

(2017) 07 GUJ CK 0167
In the Gujarat High Court
Case No : 13873 of 2016

ARJANBHAI KESHAVBHAI RAMANI

APPELLANT

Vs

STATE OF GUJARAT & 2

RESPONDENT

Date of Decision : 05-07-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

[5681](#) Land Acquisition Act, 1894, [5681-11](#) Section 11 -
Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24

Citation : (2017) 07 GUJ CK 0167

Hon'ble Judges : M.R. Shah, B.N. Karia

Bench : Division Bench

Advocate : VIJAY H NANGESH, DHAWAN JAYSWAL, TRIVEDI & GUPTA, KUNAN B NAIK

Judgement

1. 0. By way of this petition under Article 226 of the Constitution of India, the petitioner, by invoking the provisions of sub-section (2) of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013" for convenience), has prayed for the following main reliefs :- "(A). To quash and set aside the acquisition proceedings since there is a breach of non-compliance of the Land Acquisition Act, 1984 more particularly Rule-4 of the Land Acquisition (Companies) Rule, 1963.

(B). To quash and set aside the acquisition proceedings having lapsed due to the delay in taking possession and non-payment of compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in the interest of justice.

(C). To quash and set aside acquisition proceedings as having lapsed by coming into operation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in the interest of justice.

(D). To quash and set aside the Award U/s. 11 of the Land Acquisition Act, 1894 dated 18/6/2009 passed by the respondent ? Deputy Collector in the interest of justice."

2. 0. Now, so far as the challenge to the acquisition proceedings / acquisition of the land under the provisions of the Land Acquisition Act, 1894 is concerned, the said question is already concluded against the petitioner in light of the decision of the Division Bench of this Court in Special Civil Application No. 14893 of 2015 and Special Civil Application No. 14894 of 2015, by which, other land owners whose land came to be acquired under the provisions of the Land Acquisition Act, 1894, challenged the acquisition of land on the very ground and the said petitions have been dismissed, which have been confirmed by the Hon"ble Supreme Court. Under the circumstances, challenge to the acquisition of the land in question under the provisions of the Land Acquisition Act, 1894 is hereby rejected for the reasons stated in the judgement and order passed by the Division Bench of this Court in the case of Abha Osman Turq Versus State of Gujarat in Special Civil Application No. 14893 of 2015 and Special Civil Application No. 14894 of 2015.

3. 0. Now so far as the case on behalf of the petitioner to declare that the acquisition has lapsed in view of the provisions of the Act of 2013 is concerned, it is the case on behalf of the petitioner that as the petitioner was in possession of the land in question as on 1/1/2014 i.e. the date on which the Act of 2013 came into force and that the amount of compensation was not paid to the petitioner, in view of the provisions of Sub-section (2) of Section 24 of the Act of 2013, the acquisition has lapsed.

4. 0. However, it is required to be noted and it is not in dispute that, as such, in the present case Award under section 11 of the Land Acquisition Act, 1894 has been declared on 18/6/2009 i.e. after 1/1/2009. Sub-section (2) of Section 24 of the Act of 2013 shall be applicable only in a case where Award has been declared under the provisions of the Land Acquisition Act, 1894 prior to five years or more prior to the commencement of the Act of 2013. Under the circumstances, only in a case where Award under section 11 of the Land Acquisition Act, 1894 is made five years or more prior to commencement of the Act of 2013, Sub-section (2) of Section 24 of the Act of 2013 will come into play.

5. 0. In the recent decision in Civil Appeal No.5054 of 2008, when Sub-section (2) of Section 24 of the Act of 2013 was pressed into service, the Hon"ble Supreme Court has observed and held that any determination under Sub-section (2) of section 24 of the Act of 2013 must proceed sequentially. It is further observed and held that, first, the factum of an Award under Section 11 of the Land Acquisition Act, 1894, must be clearly established. It is further observed and held that, the said Award must predate the commencement of the Act, i.e., 01/01/2014, by at least five years (or more), i.e., the Award must have been passed on or before 01.01.2009. It is further observed that this having been established, if possession is found not to have been taken, or compensation not

paid, then the proceedings shall be deemed to have lapsed. Therefore, all the aforesaid conditions / requirements are sine-qua non and they are required to be complied with/satisfied. 6. 0. In the present case, as observed hereinabove, and it is admitted position that the Award under section 11 of the Land Acquisition Act, 1894 has been declared on 18/6/2009 i.e. after 1/1/2009. Under the circumstances, considering the language of Sub-section(2) of Section 24 of the Act of 2013 and the observations made by the Hon"ble Supreme Court in the aforesaid decision, in the present case, Sub-section (2) of Section 24 of the Act of 2013 shall not be applicable and/or the petitioner cannot get benefit of Sub-section (2) of section 24 of the Act of 2013.

Under the circumstances, even the relief sought by the petitioner to declare that the acquisition has lapsed considering the provisions of Sub-section (2) of Section 24 of the Act of 2013, cannot be accepted and the same deserves to be rejected and is accordingly rejected.

7. 0. In view of the above and for the reasons stated above, present petition fails and the same deserves to be dismissed and is accordingly dismissed. Notice is discharged. In the facts and circumstances of the case, there shall be no order as to costs.