

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4970 OF 2010
(Arising out of SLP(C) NO.2639 OF 2007)

Mahesh Chandra Banerji ..Appellant

Vs.

U.P. Avas Evam Vikas Parishad & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 4971 OF 2010
(Arising out of SLP(C) NO.8019 OF 2007)

Dr. Devesh Chandra Banerji & Anr. ..Appellants

Vs.

State of U.P. & Ors. ...Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. One, Udai Chandra Banerji had two sons, namely, Suresh Chandra Banerji and Ramesh Chandra Banerji. On 1st February, 1927, the two brothers jointly purchased 8848 square yards of land in Khasra Plot No.2305 situated in Kasba Koli. The said khasra number was subsequently converted into Plot No.1002. Although, the purchase was said to have been made jointly by Suresh Chandra Banerji and Ramesh Chandra Banerji, the Sale Deed was executed in the name of Ramesh Chandra Banerji, who was the elder brother. From the Sale Deed, it would be evident that a Kothi (building) was in existence over a part of the said land and the land adjacent to the building was lying vacant. Certain additional constructions were raised on the vacant portions which were completed in the year 1930. The said property fell within the municipal limits of Aligarh. On 1st April, 1957, house tax was imposed for the first time and the name of Suresh

Chandra Banerji was recorded in the assessment list of the house tax payers in the records of the Municipal Board. In 1930, Ramesh Chandra Banerji and Dr. Suresh Chandra Banerji shifted into the Kothi with their families and continued to reside therein. In 1941, Ramesh Chandra Banerji expired and after his death, a family settlement is said to have taken place between Ramesh Chandra Banerji's heirs and Dr. Suresh Chandra Banerji, as a result whereof the family of Ramesh Chandra Banerji shifted to Kanpur and Dr. Suresh Chandra Banerji became the exclusive owner of the Kothi in question and he resided therein along with his family members till his death on 16th August, 1989. At the time of his death Dr. Suresh Chandra Banerji left behind him surviving his sons, Paresh Chandra Banerji, Dinesh Chandra Banerji, Bhavesh Chandra Banerji and Umesh Chandra Banerji, who died in August, 1997.

3. Mahesh Chandra Banerji, one of the sons of late Dr. Suresh Chandra Banerji, claims to have acquired knowledge that a Development Scheme known as Yojana No.7 had been taken up by the Avas Evam Vikas Parishad in 1968 and that a notification under Section 28 of the Avas Vikas Parishad Adhiniyam, being U.P. Act No.1 of 1968, had been issued on 5th October, 1968 and a further notification under Section 32(i) of the Adhiniyam was issued on 25th January, 1971, which was published in the Gazette on 13th February, 1971. Under the said scheme, along with other lands, the property of late Dr. Suresh Chandra Banerji in Khasra Plot No.1002, was also proposed to be acquired. Objections were filed against the proposed acquisition and in response thereto the Respondent No.1 decided to exclude the residential house of the appellants and the adjoining land from the acquisition. Despite the same, further representations were made by the appellants to allow them full frontal access from

G.T. Road to their residential premises, since they wanted to establish a nursing home on the said plot. It appears that a decision was even taken in that regard and Resolution No. 1/130/79 dated 16th January, 1979 was accepted by the Respondent No.1- Parishad and the cost of the said land was fixed at not less than R.82/- per square metre. According to the appellants, since the said resolution/decision was not being given effect to, and, on the other hand, auction notice was issued by the Parishad on 23rd August, 1993 for sale of the acquired lands under the above-mentioned scheme, they were compelled to file Original Suit No.307 of 1998 before the Civil Judge, Senior Division, Aligarh, *inter alia*, praying for the following reliefs :

"(a) By passing a decree for permanent prohibitory injunction the defendant 1st set be restrained from interfering in the peaceful possession of the plffs. And defendant IInd set over the land shown by

wards A B C D and red colour shown in the map annexed with the plaint.

(b) By passing a decree for mandatory injunction the defendant No.1 and 5 be directed to remove their encroachment from the land of the plaintiff detailed at the foot of the plaint and to restore it's position and possession as on the date of suit within the time specified by the court and in failure to do the same be done by agency of court."

4. Initially, an order of injunction was passed in favour of the appellants, which was subsequently vacated on 19th April, 2001. Simultaneously, with the filing of the aforesaid suit, two of the other sons of late Dr. Suresh Chandra Banerji, namely, Shri Dinesh Chandra Banerji and Shri Bhavesh Chandra Banerji, filed Civil Misc. Writ Petition No.18132/98 questioning the acquisition proceedings, but the same was ultimately dismissed on 12th May, 1999, on account of the pendency of the suit relating to the same acquisition.

5. In the meantime, on 5th May, 2000, the Respondent No.6 became the successful bidder in the auction conducted by the Respondent No.1-Parishad in respect of a portion of the acquired lands which had earlier belonged to the appellants and a sale deed was also executed in his favour on 5th May, 2000.

6. After execution of the sale deed in favour of the Respondent No.6, the appellants on 18.7.2001 filed FAFO No.694/2001 against the order by which the interim order passed in the suit had been vacated. The High Court of Allahabad granted stay of the order passed in the suit, but indicated that the right of the Respondent No.6, Shri Gyanendra Prashad Varshney, would not be affected by the stay order. Ultimately, Civil Suit No.307 of 1998 came to be dismissed as withdrawn on 18th November, 2004, on the ground that the same had become infructuous.

7. While the above-mentioned suit was pending, Dr. Mahesh Chandra Banerjee made a representation to the Housing Commissioner (C), Uttar Pradesh Housing & Development Board, Lucknow, on 19th August, 2002, praying for release of the land belonging to the applicant and his family members in Plot No.1002. In response thereto, the District Magistrate, Aligarh, directed the Additional District Magistrate (V.R.), Aligarh, to conduct an inquiry and to submit a report. In his report dated 30th June, 2004/02.07.2004, the Additional District Magistrate observed that the house of the applicant and the land attached to it had been exempted from acquisition. It was also specifically indicated that 8848 square yards of the land of the applicant comprised in the said plot was free from acquisition. It was further indicated that the Special Land Acquisition Officer, Agra, had clearly mentioned that only the lands owned by one Shivdan Singh had been acquired and that no other land out

of the total area comprising Plot No.1002 had either been acquired or had compensation been determined or had possession been taken thereof. It was also indicated that despite the above, the officials of the Housing Development Board, Aligarh, were selling Dr. Banerji's land illegally.

8. While, on the one hand, possession of the lands sold in auction was not being handed over to the auction purchasers, Shri Sanjai Singh and others, on the other hand, the report of the Additional District Magistrate was also not being given proper consideration for release of the lands which the Respondent No.1-Parishad had purportedly taken possession of without the same having been acquired. Consequently, Sanjai Singh and two others filed Civil Misc. Writ Petition No.54160 of 2005 before the Allahabad High Court claiming that they were entitled to be given the possession of the land in respect of which they were the

successful bidders in the auction conducted by the Parishad. They also questioned the demand made by the Respondent No.1-Parishad by its letter dated 30th April, 2005, asking for interest along with penalty and stamp fee before physical possession of the said lands could be made over to them. Aggrieved by such demand and also by the fact that possession of the land in respect of which they were the successful bidders was not being made over to them, the said writ petitioners, Sanjai Singh and others, *inter alia*, prayed for quashing of the impugned demand dated 30th April, 2005, made on behalf of the Respondent No.1-Parishad and also for a direction upon the said respondent to immediately deliver possession of Plot No.C-2/A, G.T. Road, Yojana, Aligarh, within a time period to be fixed by the court, after accepting the original amount as determined by allotment order dated 17th May, 2000 and also to execute the sale deed in their favour.

9. On the other hand, Dr. Dinesh Chandra Banerji and Mahesh Chandra Banerjee filed a separate Writ Petition No.43552/2004 against the Respondent-Avas Evam Vikas Parishad and the auction purchasers for a direction in the nature of Mandamus commanding the Respondent-State and the Avas Evam Vikas Parishad to give effect to the inquiry report dated 2nd July, 2004, submitted by the Additional District Magistrate (V.R.), Aligarh.

10. The Writ Petition filed by Sanjai Singh and others came to be disposed of by the Division Bench of the Allahabad High Court on 6th October, 2005, *inter alia*, with a direction that in the event the writ petitioners deposited the entire outstanding dues, excluding the penal interest, within a period of four weeks from the date of the order, the respondents would hand over the possession of the property in dispute to them within a period of two weeks thereafter. The Respondent No.1-Parishad was

also requested to decide the representation of the petitioners with regard to the penal interest by a speaking and reasoned order within six weeks from the date of filing of a certified copy of the order. It was also indicated that in case the petitioners had not filed their representation before the appropriate authority, they could do so within a week from the date of the order before the Housing Commissioner, U.P. Avas Evam Vikas Parishad, Lucknow, and the same would be dealt with in accordance with law.

11. After the said order was passed, Dr. Mahesh Chandra Banerji filed Civil Misc. Recall Application No.81128/2006 praying for recall of the aforesaid judgment and order on the ground that the same had been obtained by concealing material facts and that the order adversely affected the applicant who was not even impleaded as respondent in the writ petition, though, he was a necessary party.

The said application was dismissed on 12th December, 2006, on the ground that the process of the court was being misused by denying possession of the lands which had been allotted in favour of the auction purchasers and that attempts were being made to misguide the court in order to hold on to the possession which had already vested in the State under Section 16 of the Land Acquisition Act, 1894. Consequently, by an order of 12th December, 2006, Writ Petition No.43552 of 2004, which had been filed by the petitioners in SLP(C)No.8019 of 2007, was dismissed on the ground that the case was clearly covered by the judgment passed in the Recall Application filed by Mahesh Chandra Banerji in Writ Petition No.54160 of 2005 filed by Sanjai Singh and others.

12. SLP(C) No.2639 of 2007 has been filed by Dr. Mahesh Chandra Banerji against the order dated 12th December, 2006, whereby his application for recall

of the judgment delivered in Writ Petition No.54160 of 2005 was rejected. SLP(C) No.8019 of 2007 has been filed by Dr. Devesh Chandra Banerji and Mahesh Chandra Banerji against the final order dated 12th December, 2006, whereby Writ Petition No.43552 of 2004 was rejected.

13. The main contention of Mr. Rajiv Dutta, learned Senior Advocate, who appeared for the appellants in both the Civil Appeals, was that only a part and not the whole of Plot No.1002, which, according to him, measured 15 bighas and 10 biswa had been acquired for the scheme (Yojana No.7) undertaken by the Respondent-Parishad. It was urged that out of the total area comprising the aforesaid plot, possession had been taken only of 6 bighas and 17 biswa, which belonged to one Shivdan Singh, in whose name compensation had been awarded by the Collector. In fact, it was Mr. Dutta's stand that

no part of the appellants' land in Plot No.1002 had been acquired for the aforesaid scheme.

14. Mr. Dutta relied heavily on the report submitted by the Additional District Magistrate (V.R.), Aligarh, dated 30th June, 2004/02.07.2004, in regard to the inquiry conducted by him on the representation made on behalf of the appellants wherein reference had been made to the report of the Special Land Acquisition Officer, Agra, indicating that out of Plot No.1002 only the land owned by one Shivdan Singh had been acquired and that any other land had neither been acquired nor had compensation been determined nor had possession been taken. On the other hand, the actions of the officials of the Housing Development Board, Aligarh, were deprecated. Mr. Dutta pointed out that a categorical finding had been arrived at by the Additional District Magistrate (V.R.), Aligarh, that the officials of the Housing Development Board

had allotted Dr. Banerji's land illegally without acquiring the same and without making payment of compensation. Mr. Dutta submitted that having taken note of the high-handed and arbitrary action of the officials of the Housing Development Board, the Additional District Magistrate had recommended that the equivalent extent of land of Dr. Banerji, which had been arbitrarily allotted to others, should be made available to Dr. Banerji's family.

15. Mr. Dutta further submitted that although initially there was a proposal to acquire the entire land comprising Plot No.1002, subsequently on representations being made, the said proposal was dropped and, in fact, a resolution was adopted by the Respondent-Parishad to exclude the building and land of the Banerjis from the scope and ambit of the acquisition proceedings. Mr. Dutta submitted that the controversy began when some of the lands owned by the appellants in the plot in

question were forcibly occupied and sold, allegedly in pursuance of the above-mentioned Yojana No.7. Mr. Dutta submitted that as will be evident from the proceedings conducted by the Collector in regard to the acquisition of Plot No.1002, there is no mention whatsoever of the land of the Banerji family having been acquired or compensation having been assessed therefor. It was urged that this would clearly establish that no part of the lands under the occupation of the Banerji family in the plot in question had been acquired for the above-mentioned Scheme. Mr. Dutta submitted that although an attempt has been made on behalf of the Respondent-Parishad to muddy the waters by claiming that the lands of the Banerji family had also been included in the 6.17 bighas in respect of which compensation had been awarded, there was no evidence of such assertion since the proceedings were confined only to the lands belonging to the property of Shivdan Singh. It was also pointed out

that no compensation had either been awarded or paid to the members of the Banerji family and hence, the case made out on behalf of the Parishad that the land belonging to the Banerji family in Plot No.1002 had also been acquired, has no basis whatsoever.

16. Mr. Dutta urged that in view of the detailed inquiry conducted by the Additional District Magistrate (V.R.), Aligarh, and the report submitted by him on the basis thereof, the impugned order passed by the Division Bench of the Allahabad High Court on the Recall Application filed on behalf of the appellants herein, was liable to be set aside and the matter was liable to be remanded to the Division Bench of the High Court for fresh consideration.

17. Mr. Dinesh Dwivedi, learned senior counsel, appearing for the Respondent-Parishad and its Authorities, referred to the reliefs prayed for by

Dr. Mahesh Chandra Banerji and Dr. Devesh Chandra Banerji in Original Suit No.307 of 1998 which was ultimately dismissed as infructuous. Mr. Dwivedi submitted that the suit was for injunction simplicitor to restrain the Parishad from interfering with the possession of the plaintiffs in the lands forming the subject matter of the suit and also for mandatory injunction on the Defendant Nos.1 and 5 to remove encroachments from the said lands and to restore its position and possession as on the date of the suit. It was submitted that the plaintiffs chose to abandon the suit on account of the writ petition which had been separately filed in respect of the same land, *inter alia*, for implementation of the report of the Additional District Magistrate (V.R.), Aligarh, dated 2nd July, 2004, submitted to the District Magistrate, Aligarh. Mr. Dwivedi submitted that the aforesaid report did not give an accurate picture of the acquisition proceedings since the lands measuring

6.17 bighas in respect of which possession had been taken by the Parishad, was not confined to the lands of Shivdan Singh alone, but also included some of the lands comprising the lands of the Banerji family as well. Mr. Dwivedi referred to the status of the land comprised in Plot No.1002 shown in the letter addressed by the Executive Engineer, U.P. Housing and Development Board on 9th February, 2004 to the District Magistrate, Aligarh.

18. From the contents of the said letter, Mr. Dwivedi pointed out that out of the total lands comprising Plot No.1002, the land comprising the Pisawa House was excluded from the acquisition along with Dr. Mahesh Banerji's Kothi and the open land towards North-32 ft., towards South-32 ft., towards East-12 ft. and towards West-52 ft. measuring 1-1-10 bighas and a further 0-14-2 bighas on which Smt. Angoori Devi's Kothi was situated. Mr. Dwivedi submitted that according to the

aforesaid facts, the stand taken on behalf of the appellants on the basis of the report of the Additional District Magistrate (V.R.), Aligarh, that no portion of the lands belonging to the Banerji family had been acquired, was wrong and not supported by the record. In fact, Mr. Dwivedi pointed out that while assessing compensation for the 6.17 bighas of land in respect whereof possession had been taken, the Collector was alive to the fact that the entire lands did not belong to Shivdan Singh alone, as alleged, and the same would be evident from the Award, wherein compensation had been assessed in favour of **Shivdan Singh, etc.** It was submitted that apart from Shivdan Singh, the lands of the Banerji family had also been included in the acquisition.

19. The submissions made on behalf of the Parishad were also adopted by Mr. R.K. Dash, learned Senior Advocate for the State of Uttar Pradesh. The

categorical stand taken by learned counsel was that the views expressed by the Additional District Magistrate (V.R.), Aligarh, were contrary to the records, as mentioned by the Executive Engineer, U.P. Housing and Development Board in his letter dated 9th February, 2004, addressed to the District Magistrate, Aligarh.

20. Mr. L. Nageshwara Rao, learned Senior Advocate, who appeared for Respondent Nos.4 to 6, firstly referred to the notice published by the Respondent-Parishad under Section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, wherein the area to be comprised in the G.T. Road Bhoomi Vikas Yojana was specified and objections were invited within 30 days from the date on which the notice was first published in the Uttar Pradesh Gazette, i.e., 5th October, 1968. Mr. Rao submitted that no objection had been filed on behalf of the Banerjis within the specified time and the representation on the basis

of which the inquiry was conducted by the Additional District Magistrate (V.R.), Aligarh, was made as late as on 19th August, 2002. It was submitted that in the meantime, auction had been conducted on 30th March, 2000 and allotment letter had also been issued in favour of the successful bidders by the Housing Board on 17th May, 2000 and possession was also given to the three auction purchasers on 5th April, 2006. Mr. Rao submitted that the Respondent Nos.4 to 6 were, therefore, bona fide purchasers for value without notice and the allotment made in their favour, could not be disturbed.

21. From the submissions made on behalf of the respective parties and the materials on record, it will be apparent that the dispute in this case centers around the question as to whether barring 1-1-10 bighas of the lands comprising a part of the property belonging to the Banerji family, which had

been excluded from the acquisition, the remaining portion had also been acquired for the purpose of Yojana No.7 undertaken by the Respondent-Parishad. From the calculations as indicated in the report of the Executive Engineer, U.P. Housing Development Board, only 1-1-10 bighas of land belonging to the Banerji family had been excluded from the scope of the acquisition and as far as remaining lands are concerned, the same either fall within the 6.17 bighas possession whereof had already been taken, or the same fell outside the said area which did not form part of the lands excluded from the ambit of the acquisition. In either case, the Banerjis have to be compensated for the said lands in respect whereof, according to the Banerjis, no compensation had either been assessed or awarded. The said conundrum still remains to be solved. No positive finding has at all been arrived at in this regard by the acquiring authorities, nor even by the Collector while making his Award. There is,

therefore, some justification in Mr. Dutta's submissions that if the lands of the Banerji family, apart from the lands which had been excluded from the acquisition, had actually been acquired for the purpose of Yojana No.7, the same had to be reflected in the proceedings for acquisition of the lands and, accordingly, compensation was required to be paid to the Banerji family in respect thereof. The general submission made on behalf of the Parishad and the State that it was for the Banerjis to prove their title to the alleged lands comprising 6.17 bighas and to ask for compensation therefor, does not stand scrutiny in view of the fact that identity of the lands covered within the said 6.17 bighas has not been properly established.

22. The writ court is not ideally situated to decide such a disputed question of fact. Although, a description of the lands of the Banerji family

which had been acquired, has been given in the letter written by the Executive Engineer, U.P. Housing Development Board to the District Magistrate on 9th February, 2004, the same has to be considered along with the decision which had been taken to allow the Banerji family to retain the lands adjacent to their Kothi upto G.T. Road. There appears to be a communication gap between the different authorities of the State Government as also the Parishad relating to these lands. If a resolution had been taken to allow the Banerji family to retain the above-mentioned lands contiguous to G.T. Road, then the specifications given in the letter of the Executive Engineer appear to be incorrect. Whatever be the dispute, a citizen cannot be deprived of his property except in accordance with the procedure established by law. If barring 1-1-10 bighas of land which had been excluded from the ambit of the acquisition, the other lands of the Banerji family have actually

been acquired and possession thereof been taken, the extent of the lands so acquired will have to be established and compensation in respect thereof has to be paid to the Banerji family. That does not appear to have been done in this case, thereby causing prejudice to the appellants. On the other hand, if the excess lands belonging to the Banerji family had been included within the 6.17 bighas of land in respect whereof possession had actually been taken, the State and the acquiring body have to identify the said lands for the purposes of assessing compensation.

23. All the above questions can either be decided in a properly instituted suit or by the Collector on a proper inquiry being conducted. We are, therefore, of the view that in order to put a quietus to the dispute, the District Magistrate should conduct a fresh inquiry in order to determine the extent of the lands of the Banerji

family which had been included in the acquisition proceedings for the purpose of Yojana No.7 undertaken by the Parishad upon giving the affected parties an opportunity of placing their respective cases.

24. The District Magistrate, Aligarh is, therefore, directed to conduct an enquiry in order to determine the extent of land belonging to the Banerji family which is said to have been acquired for the purposes of the scheme covered by Yojana No.7 undertaken by the Respondent No.1-Parishad and to also determine as to whether the same was included in the 6.17 bighas of land possession whereof had been taken earlier. In the event the lands have not been included within the ambit of the acquisition proceedings, as indicated by the Additional District Magistrate (V.R.), Aligarh, then, in such an event, the compensation for the same is to be assessed and Award is to be made in

respect thereof, in accordance with law. On the other hand, if the said lands have been included within the 6.17 bighas in respect of which compensation had already been awarded, the District Magistrate shall, after identification of the lands of the appellants, apportion the compensation payable to them and make an Award accordingly.

25. As indicated hereinbefore, in conducting such an inquiry, the appellants as also the authorities of the Respondent No.1-Parishad should be given proper opportunity of placing their respective cases. Since the acquisition relates back to the year 1968/1971, such investigation and enquiry must, however, be completed within six months from the date of receipt of a copy of this order.

26. The appeals are, accordingly, allowed to the aforesaid extent, but without any order as to

costs. All connected applications shall also stand disposed of by this order.

J.
(ALTAMAS KABIR)

J.
(CYRIAC JOSEPH)

New Delhi

Dated: 7th July, 2010.