REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5820 OF 2019
(ARISING OUT OF SLP (CIVIL) NO. 10151 OF 2014)

LUCKNOW DEVELOPMENT AUTHORITY & ANR. .....APPELLANT(S)

VERSUS

GOPAL DAS (DECEASED) THROUGH LRs & ORS. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

Leave granted.

2) The appellant-Lucknow Development Authority[1] is aggrieved against the judgment and order passed by the Division Bench of Lucknow Bench of the Allahabad High Court on January 15, 2014 whereby the order dated July 29, 2011 passed by LDA was quashed. The appellants were also made liable to pay costs of Rs.1,00,000/- with the direction to recover the costs from the authorities who have been instrumental in passing the impugned order.

[1] for short, 'LDA'

3) The facts leading to the present appeal are that LDA acquired total land measuring 168.592 hectares (666 Bigha, 7 Biswa, 8 Biswansi, 8 Kachwansi) vide notification dated November 12, 1981 under Section 4 of the Land Acquisition Act, 1894 for development of Sitapur Road City Extension Scheme for residential purposes. Notification under Section 6 read with Section 17 was issued on December 3, 1981 and the award was published on January 15, 1986.

4) The land of the respondents measuring 1.200 hectares forming part of land acquired was sought to be released from acquisition from the State Government under Section 17 of the Uttar Pradesh Urban Planning and Development Act, 1973[2]. The land was released from acquisition on May 23, 2011 whereby an order of restoration of land in question of Khasra Nos. 416 and 417 was passed in favour of the respondents along with an order of payment of development fee in terms of Section 17 of the Act. The respondents were directed to deposit an amount of Rs.1,57,22,056/- within one week being Rs.1,38,780/- as the cost of acquisition and Rs.1,55,83,276/- as the amount of development fee vide separate letter dated July 29, 2011. It is the said order which has been set aside by the High Court vide order impugned in the present appeal. The High Court held as under:

[2] for short, 'Act'

> "33. In view of the aforesaid interpretation of word, "development", it shall be obligatory on the part of the development authorities like LDA in the present case, to make some development in accordance to statutory mandate over the land and its vicinity to make it entitle to impose development charges in terms of proviso of sub-section (1) of Section 17 of the Act. Further, the development charges co-relate with the expenditure incurred with regard to development activities. The development activities should be in the vicinity where citizens' plots, flats or houses exist. In the present case, from the lay out plan and material on record, it appears that no development activities have been done towards west side of the railway line. Whatever development has been done, it seems to have been done in the Sector-A of the Scheme towards eastern side of railway line. Neither any material has been brought on record nor there is any pleading on record that electricity, sewer line, road constructed by the LDA is utilized by the petitioner. There is no material on record which may prove that electricity connection has also been provided to the petitioner's premises from the infrastructure of the LDA. National Highway No.24 is the old road connecting Lucknow and Sitapur and it does not seem to be part of the development project of the LDA.
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> 34. …Nothing has been brought on record to establish the expenditure incurred on development work done over the land in dispute or in its close vicinity in terms of Section 8 and 9 of the Act from which the petitioner may be benefited. In absence of any benefit provided to the petitioner by the development work done by the development authority or the Lucknow Development Authority as the case may be, the petitioner or a citizen may not be subjected to payment of development charges."

5) Such development charges at the time of restoration are contemplated in terms of proviso to Section 17(1) of the Act, which reads as under:

> "17. **Compulsory acquisition of land.-**(1) If in the opinion of the State Government, any land is required for the purpose of development, or for any

other purpose, under this Act, the State Government may acquire such land under the Provisions of the Land Acquisition Act,1894:

Provided that any person, from whom any land is so acquired, may after the expiration of a period of five years room the date of such acquisition apply to the State Government for restoration of that land to him on the ground that the land has not been utilised within the period for the purpose, for which it was acquired and if the State Government is satisfied to that effect it shall order restoration of the land to him on re-payment of the charges which were incurred in connection with the acquisition together with interest at the rate of twelve per cent per annum and such development charges, if any, as may have been incurred after acquisition.

(2) Where any land has been acquired by the State Government, that Government may, after it has taken possession of the land transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by Authority or the local Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition."

6) Learned counsel for the appellants submits that the land in question is 138575.25 sq. feet i.e. 12878.741 sq. meters and is situated between railway line of Aishbagh-Mailani Section and National Highway No. 24. Since the land in question is part of a planned scheme of LDA, all necessary external infrastructural developments like construction of road, electricity, water and sewer lines have been made available in the area. It is also pointed out that development under the Act means development of the entire area as a whole and not only the land of the one or two landowners. The land in question is part of Master Plan and the

development of the area cannot be seen in piecemeal. In the impugned order before the High Court, the competent authority has recorded the following facts:

> "11. …Under the scheme of Sitapur City Extension Scheme in question, the land admeasuring 168.529 hect. was acquired in the year 1981. This land is completely developed land and under this land approx.. 97.1% of the land is planned land. All the public facilities like Roads, Electricity, Water, Sewer etc. has been made available over this land by the authority. In between Railway Line and National Highways there is total 34-1-0-0 bigha land which is covered with road (National Highway), hence it comes within the category of developed land. Since before, the facilities of roads, electricity and water are available here. The total acquired land except 19-6-0-0 bigha has been allotted. However, the land in question is reserved for future development, and any decision in this regard are not available in the record. The land in question comes under the scheme of Sitapur City Extension Scheme. Any zonal Plan of land situated in between Railway Line and National Highway is not approved, but by clubbing this area, the "Road Network Plan" of complete scheme in which all the sectors have been shown is approved. The aforesaid plan exists at present and there are no necessity to renew the lay-out plan of Schemes of the Authority.
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> 12. …In accordance to Report of the Authority, approx. 34 Bigha land between National Highway Lucknow Sitapur Road and Railway Line has been acquired which is an Pattinuma, and out of which 15 Bigha land has been allotted and approx. 19 Bigha land is remain as it is. The land of the petitioner Shri Gopal Das is included in this 19 Bigha land and out of this aforesaid 19 Bigha land, over the land of 12 Bigha there are personal buildings etc. are existed being the encroachment. In this way when the land of the petitioner has not been planned and has not been allotted and in part of the land his paint business is running, then it does not reveal justified in any manner that the land has been used by the Lucknow Development Authority. Because the land in question of petitioner has been acquired by the Lucknow Development Authority for the use of residential provisions, but the same has not been used for the said provisions. Therefore on the basis

> of all the aforesaid facts and circumstances, the balance of convenience is revealed in favour of the petitioner. Therefore, in such circumstances, the transfer of land in question is to be considered in favour of petitioner under Section 17 of the Uttar Pradesh Urban Planning and Development Act, 1973."

7) The learned counsel for the appellants submits that the land in question is situated between railway line and National Highway, which is measuring 34 Bighas, out of which 15 Bighas has been allotted and remaining 19 Bighas of land including 12 Bighas of the respondents has not been allotted. It is the said averment made in Para 15 which was taken into consideration by the High Court and returned a finding that the development charges could not be claimed as there is no development work on the land of the respondents. It is the said finding which is sought to be supported by Mr. V.K. Garg, learned senior counsel appearing for the respondents.

8) Learned counsel for the respondents pointed out that in respect of some other land, part of the same acquisition has been released in terms of Section 24 of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the respondents cannot be treated in a discriminatory manner.

9) We do not find that the findings recorded by the High Court are sustainable in law. As per the averments made in the counter

affidavit filed before the High Court and also in the impugned order, it is stated that 97.1% of the total land acquired is planned land. Small portion of 19 Bighas including the land of the respondents has not been planned for the reason that there were buildings on such area. Therefore, when the appellants state that the land of the respondents has not been planned or allotted is in the context that the area has not been plotted. It does not mean that the appellants have not carried out any development on the land in question. It is not some part of the land acquired is required to be taken into consideration, to find out as to whether any development has been carried out in the land acquired. The findings of the High Court that the land in question or the vicinity has not been developed is not the correct reading of the impugned order passed as it has been clearly stated that 97.1% of the land acquired has been developed. The development is to be examined in respect of the land acquired. It is categorical stand of the appellants that they have constructed road, provided electricity, water and laid sewer lines and, therefore, the respondents cannot avoid payment of development charges while seeking restoration of land in terms of Section 17 of the Act.

10) In view thereof, we find that the judgment passed by the High Court setting aside the claim of development charges is not sustainable. Consequently, the appeal is allowed and the said finding is set aside.

11) We find that the order quantifying the development charges of Rs.1,57,22,056/- was raised without giving any opportunity of hearing to the respondents. Consequently, the demand letter/order dated July 29, 2011 is set aside with liberty to the appellants to communicate the amount incurred on acquisition and development charges in accordance with law. It shall be open to the respondents to seek remedy, if any, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in accordance with law.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
JULY 24, 2019.