

(2008) 08 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 426 of 2002

Chitrangad Upadhyay

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10

Citation : (2008) 4 MPLJ 334

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Vandana Kasrekar, for the Appellant; Umesh Gajankush, Government Advocate for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.

The relevant facts leading to the controversy in the present petition may be noticed as follows.

The petitioner was owner of land measuring 1.046 Hectares at village Malanwasa Tehsil and District Ujjain. Under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Ceiling Act), a final draft statement of surplus holding of the petitioner was prepared on October 18, 1985. Thereafter proceedings u/s 10 of the Ceiling Act were initiated for assessment of compensation payable to the petitioner and for final declaration of the land holding of the petitioner as surplus.

When the aforesaid proceedings under the Ceiling Act were pending, the land of the petitioner was acquired by the State Government under the provisions of Land Acquisition Act, 1894 (hereinafter called the Acquisition Act). A notification u/s 4 of the Acquisition Act was issued on August 12, 1988 followed by the declaration u/s 6 on July 7, 1989. The land acquisition Collector, pronounced the

award on July 6, 1991 and an amount of Rs. 3,23,892/- was assessed as compensation payable to the petitioner for his acquired land. After the compensation was deposited by the acquiring authorities, the possession of the land in question was taken from the petitioner on January 10, 1992.

Since the proceedings under the Ceiling Act were still being continued, therefore, the petitioner filed an application before the competent authority on February 3, 1992, bringing the factum of the acquisition of his land to the notice of the said authority and requesting that since he had already received the compensation for the acquired land and possession of the said land had also been taken on January 10, 1992, therefore, the proceedings under the Ceiling Act be dropped. A copy of the application filed by the petitioner on February 3, 1992 has been appended as Annexure R-1 with the reply filed by the respondents.

It appears that later on, on coming to know of the acquisition proceedings and also the fact that the petitioner had received the compensation of Rs. 3,23,892/- under the provisions of the Acquisition Act, the matter was taken by the competent authority under the Ceiling Act with the land acquisition authorities and consequently, a communication dated December 6, 2001 was issued to the Manager of Bank of India, where the amount of compensation for the acquired land had been deposited, to stop the payment of Rs. 3,23,892/- to the petitioner. A copy of the aforesaid communication addressed to the bank has been appended as Annexure P-5 with the present petition. Thereafter some proceedings appear to have been initiated by the acquisition authorities for ordering the recovery of the amount of compensation paid to the petitioner. An order dated December 20, 2001 was passed whereby it was noticed that since the petitioner was only entitled to an amount of Rs. 11,680/- under the Ceiling Act, therefore, he was not entitled to any compensation under the provisions of the Land Acquisition Act. Consequently, the petitioner was directed to refund the remaining amount of compensation by deducting an amount of Rs. 11,680/-. A copy of the order dated December 20, 2001 has been appended as Annexure P-6 with the present petition.

It is in these circumstances that the petitioner has approached this Court challenging the orders Annexures P-5 and P-6.

The claim of the petitioner has been contested by the respondents. A reply has been filed. In substance, it has been claimed that since the land of the petitioner was declared as surplus therefore, he was only entitled to compensation under the provisions of Ceiling Act and since the aforesaid compensation payable to the petitioner for his land was merely Rs. 11,680/- therefore, the remaining amount of compensation, which was payable to him under the provisions of the Acquisition Act, was without his entitlement and as such he was liable to refund the said amount.

I have heard the learned counsel for the parties and have also gone through the record of the case.

Ms. Vandana Kasrekar, learned counsel for the petitioner has pointed out that although a final statement declaring the land belonging to the petitioner was issued on October 18, 1985, but no assessment proceedings had been finalized for payment of compensation to the petitioner under the provisions of Ceiling Act nor at any point of time, the possession of the surplus land had ever been taken from the petitioner and therefore, under the provisions of the Ceiling Act, the surplus land of the petitioner could not be deemed to have vested in the State Government.

Learned counsel maintains that in these circumstances, when the land in question was still owned by the petitioner, the proceedings under the Acquisition Act were duly initiated for acquiring the land of the petitioner and an award was pronounced by the Land Acquisition Collector on July 6, 1991 and a compensation amount of Rs. 3,23,892/- was assessed and was deposited in the account of the petitioner and it was only thereafter, when the possession of the land was taken on January 10, 1992 under the Acquisition Act that the land in question stood vested in the State Government. Learned counsel thus contends that the petitioner was fully entitled to the compensation for the acquired land as per the provisions of the Land Acquisition Act and the pending proceedings under the Ceiling Act could not be treated to be any cloud on the title of the petitioner to receive the compensation for his acquired land under the Land Acquisition Act.

On the other hand, Shri Umesh Gajankush, learned Government counsel, defends the action taken against the petitioner and contends that since the proceedings under the Ceiling Act had already been initiated in the year 1985 and a final draft statement had been prepared therefore, the acquisition of the land of the petitioner under the provisions of Acquisition Act in the year 1989 was of no help to the petitioner nor it could be claimed by the petitioner that he was entitled to compensation amount of Rs. 3,23,892/-, as was awarded vide award dated July 6, 1991 by the Land Acquisition Collector. Shri Gajankush, has also pointed out that the petitioner himself, even after receiving the compensation amount under the Acquisition Act, had been filing the repeated applications under the Ceiling Act for claiming compensation under the aforesaid Act. On the strength of the said fact, learned counsel seeks to argue that the petitioner, having claimed compensation under the Ceiling Act by filing repeated applications, was estopped to claim any compensation under the provisions of the Acquisition Act.

I have duly considered the rival contentions of the learned counsel for the parties. In my considered view, the present petition deserves to be allowed.

The facts as noticed above, are not in dispute. Although the respondents have maintained that the land of the petitioner, which later on had been acquired under the provisions of the Acquisition Act, had been declared as surplus, but it has not been disputed by them that even at the time of issuing of section 4 notification under the Acquisition Act, proceedings u/s 10 of the Ceiling Act for assessment of compensation and for delivery of possession etc. were yet

pending. In these circumstances, it cannot be held that the petitioner had stood divested of any of the surplus land under the provisions of Ceiling Act and that the surplus land had stood vested in the State Government. It is also clear from the record that a notification u/s 4 of the Acquisition Act was issued on August 12, 1988 followed by a declaration u/s 6 on July 7, 1989. The award under the Acquisition Act was pronounced on July 6, 1991 and the market value of the acquired land of the petitioner was assessed as Rs. 3,23,892/-. The said compensation amount was deposited by the acquisitional authorities and thereafter the possession of the acquired land was taken from the " petitioner on January 10, 1992. Thus, for all practical purposes, the aforesaid land of the petitioner stood vested for the first time in the State Government w.e.f. January 10, 1992, and at no point of time earlier. Consequently, it has to be held that even though the proceedings under the Ceiling Act were pending at the time of acquisition proceedings had been initiated, still the petitioner continued to be vested with the title of the land owned by him and was divested of the aforesaid title only w.e.f. January 10, 1992 under the provisions of the Acquisition Act. Therefore, legally the petitioner was entitled to receive the compensation as per the market value under the provisions of the Acquisition Act. The aforesaid compensation was duly paid to him and the same cannot be ordered to be recovered back, in any manner. Even if it be taken, as has been relied upon by the respondents, that the petitioner had been filing wrong and false claims for getting compensation under the Ceiling Act even after having received the compensation under the Acquisition Act, the said wrong and false claims made by the petitioner, may be attributable to, his greed or wrong legal advice, but by any stretch of imagination, cannot be taken to have authorized the State Government to order the recovery of compensation already paid to the petitioner under the provisions of Acquisition Act. The entitlement of the petitioner, to receive the compensation for his land, was required to be determined viz-a-viz the date of divesting of his title. As noticed above, the petitioner stood divested of the title of his land under the Acquisition Act w.e.f. January 10, 1992.

Consequently, the present petition is allowed and the orders dated February 6, 2001 and December 20, 2001 passed by respondents No. 2 and 3 are hereby quashed and it is directed that any order of recovery against the petitioner to recover back the amount of compensation paid to him under the provisions of the Land Acquisition Act, shall stand nullified.