

(2014) 02 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1013/2010, 4267/2011, 11307, 13023, 13024, 13314, 13315, 14308/2008, 1012, 1294, 1613, 1868, 3320, 6105, 6456, 11265/2009, 1100, 1102, 1247, 1248, 1249, 1250, 1331, 1333, 1334, 1672, 2553, 2656, 2855, 2856, 3152, 3222, 3230,

Anil Kumar Jain and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 90B

Citation : (2014) 02 RAJ CK 0043

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : R.K. Gaur, D.K. Garg and Amit Jindal, Advocates for the Appellant; J.P. Goyal, Sr. Adv., Abhi Goyal, Aditya Sharma, Rajneesh Gupta, M.D. Agrawal, Rahul Sharma, Gunjan Pathak and Surinder Pratap Singh, Advocates for the Respondent

Judgement

M.N. Bhandari, J.—These writ petitions involve common question of law and fact, thus heard and decided together.

2. Learned counsel for the petitioner/s submit that acquisition proceedings were initiated and completed by the National Highway Authority (for short "the Authority") under the provisions of National Highways Act, 1956 (for short "Act of 1956"). The compensation was determined, however, dispute remained in regard to distribution of compensation. As and when there exists dispute regarding claim of compensation, it cannot be determined by the competent authority but has to be referred to the Principal Civil Court. In the instant case, the competent authority determined the issue instead of referring it to the Principal Civil Court.

3. Referring to the facts of this case, it is submitted that in few cases, the land was sold through registered sale deed yet in absence of mutation, the amount was awarded in favour of previous land holder ignoring the claim of purchaser

through a registered sale deed. In few cases, one of the Khatedar, out of joint khatedar, has been denied compensation as he was not possessing the part of land acquired by them whereas in few cases, claim of compensation was made in the ratio of khatedari rights by joint khatedar. In other cases where proceedings under Section 90B of the Land Revenue Act, 1956 was completed, the compensation was given to the Municipalities concerned instead to the extent of land came in the share of municipalities. In those cases, the petitioner/s should have been given compensation to the extent of land, of which, Pattas had been issued in their favour. In any case, all these disputes should have been referred to the principal civil court of original jurisdiction as per Section 3H of the Act of 1956. The competent authority, however, directed the petitioner/s to prefer an appeal for the aforesaid purpose, though not provided under the Act.

4. The other argument/s of learned counsel for the petitioner/s is that after determination of compensation, it should have been deposited with the civil court but it was deposited with the competent authority.

5. Learned counsel for the petitioner/s submit that if the amount is not deposited with the civil court, they would be losing interest unnecessarily.

6. Learned counsel for the respondent/s, on the other hand, submit that the order passed by the competent authority is just and proper. The issues raised by the learned counsel for the petitioner/s were taken into consideration. As per the provisions of Section 3H of the Act of 1956, the competent authority had rightly decided the issues. The petitioners were still given liberty to prefer an appeal for their rights as indicated in the operative portion of the judgment.

7. Learned counsel appearing for the Municipality submitted that entire compensation has not been given to the municipality but only to the extent land came in their share after the order under Section 90B of the Land Revenue Act.

8. Learned Sr. Advocate Mr. J.P. Goyal assisted by Mr. Abhi Goyal appearing for the respondent/s submits that land was sold by him to one of the petitioners and accordingly compensation should go to him but has been awarded to the previous land holder as his name exists as Khatedar in the revenue record.

9. So far as manner to deposit the amount is concerned, learned counsel Mr. M.D. Agrawal referred the provision of Section 3G of the Act of 1956, which provides that a rule can be made to provide manner to deposit the amount and for that, rule was made in the year 1998 itself, namely, The National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998 (for short "Rules of 1998"). As per Rule 2(1)(a) and Rule 2(2) of the Rules of 1998, the amount has to be deposited with the competent authority, who thereafter to keep it separately in the Public Account of India. The aforesaid procedure has been applied in the instant case, thus there is no illegality, thus direction to deposit the amount to civil court may not be given.

10. I have considered the submissions made by learned counsel for the parties and scanned the matter carefully.

11. The first issue is as to whether competent authority should have referred the matter to principal civil court or it can determine the issue is concerned, a reference of Section 3H of the Act of 1956 would be relevant, however, a reference of Section 3G of the Act of 1956 has also been given to show the manner of determination of amount, thus both the provisions are quoted hereunder:

"3G. Determination of amount payable as compensation - (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten percent of the amount determined under Sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspaper, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or Sub-section (5), as the case may be, shall take into consideration -

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking

possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount. - (1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

12. Sub-section (3) of Section 3H of the Act of 1956 gives jurisdiction to the competent authority to decide the dispute, if several persons claim to be interested in the amount deposited under Sub-section (1). Sub-section (4) of Section 3H of the Act of 1956 directs competent authority to refer the dispute to the decision of the principal civil court of original jurisdiction. It is in the case where dispute arises as to apportionment of amount. Both the sub-sections, referred to above, operate in different fields. Sub-section (3) of Section 3H applies when there are several persons claim interest in the amount deposited. The dispute can be decided by the competent authority. It is in such cases where dispute can be as to who is the real claimant of the compensation, the competent authority can decide the aforesaid. Sub-section (4) of Section 3H of Act of 1956

comes in picture when dispute is not for claim but apportionment of the amount of compensation. In the case of joint khatedari, apportionment is required to be determined. In case of dispute, it necessarily to be referred to the principal civil court.

13. If the cases in hand are looked into, mostly cases are covered by Sub-section (4) of Section 3H of the Act of 1956, i.e., dispute regarding apportionment of amount. Few cases are covered by Sub-section (3) where jurisdiction exists with the competent authority to decide as to who should get compensation. The cases of that nature may be where land was sold by the person/s but in absence of mutation, compensation has not been awarded to the subsequent purchaser. The aforesaid issue can be decided by the competent authority and in the case where 90B proceeding has already been concluded with issuance of Patta, the compensation to the extent of land allotted to the person, should have been given to him leaving the remaining amount for Municipality, i.e., to the extent of land vest in Municipality. All other cases are covered by Sub-section (4) of Section 3H of the Act of 1956.

14. The issue regarding manner to deposit the amount has also been raised.

15. According to learned counsel for the petitioners, after determination of compensation, it should be deposited with the civil court.

16. The aforesaid is seriously opposed by learned counsel for the respondent/s. In this regard, a reference of Section 3G of the Act of 1956 would be relevant where provision exists for determination of amount payable as compensation. The Act gives liberty to the respondent/s to frame rules to determine the manner to deposit the compensation. In reference to the aforesaid, Rules of 1998 were framed. Reference of Rule 2 of the Rules of 1998 is relevant, thus quoted hereunder for ready reference:

"2. The manner of depositing money with the competent authority.-

(1) Subject to the provisions of the act, the existing agency authorised by the Central Government in this behalf shall deposit,-

(a) the amount determined under section 3G of the Act, and

(b) where the amount determined by the arbitrator under section 3G of the Act is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded by the arbitrator, within seven days of such determination of award by the competent authority or by the arbitrator, as the case may be, with the competent authority through demand draft.

The competent authority shall deposit the amount received under sub-rule (1) in a separate Public Deposit Account of India and the provision of Sub-section (2) to (4) of the Act shall apply to such deposit.

Explanation.-For the purpose of this rule,-

(a) "Act" means the National Highways Act, 1956 (48 of 1956)

(b) the expression "executing agency" shall have the same meaning as assigned to it under clause (d) of rule 2 of the National Highways Rules, 1957."

17. The perusal of Rule 2(1)(a) shows that after determination of amount under Section 3G of the Act of 1956, it should be deposited in the manner given under Rule 2(2), which provides that competent authority shall deposit the amount received under Sub-rule (1) in a separate Public Deposit Account in the Public Account of India. The amount has been deposited with the competent authority, thus there is no illegality, rather direction cannot be given to deposit the amount to civil court. Such a direction would be de hors the rules of 1998 and otherwise not permissible unless struck down by the Court.

18. In view of the discussion made above, all these writ petitions are disposed of with the following directions:

"(i) In the cases where land was sold through registered sale deed but in absence of mutation, compensation has not been given to the purchaser under sale deed, direction is given to award compensation to registered sale deed holder. To that extent, the impugned order stands modified.

(ii) In the cases where 90B proceedings were completed with issuance of Patta, compensation should be awarded to Patta holders to the extent of land possessed by them under those Pattas. For the remaining land vest in the Municipalities, compensation should be awarded to the Municipalities and accordingly, the impugned order is modified/clarified to that extent.

(iii) For all other cases, which are not covered by the categories referred to above, it is directed to be referred to the principal civil court of original jurisdiction and accordingly, the impugned order is modified to that extent. On reference, the principal civil court would be expected to decide the matter as expeditious as possible.

(iv) If the amount was disbursed prior to filing of the writ petition or during the intervening period then cases covered by direction Nos. (i) and (ii), it would be payable to the categories of the petitions covered by directions aforesaid."