
(2019) 05 UK CK 0040

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1373 Of 2018, Writ Petition (M/S) No. 1873 Of 2017

Anil Kishore Joshi & Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 4, 27, 28, 29(2), 29(3)
Code Of Civil Procedure, 1908 — Order 2 Rule 2
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0040

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rajendra Kotiyal, T.P.S. Takuli, V.K. Kaparwan, Anurag Bisaria

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The petitioner in the present writ petition has prayed for the following reliefs :-

a) Issue appropriate writ declaring that the acquisition vide the notifications dated 07.05.2016 (annexure no.4 to the writ petition), 01.12.2016 published

on 4.12.2016 (annexure no.9 to the writ petition) and 28.11.2017 published on 23.12.2017 (annexure no.27 to the writ petition) are bad in and law.

b) Issue appropriate writs including a writ in the nature of certiorari by calling for the records of the case and upon such transmission quashing the

award dated 15.03.2018 passed by Special Land Acquisition Officer to the extent of petitioner's claim is concerned (annexure No.31 to the writ

petition).

c) Issue appropriate writs including a writ in the nature of mandamus commanding the respondents not to proceed with impugned award dated 15.03.2018 to the extent of petitioner's claim is connected (annexure no.31 to the writ petition).

d) Issue appropriate writs including a writ in the nature of prohibition prohibiting the Respondents or each of them from proceeding with the award impugned in the instant writ petition.

e) Issue rule nisi in terms of prayer (a) to (c) above.

f) Issue a writ order or direction in the nature of mandamus directing the respondents to comply the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and the Rules.

g) During the pendency of the instant writ petition to stay the operation of the impugned award dated.

h) Upon the return of the rule, to make the rule absolute.

i) Pass such order and further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

2. As a matter of the fact by giving challenge to the notification in this writ petition, the petitioner has simultaneously challenged the award which has

been referred by the Special Land Acquisition Officer on 15.03.2018 and also claimed for other ancillaries reliefs pertaining to a rightful determination

of compensation of plants and trees which he contends that it had not been included in the award which has been rendered by the Special Land

Acquisition Officer on 15.03.2018. At this stage, it would be relevant to mention that the petitioner had earlier invoked the writ jurisdiction of this Court

under Article 226 of the Constitution of India wherein he has sought for following reliefs:-

i) Issue a writ, order or direction in the nature of mandamus directing the respondent no.3 to consider the application/ representation dated 09.07.2017

submitted by the petitioner before the respondent No.3.

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to evaluate the valuation of the mother plant/plant/other

trees/Napier grass of the petitioner from Forest Research Institute, Dehradun and from the Scientists of Silk Board, so that the appropriate

compensation (as per the government norms) could be given to the petitioner.

iii) Issue a writ, order or direction in the nature of Mandamus directing the respondent no.3 to decide the application/representation dated 9.07.2017

submitted by the petitioner with reasoned and speaking order.

iv) Pass such further orders or directions which are just and proper in the facts of the case.

v) Issue a writ, order or direction in the nature of mandamus directing the respondents to value the aforesaid trees as claimed by the petitioner in

accordance with law and award the compensation of the same to the petitioner as expeditiously as possible.

vi) Issue a writ, order or direction in the nature of mandamus directing the respondents to constitute an expert committee for proper valuation of the

aforesaid plants/mother plants as has been claimed by the petitioner.

3. What is important to point out at this stage that in earlier writ petition, the petitioner had sought a writ of mandamus for deciding the representation

dated 09.07.2017 and other relief was also in the nature of mandamus with a direction to the respondents for appropriate valuation of mother plant,

trees and other trees, Napier grass from Forest Research Institute, in this writ petition which was initially entertained by this Court, the petitioner had

ultimately withdrawn this writ petition and consequently, the same was dismissed as withdrawn as having being rendered infructuous on 07.05.2018, in

fact, prior to dismissal of the writ petition by the order of this Court on 07.05.2018, there was reference made by an earlier order dated 05.04.2018 to

the effect that in case the award is given, the same was required to be placed on the writ petition but the petitioner had not placed the same on record.

Thereafter, the petitioner filed a recall application No.1616 of 2018 seeking recall of the order dated 07.05.2018 whereby he has voluntarily got the

writ petition which is dismissed as withdrawn as having being rendered infructuous. The said application came before coordinate bench of this Court

for consideration and the same was dismissed vide order dated 15.03.2019 wherein the Court has recorded the findings to the effect that once the

petitioner himself has chosen to get his writ petition dismissed as withdrawn as having being rendered infructuous, he cannot be permitted to get the

said order recall because the decision dated 07.05.2018 was a decision which was solicited by the petitioner himself.

4. This order of dismissal of the writ petition dated 07.05.2018 as well as

dismissal of the recall application dated 15.03.2019 has attained finality. It was after the dismissal of the writ petition that the petitioner had filed the present writ petition on 15.05.2018 when for the first time, he has questioned the notification issued under Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on 07.05.2016 as well as the publications made thereafter.

5. The petitioner has also questioned the award dated 15. 03.2018 as passed by Special Land Acquisition Officer. What is important to point out at this stage that at the stage when the petitioner got his earlier writ petition dismissed as withdrawn i.e. on 07.05.2018 though the notification which is now put to challenge and the award which has been put to challenge as second relief in the present writ petition, were in existence and in view of the provisions contained under Order 2 Rule 2 of the Code of Civil Procedure, It would be taken as fact that the petitioner has voluntarily chosen his relief and has not questioned to notification nor he has questioned the award dated 15.03.2018.

6. Be that as it may this Court is of the view that so far as relief Nos. A,B and C are concerned but the same would not be tenable at this stage for the reason when the petitioner himself has voluntarily given his rights to challenge the said notification and the award where he has instituted earlier writ petition. Subsequent to relief which has claimed therein with regards to the determination of fair compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. He has submitted that as the matter of the fact that he admits that he has not the owner of the land but he claims his right to determination of compensation so far as it relates to tress which are existing on the land which is the subject matter of the opposition in pursuance of notification which has referred to relief No.1 in the present writ petition. This contention with regards to the determination of compensation pertaining to the trees has been disputed by the learned Standing Counsel on the ground that the argument as extended by learned counsel for the petitioner to the effect that Special Land Acquisition Officer has not determined the compensation with regards to trees which are existing on the land acquired as an absolutely untenable arguments for the reason that the Collector/District Magistrate while

dismissing the award on 15.03.2018 in its claim 18, he has computed the valuation of the land acquired superstructure on the existing land as well as clause 18(Ga), he has determined the quantum of the compensation to the award towards the loss of trees and plants existing on the land acquired by the said notification. This determination of compensation and its quantification as made by the award in question in fact it shows that the Collector had exercised its powers under Section 27 read with Section 29 (2) and (3) of the Act, 2013 wherein the valuation of the trees and appropriate determination of compensation by passing award has been completed thereto by District Magistrate in the light of procedure as contemplated under Section 28 of the Act.

8. As far as the trees which the petitioner's contention was existing in village Maletha Pargana Kirtinagar District Tehri Garhwal, it cannot be said that the compensation payable towards to the trees which was likely to be damaged as the consequence to the acquisition was futile and if at all the petitioner was aggrieved by wrongful determination or was not satisfied by determination made by the Collector to the trees which are existing on the land acquired, he has a remedy under the Act itself to seek an appropriate reference against a wrongful determination or no determination of the compensation as sought to be pleaded by learned counsel for the petitioner.

9. Since the proceedings in question is emanating from Special Central Statutory i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it does not contemplate any procedure under Section 28 which grants the liberty to the land looser or occupant of the land who suffers any damages or loss on account of acquisition for redressal of his grievance by way of submitting the representation is not permissible under the Act. Since the Act itself does not contemplate redressal of grievance by submission of representation no such direction can be given by this Court for deciding the representation.

10. After having said so, if at all the petitioner is dissatisfied with the quantum of the determination of compensation as held under Section 29(2) and 3 of the Act, he has a remedy of seeking an appropriate reference before the competent authority for determination of right to compensation and the second writ petition after dismissing of earlier writ petition would not be tenable.

11. With the aforesaid liberty, it will be open for petitioner to seek appropriate

reference in accordance with law, this writ petition is accordingly,
dismissed. In case, while seeking the reference, if there arises any question
pertaining to the limitation, the reference court would reasonably consider
the time consumed in pendency of the writ petition for the purpose of limitation
for seeking the reference.