

(2017) 04 RAJ CK 0144
In the Rajasthan High Court
Case No : 5637 of 2005

Firm Rajasthan Glass House

APPELLANT

Vs

State of Rajasthan & ors.

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6, Section 48 - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for

Citation : (2017) 04 RAJ CK 0144

Hon'ble Judges : M.N. Bhandari

Bench : SINGLE BENCH

Advocate : RP Garg, RK Mathur, Aditya Mathur

Judgement

1. This writ petition has been filed with the following prayers which are quoted hereunder: "i. to issue any order or direction or writ of any nature for quashing the entire Land Acquisition proceedings and petitioner's land bearing Khasra no. 224 measuring 2 Bigha 3 Biswa situated in Village Devkhera, Tehsil Alwar;

ii. to issue any order or direction or writ of any nature for quashing notification under Section 4, 6 and Land Acquisition Award dated 19.07.1997/19.07.1979 in relation to the petitioner's land bearing Khasra no. 224 measuring 2 Bigha 4 Biswa, situated at Village Devkhera, Tehsil Alwar;

iii. To issue any order or direction or writ of any nature for passing order for deacquiring the land or the petitioner Khasra no. 224 measuring 2 Bigha 4 Biswa, situated at Village Devkhera, Tehsil Alwar;

iv. in alternate to issue any order or direction or writ of any nature for regularisation of the petitioner land under circular dated 21.05.2000 issued by the government;

v. or any order or direction as deemed just and proper by the Hon"ble Court in

the facts and circumstances of the case may also kindly be passed in favour of the petitioners."

2. The prayers aforesaid reflect a challenge to the acquisition proceedings with the further prayer to direct the respondents to de-acquire the land. The other relief is for regularisation of the land in the light of circular of the State Government dated 21st May, 2000.

3. Learned counsel for petitioner submits that after a Notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act of 1894"), declaration under Section 6 was made followed by an award. The land is still in possession of the petitioner thus a prayer is made to regularise it in his name. The settlement committee called the petitioner but regularization of the land has not been made though as per circular of the Government, even acquired land can be regularised in favour of a person interested or in possession. It is also stated that neighbouring land has been de-acquired thus to avoid discrimination, a direction to de-acquire the land be given.

4. The challenge to the acquisition of land has been made on various grounds and recently an application has been filed to declare the acquisition of land as lapsed pursuant to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013"). The provision aforesaid provides deemed lapse of acquisition in event of non-payment of compensation or if physical possession is not taken from the land holder even after the award passed five years prior to 1st January, 2014 i.e. the date from which Act of 2013 was given effect. The declaration of deemed lapse has been sought in view of possession of land with the petitioner. A prayer is accordingly made to allow the writ petition with grant of relief.

5. Learned counsel for petitioner submits that land in question was purchased by him subsequent to the Notification under Section 4 of the Act of 1894 but prior to the declaration under Section 6 of the Act. In the light of the above, rigour of Section 4 of the Rajasthan Lands (Restrictions on Transfer) Act, 1976 (for short "the Act of 1976") would not apply. It applies only to the case where purchase of the land is made subsequent to declaration under Section 6 of the Act of 1894.

6. It is further submitted that right of the petitioner has been recognised even by the Land Acquisition Officer. It would reflect from perusal of the award where compensation has been given to the petitioner. Once right of the petitioner has been recognised, Section 4 of the Act of 1976 would not apply.

7. On a representation for regularisation of land, the petitioner was asked to participate in the proceedings. Taking into consideration the facts of this case, the relief prayed in the writ petition or the alternative prayer of lapse of the acquisition may be allowed. A reference of the judgments of the Delhi High Court in the cases of M/s. I.S. Dye Stuff Industries Ltd. Vs. UOI & Ors, W.P. (C) 8798/2014 & CM 20202/2014, decided on 09.02.2015, Mahender Singh & Ors.

Vs. Union of India & Ors., WP (C) No.8706/2014 & CM No.20029/2014, decided on 06.07.2015, Anil Kumar Aggarwal Vs. Union of India & Ors., W.P. (C) 5420/2014 & CM 10776/2014, decided on 03.11.2014, N.S. Vasisht Vs. Union of India & Ors., W.P. (C) 7731/2015, decided on 19.01.2016, Sunit Bansal & Anr. Vs. Union of India & Ors., W.P. 1454/2015 and CM No.2552/2015, decided on 01.03.2016 as well as of the Madras High Court in the cases of K. Rajeshkumar Vs. The Special Tehsilda, decided on 06.04.2016, V.Prabhakar Reddy Vs. The Government of Tamilnadu, W.P. No.14430/2015, decided on 05.04.2016 and of Karnataka High Court in the case of Sri. N.Vinod Kumar Vs. Bangalore Development Authority, Writ Petition Nos.10094-10097 of 2015, decided on 30th March, 2016 has been given. It is to show that acquisition can be challenged or claim for compensation can be made even if purchase of the land is made subsequent to the initiation of the proceedings under the Act of 1894. The right of subsequent purchaser has been recognised. The judgments aforesaid apply to the facts of this case. Accordingly, objection raised by learned counsel for respondents about right of the petitioner or his locus may not be accepted.

8. Learned counsel for respondents has opposed the writ petition. The preliminary objection about delay in filing of the writ petition has been raised. He submits that award in the instant case was passed in the year 1997 and to challenge it, writ petition was filed in the year 2005. The delay of 8 years remained unexplained thus on the ground of laches itself, writ petition deserves to be dismissed. A reference of the judgment of the Division Bench of this court in the case of Hazari Singh Vs. The State of Rajasthan & Ors., reported in 2000 (1) LACC 137 has been given.

9. The other objection is regarding locus of the petitioner to challenge the acquisition of land. It is submitted that Notification

under Section 4 was issued on 4th July, 1995 and purchase of the land was made on 28th August, 1995 i.e. subsequent to the initiation of the acquisition proceedings. The purchase is hit by Section 4 of the Act of 1976. Any purchase after initiation of the acquisition proceedings is void. No person can claim right based on the void transaction. In view of above, petitioner has no locus for challenge to the acquisition.

10. It is also submitted that Section 4 of the Act of 1976 became applicable with initiation of proceedings. The aforesaid is clear from bare reading of the provision. A reference of the judgments of the Apex Court in the case of Meera Sahni Vs. Lieutenant Governor of Delhi & Ors., reported in (2008) 9 SCC 177 and in the case of Sneh Prabha (Smt) & Ors. Vs. State of U.P. & Anr., reported in (1996) 7 SCC 426 have been given.

11. It is further submitted that even if award was passed after referring the name of the petitioner or he was called in the proceedings for regularisation of land, it does not mean that void transaction gets life. The void transaction remains always void. There exist difference between void and voidable

transaction. The case in hand is of void transaction.

12. It is lastly submitted that regularisation of land in pursuance of circular of the State Government has been recently dealt with by the Division Bench of this court. It is held that such exercise in the hands of State Government is illegal, rather, gives rise to the encroachment. A direction was given to the State Government not to take up the matter for regularisation of land pursuant to such

Policy. The judgment aforesaid holds field and thereby prayer for regularisation of the land may not be accepted otherwise it would be nothing but to regularise the land in favour of a person having no right in the land as the transaction is void. A prayer is accordingly made to dismiss the writ petition.

13. I have considered the rival submissions made by learned counsel for the parties and perused the record.

14. The facts of the case have already been given while referring the arguments made by learned counsel for the parties.

15. The first question for my consideration is in reference to Section 4 of the Act of 1976. For ready reference, it is quoted hereunder: "4. Restriction on transfer of lands in relation to which acquisition proceedings have been initiated. - No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the State of Rajasthan, which is proposed to be acquired in connection with the scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the State Government under section 6 of the Rajasthan Land Acquisition Act, 1953 or under the corresponding provision of any other law providing for acquisition of land for a public purpose, and the State Government has not withdrawn from the acquisition under section 48 of that Act or under any such law."

16. The issue is as to whether Section 4 would apply after declaration under Section 6 of the Act of 1894 or with initiation of

the proceedings. From bare reading of the provision shows its application to a land which is proposed for acquisition in connection with the scheme and in relation to it, with a declaration under Section 6. It does not show that Section 4 of the Act of 1976 would apply on declaration under Section 6 of the Act of 1894 or under the corresponding provisions.

17. In the instant case, purchase of land is subsequent to proposed acquisition as Notification under Section 4 of the Act of 1894 was issued on 4th July, 1995, whereas, sale deed in favour of the petitioner was executed on 28th August, 1995. In the light of the aforesaid, I am unable to agree with the argument of the learned counsel for petitioner regarding inapplication of Section 4 of the Act of 1976. The issue aforesaid was considered by the Apex Court in the case of Meera Sahni (supra) and prior to it, in the case of Sneh Prabha (supra). Para 5 of

the judgment in the case of *Sneh Prabha* (supra) is relevant and gives answer to the question. Therein, referring to Notification under Section 4(1), the question was answered by the Apex Court. Para 5 of judgment aforesaid is quoted hereunder: "5. Though at first blush, we were inclined to agree with the appellant but on deeper probe, we find that the appellant is not entitled to the benefit of the Land Policy. It is settled law that any person who purchases land after publication of the notification under Section 4 [1], does so at his/her own peril. The object of publication of the notification under Section 4 [1] is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings points out an impediment to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4 [1] does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land. In a recent judgment, this Court in *Union of India vs. Shri Shivkumar Bhargava* considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4 [1] was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy."

18. A similar view was taken by the Apex Court subsequently in the case of *Meera Sahni* (supra) while considering the paramateria provisions of the Delhi Lands (Restrictions on Transfer) Act, 1972. The purchase of the land subsequent to the Notification under Section 4 of the Act of 1894 is hit by Section 4 of the Act of 1976, thus it is void. The relevant Paras 17 and 18 of the said judgment are also quoted hereunder: "17. When a piece of land is sought to be acquired, a notification under Section 4 of Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act."

18. In *U.P. Jal Nigam v. Kalra Properties (P) Ltd.* it was stated by this Court that:

"3.Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property."

19. The judgment of the Apex Court in the case of U.P. Jal Nigam Vs. Kalra Properties (P) Ltd., reported in (1996) 3 SCC 124 gives answer to the question. It is held that after issuance of the Notification under Section 4(1), any encumbrance created does not pass title of the land. Section 4 of the Act of 1976 would thus apply on issuance of the Notification under Section 4 of the Act of 1894.

20. The question now remains as to whether a writ petition can be filed based on void transaction. The aforesaid issue to be considered in the light of the subsequent award where reference of petitioner's name exists with a direction for payment of compensation. The reference of name of the petitioner in the award or calling for subsequent proceedings for regularization of land cannot make void transaction to be valid. The distinction exists between void and voidable transaction. Accordingly, even if petitioner's name appears in the award in reference to his claim on a notice under Section 9 or otherwise, it cannot nullify the effect of Section 4 of the Act of 1976. The petitioner cannot challenge acquisition of land as has been held by the Apex Court in the case of Meera Sahni (supra). See para 21.

21. The next question is in regard to de-acquisition of the land. The neighbouring land has been de-acquired thus issue of discrimination has been raised. The prayer aforesaid can be raised by a lawful owner and not by a person having no legal right in the land in question. In view of above, I do not find any ground to accept the prayer for de-acquisition of the land.

22. The last argument is for regularization of land for which even proceedings were undertaken. The petitioner was called for it. The circular dated 21st May, 2000 permits regularization of the land but

that process has recently been criticised by the Division Bench of this court in the case of Jago Janta Society Vs. The State of Rajasthan & Ors., DB Civil Writ Petition (PIL) No.19609/2013, decided on 06.08.2015. The relevant paras of the said judgment are quoted hereunder: "7. The parties have not produced before us any such Rule, or a decision by the State Government, to regularize the land in favour of the encroachers, who have taken more than 250 sq. yds. of land, in terms of the Award for acquisition of land. We are also of the view that allotment of any further land to them, will amount to breach of the terms of the Award.

9. Considering the facts and circumstances of the case and the fact that a large number of colonies with unauthorized occupants are being regularized, we are of the view that a direction be issued by this Court to the JDA, Nagar Nigam, Jaipur and the Rajasthan Housing Board, to stop the policy of regularizing the land in

occupation of the encroachers. It has become a regular practice, first to illegally occupy the land, and then to seek its regularization, and thereafter continue to litigate over the rates, on which such regularization is to be made. In the meantime constructions are raised, on which misplaced plea in equity are pleaded in Courts.

13. We find it imperative, considering the facts of the case and large number of cases which are coming before the Court, that henceforth, the Government of Rajasthan, JDA, Rajasthan Housing Board, and the Nagar Nigam, will stop enforcement of the policy of

regularization of unauthorized occupations and encroachments, which has given premium to the persons, who have encroached, and thereafter claimed regularization. All the policy decisions for regularization of illegal occupations and encroachments shall be suitably revised."

23. The practice adopted by the Government to regularise the land already acquired, has been seriously deprecated by the Division Bench as possession thereupon is nothing but encroachment. A direction has been given not to give effect to the Policy for regularization of the land. In view of above, last prayer made by the petitioner for regularization of the land cannot be accepted.

24. The issue now remains in reference to Section 24(2) of the Act of 2013. The question is as to who can claim deemed lapse. Can it be by a stranger or a person having no title in the land. The obvious answer would be that deemed lapse under Section 24(2) cannot be sought by a stranger or by a person who is not owning the land. If deemed lapse has to be sought, it can be by the khatedar or a title holder of land if he is in possession of the land or compensation has not been paid but not by a person having void transaction. The challenge to the acquisition of land in the hands of purchaser after a Notification under Section 4 of the Act of 1894 has not been accepted by the Apex Court in the case of Meera Sahni (supra). See Para 21 of the said judgment.

25. In the light of the argument, I do not find that declaration of deemed lapse of the acquisition can be sought by the petitioner. In the writ petition, no prayer for deemed lapse has been made, rather, challenge to the acquisition proceedings has not been made in reference to Section 24(2) of the Act of 2013. The application to seek amendment was not made, however, application for deemed lapsed was submitted. Even if aforesaid application is taken into consideration without amendment in the writ petition, prayer made therein cannot be granted for the reasons given above.

26. The petitioner has made reference of judgment of the Supreme Court as well as High Courts where even right of the subsequent purchaser has been recognized. I have gone through all those judgments and find that they were given on the facts of those cases where similar provision, as exists under Section 4 of the Act of 1976, was not referred. In the instant case, a specific plea has been raised by learned counsel for petitioner in reference to Section 4 of the Act

of 1976. It was not referred in any of the judgments given either by Delhi High Court or any other High Courts and even by the Apex Court. In view of above, none of the judgments referred by learned counsel for petitioner can be applied to this case.

27. The further argument in reference to deemed lapse under Section 24(2) of the Act of 2013 has been made to treat it to be withdrawal of acquisition under Section 48 of the Act of 1894 thus Section 4 of the Act of 1976 would not come in to play. I have considered the said argument also and find that Section 4 of the Act of 1976 would not have effect if State Government withdraw the acquisition under Section 48 of the Act of 1894 or under any such law. The distinction has to be made between withdrawal of the acquisition by the State Government and deemed lapse. They are not same and prayer for deemed lapse has not been accepted. The issue of delay in challenge has also been raised and is covered by the judgment of the Division Bench in the case of Hazari Singh (supra).

28. In the light of discussion made above, I do not find any merit in the writ petition. It is accordingly dismissed.