
(2013) 05 RAJ CK 0134
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2479 of 2010

Devi Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 18, 4, 4(1), 5A

Citation : (2013) 05 RAJ CK 0134

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ashish Saxena, for the Appellant; Rajesh Kapoor for Respondent No. 4-LAO and Mr. R.D. Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—All the writ petitions have been filed challenging in common the land acquisition proceedings in respect of petitioners' land in respect whereof notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter "the Act of 1894") was issued on 16.05.2008, followed by a notification u/s 6 of the Act on 04.11.2008 and finally an award on 06.10.2009 by the Land Acquisition Officer (hereinafter "LAO"). Mr. Ashish Saxena, appearing for the petitioners, has submitted that the entire land acquisition proceedings qua the petitioners' land are liable to be quashed and set aside primarily on the ground that the objections filed by the petitioners u/s 5A of the Act of 1894 were not considered by the LAO. He has submitted that consequently the petitioners were denied their only defence to the land acquisition envisaged under the Act of 1894. This, counsel argued, has entailed denial of principles of natural justice vitiating the award dated 06.10.2009. Other grounds agitated in the writ petitions to challenge the land acquisition proceedings culminating in the award were not rightly pressed in the absence of the requisite factual foundation.

2. In reply, Mr. R.D. Rastogi, appearing for respondent No. 5 and Mr. Rajesh Kapoor, appearing for respondent No. 4, have submitted that the writ petitions

ought to be dismissed on the ground of delay alone in laying a challenge to land acquisition proceedings. It has been submitted that the Hon"ble Supreme Court in the case of Govt. of A.P. and Others Vs. Kollutla Obi Reddy and Others, has held that where there is a delayed challenge to the notification u/s 4(1) of the Act of 1894 and the declaration u/s 6 thereof, writ petitions ought not to be entertained by the High Courts. Counsel submit that if at all the petitioners were aggrieved of the land acquisition proceedings including the alleged non-consideration of their objections u/s 5A of the Act of 1894, they ought to have approached this Court soon after the declaration u/s 6 of the Act of 1894 on 04.11.2008 and not waited till the passing of the award on 06.10.2009 and for four months thereafter. Counsel have further submitted that even otherwise the case set up by the petitioners with regard to their having filed objections u/s 5A of the Act of 1894 within 30 days of the publication of the notification u/s 4 of the Act of 1894 is absolutely false, as on the basis of record available with LAO, no such objections were filed by the petitioners. It has been submitted that 35 persons had filed objections u/s 5A of the Act of 1894 against the acquisition proceedings commencing with the notification u/s 4 of the Act of 1894 on 16.05.2008 and the names of the petitioners are not reflected in the said list. It is submitted that the respondents have no personal animus against the petitioners to exclude their purported objections u/s 5A of the Act of 1894 from consideration in the event the objections had in fact been filed. It has been submitted that non-filing of the objections u/s 5A of the Act of 1894 has been construed by the Hon"ble Supreme Court in the case of Talson Real Estate Pvt. Ltd. Vs. State of Maharashtra and Others, as entailing waiver of right to challenge the declaration u/s 6 of the Act of 1894. Counsel submit that subsequent to the declaration u/s 6 of the Act of 1894, the only ground of challenge can be colorable exercise of power by the State Government and no such ground has even been pleaded in the petitions. No challenge based on malafides and colorable exercise of power has been set up. The declaration of "public purpose" of the acquisition is thus "conclusive evidence" u/s 6(3) of the Act of 1894 which cannot be overlooked by the Court. No ground based on colorable exercise of power in issuing the Section 6 declaration by the State Government having been agitated, the Section 6 of the Act of 1894 declaration in the instant case is thus unassailable before that court. After a Section 6 of the Act of 1894 declaration only determination of compensation u/s 9 of the Act of 1894 and a making of the award within the statutory time frame u/s 11A of the Act of 1894 remains. It is submitted that it is also not the petitioners' case that the award has not been passed within 2 years of the last of the publication of Section 6 of the Act of 1894 declaration. Consequently the award dated 06.10.2009 is beyond the ken of judicially review on any legally tenable and sustainable ground. It is submitted that aside of the aforesaid, the petitioners have also admittedly filed their references u/s 18 of the Act of 1894 before the competent civil court and some even agreed to accept the compensation awarded albeit under protest. It has been submitted that in the circumstance of references u/s 18 of the Act of 1894 having been filed, the petitioners should

also be taken to have acquiesced in the land acquisition proceedings and thereafter stand confined to their case before the civil court for the enhancement of the compensation determined by the LAO in the proceedings.

3. Heard the counsel for the petitioners and the respondents.

4. It is not in dispute that the present petitions challenging the land acquisition proceedings have been filed only on or about 15.02.2010 subsequent to the passing of the award on 06.10.2009 i.e. well over fifteen months since the issue of declaration u/s 6 of the Act of 1894 on 04.11.2008 preceded by Section 4 of the Act of 1894 on 16.05.2008. In Tamil Nadu Housing Board, Chennai Vs. M. Meiyappan and Others, the Hon''ble Supreme Court has held that stale challenges to an award not to be encouraged by courts. In Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, the Hon''ble Supreme Court held that after passing of an award, acquisition proceedings should not ordinarily be set aside. I do not find any force in the contention of the counsel for the petitioners that the objections u/s 5A of the Act of 1894 were filed following the declaration u/s 4 of the Act of 1894 as it has been categorically stated in the reply to the writ petition that no such objections were received by the LAO. Rejoinder to the reply has not been filed by the petitioners to controvert the say of the respondents. In my considered opinion, it has thus to be held that objections u/s 5A of the Act of 1894 were not filed as aside of denial on oath by the LAO, no proof of filing the objections has been submitted with the writ petitions. This state of affairs would tantamount to a waiver of right to challenge the notification u/s 6 of the Act of 1894 as held by the Hon''ble Supreme Court in the case of Talson Real Estate (P) Ltd. (Supra). Further the petitioners appear to have accepted the award amount under protest and correspondence on record particularly the letter dated 21.12.2009 indicates that the petitioners appear to be aggrieved not so with the acquisition proceedings, but with the quantum of compensation in respect whereof the petitioners have already filed references u/s 18 of the Act 1894. In the case of Govt. of A.P. (Supra) the Hon''ble Supreme Court has indicated that where a reference u/s 18 of the Act of 1894 for enhancement of compensation has been filed, High Courts ordinarily ought not to entertain any petition challenging the acquisition proceedings. Consequently, I find no force in the writ petition and the same are dismissed.