
(1994) 02 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1397 of 1983

Dhula and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 RLW 123 : (1994) 2 WLC 148 : (1994) 1 WLN 287

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—By this writ petition the petitioners seek to quash the order Annex. 7 and notice Annex. 8 dt. 30.7.81 issued by Land Acquisition Officer cum Sub Divisional Officer, Dungarpur as also the demand notice dt. 4.9.82 (Annex.9) issued by the Patwari.

2. The facts which are necessary to be noticed for the disposal of this writ petition in brief as alleged by the petitioners are that the petitioners, who are the residents of village Indora, Tehsil Aaspur Dist. Dungarpur were owing Khatedari rights in Khasara No. 49, 317, 318, 335, 336 and 337 at village Indora which consisted of 10 Bighas 11 Biswas of irrigated land and a well. It is alleged that for the purpose of acquisition of certain lands for Soma-Kamala-Amba Dam, proceedings were initiated under the Rajasthan Land Acquisition Act and the respondents after holding negotiations with the persons owing the Khatedari rights including the petitioners made an order on 26.9.80 that 32 villagers of Indora have agreed to accept the compensation at the prescribed rate for the different types of land but since both the parties were in agreement the compensation award was prepared as per the agreement. Thereafter, an award was made on 27.9.80 for Rs. 2692.10 in favour of the petitioners vide Annex.2. The petitioners moved an application (Annex.3) requesting the Land Acquisition officer either to refer the matter to the court or amend the compensation order

in terms of the agreement treating their land to irrigated one and fixing its value accordingly. The Land Acquisition Officer vide order dt. 17.11.1980 (Annex.4) modified the compensation order in respect of petitioners and issued a fresh compensation order for Rs. 8100/- on 18.11.1980 vide Annex.5. It is also alleged that the Land Acquisition Officer again vide order dt. 30.7.1981 ordered to recover the excess amount u/s 12-A of the Rajasthan Land Acquisition Act from the petitioners and also ordered that the award made in favour of the four persons, the present petitioners may also be made according to the same method as has been done in the other 28 cases. A notice was also issued to one Khub Chand for whom it is alleged that his case was identical with the petitioners for recovery of Rs. 19125/- on 30.7.81. The petitioner Dhula was also served with a notice dt. 1.9.82 (Annex.9) issued by Patwari demanding Rs. 5407.90. The aggrieved petitioners have approached this Court under Article 226 for quashing the impugned order and notice as aforesaid.

3. This Court on 3.5.83 issued notice to show cause as to why this petition be not admitted and also ordered recovery shall be effected from the petitioners out of the amount paid to them on account of revised compensation. The respondent State had put in appearance in pursuance of notice and filed reply. It has been stated that there was no need for taking action u/s 6 and to issue notices u/s 9 of the Act as the interested persons submitted agreement letters and consented for acquisition of their land and other property. It has also been stated that u/s 12-A of the Act, the Land Acquisition Officer is empowered to amend the award only in connection with clerical or arthmetical mistakes and the amendment order dt. 17.11.80 cannot be issued u/s 12-A of the Act. The respondents further averred that the order dt. 30.7.1981 was passed u/s 12 of the Rajasthan Land Acquisition Act, 1953 because the land was not irrigated one but Rakad I, therefore, the notice and the order for recovery of excess amount is correct and reasonable.

4. Learned Counsel for the petitioner has contended that the respondent No. 2 on the basis of verification of type of land of the petitioners by the Tehsildar and Irrigation Department and having satisfied about the correctness of the petitioner's claim issued a fresh award for which he was competent u/s 12-A, therefore, the order dt. 30.7.81 recalling the earlier order dt. 17.11.80, is void and deserves to be set aside.

5. Learned Dy. G.A. appearing on behalf of the respondent has submitted that u/s 12-A of the Rajasthan Land Acquisition Act no prior notice is needed to be given to the petitioners. He has also submitted that the petitioner has been paid the price of his land according to the type of land as recorded in the revenue record.

6. Heard learned Counsel for the parties and perused the material on record.

7. The question for determination is whether the award once made can be revised or not?

8. It may be stated that there is no provision in the Central Land Acquisition Act or in the Rajasthan Land Acquisition Act providing amendment of award once made. However, in the Rajasthan Land Acquisition Act there is Section 12-A, which provides that amendment of award is permissible when there exists a clerical or arthmetical mistakes in the award, may, at any time not later than six months from the date of the award, be corrected by the Collector either on his own initiative or on the application of the parties. In the instant case, admittedly after negotiations the parties entered into an agreement, award was made by the Land Acquisition Officer as per the kind of land on prevailing rates. The compensation which was awarded was amended on the application of the petitioners on the ground that the land was irrigated one, for which the Land Acquisition Officer was not competent as is apparent in view of Section 12-A for the reason that the ground on which award has been amended could not be called as a clerical or arithmetical error, which could be cured u/s 12-A of the Act. Moreso, a perusal of "Jamabandi (Khatoni)" (Anx. R-1) and "Khasra Girdwari" (Anx. R-2) clearly shows that compensation has been awarded as per the kind of land. Therefore, the order dt. 17.11.80 (Ex.4) passed by the Land Acquisition Officer merely on the basis of verification of Tehsildar that the land of the petitioners was irrigated without any basis was no order as it was against the record. The counsel for the petitioner has not been able to satisfy the Court that on what basis the Tehsildar verified the land of the petitioners to be a irrigated land in the absence of any material particularly when the kind of land as claimed by the petitioners does not find place in record of right, duly verified by the Patwari Anx. R-1 and R-2. Thus, the award of compensation could not be reviewed as it had become final and the Land Acquisition Officer was not competent to amend the award and the compensation paid as per revised award dt. 17.11.80 was bad and without jurisdiction, so the reference made vide order dt. 30.7.81 with an order to recover the amount paid in excess to the petitioners calls for no interference.

9. So far as the reference made by the Land Acquisition Officer is concerned, counsel for the respondent State Shri Lalit Kawadia has submitted that the same has already been dismissed in default on 14.1.83 by Civil Judge cum Chief Judicial Magistrate, Dungarpur as per order (Anx. R-3) placed on record for which neither the petitioners have moved an application for restoration nor they have filed appeal u/s 54 of the Act. Rather they have concealed this fact from the Court in writ petition filed on 19.4.83 and further without filing notices of the petitioners No. 2 Ramji and petitioner No. 3 Kamji got stay order. Mr. Mridul has not been able to show otherwise. Under these circumstances and as stated above, I am not inclined to interfere with the impugned order and notice dt. 30.7.81 for recovery of the excess amount of compensation as per revised award, while invoking the extra ordinary jurisdiction vested in this Court under Article 226 of the Constitution. The ad-interim order dt. 3.5.83 is also discharged.

10. Accordingly, the writ petition has no force, so it is hereby dismissed.