 (2) ADJ 760**. This decision relies upon the decision of the Supreme Court in the case of Government (NCT) of Delhi v. Manav Dharam Trust and Another reported in (2017) 6 SCC 751 which is in connection with the acquisition under the provisions of the National Highways Act, 1956. Unlike the provisions of sub-Section 3D(2) of the Act under the Land Acquisition Act, the property vests in the State Government free from all encumbrances either under Section 16 or under Section 17, on possession being taken and not on the publication of the declaration under Section 6 of the Act.

Thus, the decision in the case of Surender Nath, does not help the petitioners. The petitioners can initiate appropriate proceedings against the erst while owner.

Such being the position, the notice dated 21 November 2017 that has been issued by the Competent Authority for recovery of the compensation from the petitioner for the reason that the sale deed was executed after the publication of declaration under Section 3D(1) of the Act does not suffer from any illegality.

The writ petition is, accordingly, dismissed."

This judgment is in relation to the same notification as presently involved, as is evident from the Form No. 11, copy whereof has been filed as Annexure No. 7 to the writ petition.

It is undisputed that the petitioners purchased the land which has been acquired after the notification was issued in terms of Section 3D of the National Highway Act, 1956.

Learned counsel for the petitioners, however could not dispute the proposition of law that has been enunciated in the judgment in the case of **Vipin Agarwal (supra)**. We have also gone through the provisions of the 1956 Act, and we find that Section 3-A is the power exercised for acquisition for any public purpose and a substance of the notification has to be published proposing to acquire the land which is almost akin to Section 4 of the Land Acquisition Act, 1894. Thereafter surveys are held and objections filed that are heard and disposed of and then a final declaration is notified in terms of Section 3D of the 1956 Act, thereby vesting the acquired property in the State free from all encumbrances. This provision is somewhat akin to Section 6 of the 1894 Act. The

property, therefore vests in the State once a declaration is issued under Section 3D of the 1956 Act and any sale deed executed thereafter would be void.

In the present case also this fact that the sale deed through which the petitioners acquired the land was executed after the notification under Section 3D of the Act. In the circumstances, the petitioners by virtue of the sale deed were not entitled to receive the compensation which wrongly came to be disbursed to them. It is this disbursed amount which is sought to be recovered under the impugned orders and citations.

Having considered the submissions raised, we find ourselves in full agreement with the judgment in the case of *Vipin Agarwal (supra)*, and we therefore are unable to find any substance in the arguments of the learned counsel for the petitioners to extend any such benefit on the strength of the judgment in the case of *Surendra Nath Singh Yadav (supra)* which does not appear to have dealt with the provisions as referred to hereinabove.

Accordingly, we are of the view that if the vendors of the petitioners have no objection to the receipt of the compensation by the petitioner, then in that event, it will be open to the petitioners to raise a dispute in terms of Section 3-H of the 1956 Act, and if the authority finds that the said dispute can be referred, then it shall take appropriate action or in the alternative, it will be open to the petitioners to negotiate any settlement with their vendors even outside Court.

The writ petition is accordingly consigned to records.

**Order Date :-** 30.4.2018

S.Chaurasia