
(2015) 04 P&H CK 0341

In the Punjab And Haryana At Chandigarh

Case No : CWP's-17650, 17651, 17722, 19812, 19818, 19819, 20234, 22395, 22420 and 23984-2014 and 6459-2015

Drolia Ispat and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 11, 4, 5-A, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 17, 24, 24(1), 24(2)

Citation : (2015) 04 P&H CK 0341

Hon'ble Judges : Ajay Kumar Mittal, J; Rekha Mittal, J

Bench : Division Bench

Advocate : K.S. Dadwal, for the Appellant; Munisha Gandhi, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rekha Mittal, J.—This order will dispose of aforesaid writ petitions as identical questions of law and fact are involved for adjudication. However, for the sake of convenience, facts are taken from CWP No. 17650 of 2014.

2. On 16.04.2013, notification under Section 4 of the Land Acquisition Act 1894 (for brevity "the Act") was issued by invoking the urgency provisions for the public purpose namely construction of ROB (Rail Over Bridge) Line crossing No. 153-C at Gobindgarh (Ludhiana Delhi Railway Line). It was followed by notification under Section 6 of the Act on 11.06.2013. The award was announced by the Land Acquisition Collector on 18.09.2013. The land measuring 23 kanal 5 marla of village Alour Mugal Majra was acquired.

3. Counsel for the petitioner contends that acquisition proceedings initiated under the Act are deemed to have lapsed in view of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act 2013 (in short " the 2013 Act"). It is further argued that the respondents may issue fresh notification for acquisition of land if the same is required for a public purpose by making payment of compensation under the 2013 Act. In support of his contention, he has relied upon judgment of Hon"ble the Supreme Court of Union of India (UOI) and Others Vs. Shiv Raj and Others, AIR 2014 SC 2242 : (2014) AIRSCW 3388 : (2014) 6 SCC 564 .

4. Counsel for the respondents, on the contrary, would urge that the acquisition proceedings initiated under the Act stood finalized prior to commencement of the 2013 Act. The award by the Land Acquisition Collector, Khanna was passed on 18.09.2013 and the land owners have already received compensation for the acquired land in the year 2014. It is argued that possession of the acquired land has already been taken over and contract for construction of Rail Over Bridge and service roads on both sides of the bridge has been awarded to M/s. Amarnath Aggarwal Construction (P) Limited, Panchkula vide Chief Engineer's letter No. IP/CH/14 dated 02.01.2014 Annexure R1/1. The date for completion of project under PIDB as per tender document is 19.04.2015. It is argued with vehemence that case of the present petitioner does not fall within the preview of Section 24(2) of the 2013 Act as neither the period of five years has elapsed since the passing of the award nor the petitioner continues to be in possession of the acquired land.

5. We have heard counsel for the parties and perused the records.

6. It is an undisputed position of the case that provisions of Section 17 of the Act were invoked for acquisition of the land in question for the purpose of construction of ROB line crossing No. 153-C at Gobindgarh (Ludhiana-Delhi Railway Line). The petitioner has not denied that possession of the acquired land has already been taken over by the department after passing of the award by the Land Acquisition Collector on 18.09.2013. Counsel for the petitioner has neither disputed that compensation assessed by the Land Acquisition Collector has already been paid to the land owners in the year 2014.

7. The 2013 Act provides for new scheme for compensation, Rehabilitation and Resettlement to the affected families whose land has been acquired or proposed to be acquired. Section 24 of the 2013 Act begins with non obstante clause. The Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. Section 24, germane to the present controversy, is extracted hereinbelow for ready reference:--

"24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, -

(a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such

proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

8. It is provided in clause (a) of Sub-section (1) of Section 24 that where the acquisition proceedings have been initiated under the Act but no award under Section 11 of the Act is made, then the provisions of the 2013 Act shall apply relating to determination of compensation. Clause (b) of Section 24(1) provides that where land acquisition proceedings have been initiated under the Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the Act as if that Act has not been repealed.

9. Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the Act where an award has been made five years or more prior to commencement of the 2013 Act and either of two contingencies is satisfied i.e. (i) physical possession of land has not been taken or (ii) compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such proceedings, if the appropriate government still chooses to acquire the land which was subject matter of acquisition under the Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso under Section 24(2) deals with a situation where in respect of acquisition initiated under the Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in notification under Section 4 become entitled to compensation under the 2013 Act.

10. The petitioner has pressed into service the provisions of Section 24(2) of the 2013 Act to contend that acquisition proceedings initiated under the Act stood lapsed with the commencement of the 2013 Act with effect from 01.01.2014. Counsel for the petitioner is not in position to substantiate his contention as the award in the present case was passed on 18.09.2013, just few months before the 2013 Act came into force with effect from 01.01.2014. To take benefit of provisions of Section 24(2) of the 2013 Act, the award must have been made

five years or more prior to commencement of the 2013 Act and either of the two contingencies envisaged in Section 24(2) is satisfied viz (i) physical possession of land has not been taken or (ii) compensation has not been paid.

11. Keeping in view the facts and circumstances obtaining in the present case, we find it difficult to accept contentions of the petitioner that the acquisition proceedings initiated under the Act shall be deemed to have lapsed or the petitioner can press into service the provisions of Section 24(2) of the 2013 Act to claim lapsing of proceedings which stood finalised prior to commencement of the 2013 Act. In view of the above, there is no merit in the contentions of the petitioner that the acquisition proceedings initiated under the Act stood lapsed.

12. This takes us to judgment of Hon"ble the Supreme Court relied upon by learned counsel. The decision in Union of India and others v. Shiv Raj and others along with connected matters has got no bearing to support cause of the petitioner. In the said case, Hon"ble the Supreme Court has dealt with the adjudicatory process to be followed while dealing with objection(s) under Section 5-A of the Act by holding that the Land Acquisition Collector is duty bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. Another important issue adverted to is that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has lapsed or not. It was held that if possession has not been taken or compensation has not been paid due to challenge to the land acquisition proceedings, the pendente lite period will not be excluded to determine the five years period and including such period if the award was made five years or more prior to commencement of the 2013 Act, then the acquisition proceedings will be deemed to have lapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act. In this view of the matter, the petitioner cannot gain any advantage to his contention from the ratio laid down in the afore-referred authority.

13. Clause (b) of Section 24(1) in unequivocal terms provides that where land acquisition proceedings have been initiated under the Act and award has been made under Section 11, then such proceedings shall continue under the provisions of Act as if that Act has not been repealed. As in the present case, the proceedings were initiated under the Act and award has been made under Section 11 prior to commencement of the 2013 Act, the petitioner has rightly been paid compensation assessed by the Land Acquisition Collector, Khanna vide award dated 18.09.2013.

14. Counsel for the petitioner has made a vain attempt to argue that compensation assessed by the Land Acquisition Collector is inadequate and requires enhancement. To substantiate his contention, he has invited attention of the Court to assessment made by the Land Acquisition Collector in respect of land belonging to different land owners. If the petitioner is not satisfied with

compensation awarded by the Land Acquisition Collector, he may, if so advised, take recourse to appropriate proceedings in accordance with law seeking enhancement of compensation. As a specific remedy is provided for under the Act for enhancement of compensation, claim for enhancement of compensation by invoking the provisions of Articles 226/227 of the Constitution of India is not tenable.

15. For the reasons aforesaid, finding no merit, the petitions are dismissed leaving the parties to bear their own costs.