

(2000) 08 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2705 of 1997

Bharat Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 11, 18

Citation : (2001) 4 WLC 431 : (2007) 2 WLN 462

Hon'ble Judges : B.S. Chauhan Bharat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant case is an eye-opener as to what as extent a litigant can abuse the process of the Court as one of the petitioner, a joint Khatedar, had withdrawn the amount of compensation for the land and enjoyed the interim order for about three years by suppressing the material fact. Even today, in respect of the joint Khatedari, the petition got dismissed in a clandestine manner but possession could not be given to respondents as there had been no partition by meet and bounds.

2. The facts and circumstances giving rise to this case are that respondent No. 3, the company, had been granted a mining lease for a big area by the respondent-State for excavation of minerals. The company filed an application before the District Collector on 26.3.1993 (Annx. 1) to determine the compensation of a large track of land, including the land in dispute, under the provisions of Section 89 of the Rajasthan Land Revenue Act, 1956 (for short, "the Act, 1956"). Respondent No. 2, a joint Khatedar, filed objection before the District Collector on 2.4.1996 to the effect that they had no objection in giving possession of the land to respondent company but they wanted a proper determination of compensation and they did not want to give effect to the compromise/agreement entered into between the parties earlier. The District Collector rejected the

application of respondent company vide order dated 29.6.1996. Being aggrieved and dissatisfied, respondent company filed an appeal u/s 75 of the Act, 1956 and the Revenue Appellate Authority, vide order dated 21.11.1996, remanded the case directing the District Collector to determine the compensation in terms of Section 89 of the Act, 1956. When the matter came up again before the District Collector, petitioners filed objections on 6.1.1997 contending that the land could be acquired only under the provisions of the Land Acquisition Act as required under the provisions of Section 63(1) (iii) of the Rajasthan Tenancy Act, 1955 (for short, "the Act, 1955") which provided that the tenancy rights could be extinguished only by acquiring the land under the Rajasthan Land Acquisition Act, 1953. The District Collector, vide impugned order dated 3/26th July, 1998 (Annx. 4), rejected the objections of petitioners and determined the amount of compensation. Hence this writ petition.

3. Mr. P.P. Chaudhary, learned counsel for petitioner, has submitted that by virtue of provisions of Section 63 of the Act, 1955, it is not permissible for respondents to deprive the petitioner from the land unless the provisions of the Land Acquisition Act are not resorted to, for the reason that it is the only provision for extinguishing the right of a tenure- holder. On the other hand, Mr. Kalla has submitted that it is not necessary to resort to the said provision for the reason that Section 89 of the Act, 1956 is a complete Code in case the land is acquired for the purpose of excavation of mines and minerals.

4. As per the provisions of Section 89 of the Act, 1956, undoubtedly all rights to mine and minerals vest in the State Government and it has absolute powers, necessary for the enjoyment of such a right. The right to all mines and quarries, including the right to access to the land for the purpose of mining and quarrying, may be declared by the State Government to be subsidiary to mining and quarrying. Further, the State Government is competent to assign to any person these rights over mines, minerals and quarries.

5. Sub-section (4) of Section 89 of the Act, 1956, reads as under:

If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the State Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Collector, or, if his award is not accepted, by the civil court, as nearly as may be, in accordance with the provisions of the Rajasthan Land Acquisition Act, 1953.

6. Thus, it is clear from the aforesaid provision that the Land Revenue Act provides for a special procedure of determining the compensation by the District Collector and in case of non- agreement, tenure-holding may move the civil court wherein the compensation shall be determined as provided under the Land Acquisition Act. The submission made by Mr. Chaudhary that in view of the provisions of Section 63 of the Act, 1955 the order passed u/s 89 of the Act,

1956 is without jurisdiction, is not sustainable for the reason that I am of the considered opinion that the Act of 1956, being a subsequent Act, will prevail over the Act of 1955 as the legislature has consciously provided for the procedure u/s 89 knowing well the statutory provisions of Section 63 of the Act 1955 and if the legislature has provided for a different mode, the submission made by Mr. Chaudhary is preposterous and is not worth consideration unless the vires of provisions of Section 89 of the Act 1956 are challenged and the provisions are struck down. It is settled law that latter Law will prevail for the reason that legislature is supposed to know the law and it would not like to enact the contradictory provisions having application in the same field.

7. In *Municipal Corporation of Delhi Vs. Shiv Shanker*, , the Hon''ble Supreme Court held as above placing reliance upon the judgment in *Paine v. Stater* (1883) 11 QBD 120, wherein it has been observed as under:

Where two Acts are inconsistent or repugnant, the latter will be read as having impliedly repelled the earlier. As the legislature must be presumed in difference to the rule of law to intent to enact consistent and harmonious bodies of law, a subsequent legislation may not be readily presume to effectuate a repeal of existing statutory laws in the absence of express or atleast clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws, which citizens are rejoined and expected to obey. The legislature, which may generally be presume to know the existing law, is not expected to intent to create confusion by its omission to express its intent to repeal in clear terms.

Similar view has been reiterated by the Hon''ble Supreme Court in *Swastik Rubber Products Ltd. and Others Vs. Municipal Corporation of The City of Poona and Another*, ; *Commissioner, Sales Tax, U.P. Vs. Agra Belting Works, Agra*, ; and *Sales Tax Officer, Sector IX, Kanpur Vs. Dealing Dairy Products and another*, .

8. The Act of 1955 provides for extinguishing the tenancy right generally. It is an enactment dealing with the tenancy rights only. The Act of 1956 is a Code dealing with rights pertaining to land including tenancy. Section 89 of the Act 1956 deals with tenancy right over land containing minerals. Therefore, being a special legislation, only in that relation, it must prevail over the provisions of the Act of 1955. (Vide AIR 1931 149 (Privy Council) *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, ; and *State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others*,

9. The question of putting the tenure-holder in a disadvantageous position depriving him from solatium and interest, if land is not taken under the Land Acquisition Act, may not arise in a particular case. If parties agree and award is made in view of the second proviso to Sub-section (2) of Section 11 of the Land Acquisition Act, 1894. (Vide *State of Gujarat, etc. Vs. Daya Shamji Bhai, etc.*, and *Ishwarlal Premchand Shah and others Vs. State of Gujarat and others*, .

Moreso, in such a situation, an individual case is to be considered as per the law laid down by the Hon''ble Supreme Court in Nagpur Improvement Trust v. Vithal Rao AIR 1973 SC 689 , Prakash Amichand Shah Vs. State of Gujarat and Others, and Narain Das Jain (Since Deceased) by Lrs. Vs. Agra Nagar Mahapalika, Agra, , wherein this aspect has been dealt with elaborately in different manners for different contingencies arising in a particular case.

10. In Land Acquisition Officer Vs. Shivbai and others, , the Apex Court held that where award is accepted without protest, a tenure-holder cannot maintain the reference u/s 18 of the Land Acquisition Act. Therefore, entitlement of a person to a particular amount as compensation or as a solatium or interest on it would depend upon the facts of each case, for the reason that even the Land Acquisition Act is a mode of sale and purchase of immovable property but as the acquisition is made against the wishes of the tenure-holders, solatium has been provided therein. Under Sub- Section (2) of Section 11, an exception has been carved out therein also that in case of an agreement of a particular amount as compensation, the award can be passed in terms of the agreement and in that situation, claimant shall not be entitled for interest or solatium.

11. In the instant case, petitioner No. 2 had withdrawn the amount of compensation and filed the writ petition suppressing the factum of withdrawing the compensation and obtained the interim order of this Court. Petition No. 1, a joint Khatedar, filed the affidavit in support of the writ petition. Therefore, he cannot escape the liability of suppressing the material fact.

12. It is evident from the record that petitioner did not approach this Court with clean hands, which every litigant is expected to do. It is settled proposition of law that when a person approaches the Court of Equity in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, he should approach the Court not only with clean hands but with clean mind, clean heart and clean objective also. (Vide The Ramjas Foundation and Others Vs. Union of India and Others, ; and K.R. Srinivas Vs. R.M. Premchand and Others, Thus, there should be no suppression of material facts by the litigants.

13. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, , the Apex Court observed as under:

It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court this such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts his application is liable be dismissed.

14. In Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, the Apex Court held that if a party obtained an interim order by misleading the Court, it would be disentitled for any relief in equity jurisdiction. A Constitution Bench of the Hon''ble Supreme Court, in Naraindas Vs. The Government of Madhya Pradesh and Others, has held as under:

Now, there can be no doubt that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due process of judicial proceeding and, thus, amounts to contempt of Court.

15. Similar view has subsequently been reiterated by the Apex Court in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, ; and Delhi Development Authority Vs. Skipper Construction and Another,

16. Thus, "abuse of process of the Court calculated to hamper the due course of judicial proceeding or orderly administration of Justice" is a contempt of Court and if the instant case is re-examined in the light of judgments referred to above, petitioner can be held guilty of contempt of Court as they had obtained the interim order by misleading the Court.

17. Respondents have filed reply to the writ petition on 14.12.1997 specifically alleging that the petitioners had suppressed the material facts and did not approach the Court with clean hands and, thus, they were not entitled for any equitable relief. Moreover, they had an alternative remedy of appeal u/s 75(1) (b) of the Act 1956 itself. Petitioners sought time to file rejoinder several times and on 4.1.1998, the Court granted them the last opportunity to file rejoinder, however, the allegations made in the reply by the respondent company had not been controverted till today. As there had been serious allegations against petitioner No. 2, the petition got dismissed in a clandestine manner in respect of petitioner No. 2 vide order dated 22.10. 1999 as the order reads asunder:

Thus, petition is dismissed qua petitioner No. 2.

18. Even today, respondents cannot take over the possession as it is a matter of joint Khatedari. Therefore, the conduct of the petitioners disentitles them for any relief whatsoever. Therefore, it is a clear-cut case of abuse of process of Court.

19. In Jai Kumar Vs. State of M.P., , the Hon''ble Supreme Court has observed as under:

Justice is supreme and justice ought to be beneficial for society so that the society is placed in a better situation. Law Courts exist for the society and ought to rise up to the occasion to do the needful in the matter and as such ought to act in a manner so as to subserve the basic requirement of the society.

20. In State of Punjab Vs. Baldev Singh, , the Hon''ble Supreme Court observed as under:

In every case, the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself.

21. In the instant case, the manner in which petitioners have obtained the interim order by suppressing the material fact, makes them completely disentitled for any relief whatsoever.

22. There is another aspect of the matter which also requires mentioning. During the course of arguments, the Court found that the proceedings had culminated from the order passed by the District Collector dated 29.6.1996, by which the District Collector rejected the application of respondent No. 3 to determine the compensation. The Appellate Authority, vide order dated 21.11.1996, remanded the case to the District Collector with a direction to determine the compensation u/s 89 of the Act, 1956. Thus, the Court is not in a position to find out as what was the reason, for which the District Collector first rejected the application and on what ground the appeal has been allowed. Both these orders are relevant to determine the controversy for the reason that objections had been taken by petitioners that the land could be acquired only by adopting the procedure under the Land Acquisition Act and both these authorities might have dealt with the issue. When Mr. Chaudhary was asked as why the said orders had not been filed, he made a bald statement that those documents were not necessary for determining the controversy involved in this case. It is his assessment, but the Court has a right to ask the parties to place the documents on record which may be necessary. In the instant case, perhaps those two orders might have been helpful.

23. It is settled proposition of law that a party has to plead the case and produce/ adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the petition. In *Bharat Singh and Others Vs. State of Haryana and Others*, , the Hon''ble Supreme Court has observed as under:

In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petitioner and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point... There is a distinction between a hearing under the CPC and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

Similar view has been reiterated in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, ; *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, ; and *Ram Narain Arora Vs. Asha Rani and Others*,

24. However, bearing in mind the seriousness of issue involved herein, i.e. entitlement of a tenure-holder of solatium and interest etc., even if the Act, under which the land is sought to be acquired, does not provide for the same and implication of Seven Judges Bench of the Hon''ble Supreme Court in *Nagpur Improvement Trust (supra)* and again of the Constitution Bench in *Narain Das Jain (supra)*, I was inclined to probe the legal issue further and Mr. Chaudhary,

learned counsel for petitioners, was asked to place the orders dated 29.6.1996 and 21.11.1996 on record for the reason that the order dated 3/26th July, 1998 (impugned) is a consequential order to the order dated 21.11.1996 passed by the Appellate Authority directing the District Collector to determine the compensation u/s 89 of the Act, 1956. Petitioners ought to have challenged that order. Challenging a consequential order without challenging the main order, does not make a party entitled for any relief and without placing the relevant order on record, it cannot be dealt with and petition becomes not maintainable. (Vide *Gautam Lal v. State of Rajasthan and Ors.* RLW 1999 505. But taking into account the fact that petitioner had obtained the interim order by concealing the material fact, it was made clear that the case should be adjourned but interim order would stand vacated. At this juncture, Mr. Chaudhary submitted that instead of vacating the interim order, the petition itself be dismissed. The Court has no option but to accede to his request.

25. Petition is accordingly dismissed as prayed for.