
(1999) 03 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2175 of 1995

Harlal and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (1999) 2 RLW 1009 : (1999) 1 WLN 458

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.J. Shethna, J.—The present petitioners Harlal, Shiv Nath and Asu Ram sons of Kushla Ram have filed this writ petition and challenged the impugned order at Annex. 3 dated 1.5.1995 passed by the respondent No. 2, Assistant Commissioner, Colonisation, whereby, he reviewed his earlier order at Annex. 1 passed on 9.8.1991 of awarding compensation to the petitioners for their land.

2. The petitioners land was situated just near to the Rajasthan Canal and because of seepage pf water, the land became un- cultivable and caused substantial damage to the crop on the land, therefore, they applied for compensation before the respondent No. 2, Assistant Commissioner, Colonisation. The petitioner No. 1 was awarded compensation of Rs. 64850/-, petitioner No. 2 was awarded compensation of Rs. 60000/- and petitioner No. 3 was awarded compensation of Rs. 21500/- by the respondent No. 2, Assistant Commissioner, Colonisation by his impugned common order dated 9.8.1991 (Annex. 1). This order was passed after considering the record and hearing the petitioners as well as Executive Engineer. The respondent No. 2 also ordered to pass the award accordingly and issue the pay orders.

3. It appears that the Executive Engineer by his letter dated 15.1.1992 requested the respondent No. 2, Assistant Commissioner, Colonisation to

reconsider his decision and award passed by him in favour of the present petitioners on the following grounds - (i) Land is not Khatedari land of cultivators-tenants, (ii) Whether the land is in ceiling limit or not or alternative land can be given to them so that the State may not suffer any loss by way of paying compensation, as this aspect was not considered at the time of passing of award, (iii) the compensation has been awarded for the land which was not cultivated. How far "that was proper? When this letter came to the notice of the respondent No. 2, the Assistant Colonisation Commissioner by his impugned order dated 28.2.1992 (Annex. 2) ordered to issue notice to the petitioners calling upon them to show cause as to why the impugned order (Annex. 1) should not be reviewed. Thus, it appears that the respondent No. 2 has exercised his suo moto powers of reviewing his own order and before reviewing his own order he issued notice to the petitioner. At the time of hearing of review petition, learned Counsel for the State raised the objection before the respondent No. 2 that he had no jurisdiction to grant any compensation to the petitioners for the loss suffered by them on account of seepage of water. It was also contended that in absence of any proceeding or notification issued u/s 4 and 6 of the Land Acquisition Act the order at Annex. 1 passed by the respondent No. 2 was beyond his jurisdiction. The respondent No. 2 accepted that contention and held that he had no jurisdiction to award any compensation, therefore, he reviewed his earlier order at Annex. 1 by the impugned order dated 1.5.1995 (Annex.3) and recalled his earlier order dated 14.8.1999 (Annex. 1). However in this very order he has clearly observed that it was not disputed that petitioners had suffered loss due to seepage of water from the canal and that fact was even admitted by the Executive Engineer also, however, according to him the compensation could have been awarded only by the competent Court and no proceeding was issued by him for acquisition of land, therefore, he could not award, that compensation for which the petitioners had to file suit before the Civil Court. These orders have been challenged by the petitioners by way of this writ petition.

4. It is unfortunate that poor illiterate farmers who have actually suffered losses way back in 1991 have not been paid compensation so far because of bureaucratic, technical approach adopted by the Executive Engineer in this matter. Without going into the question as to whether the respondent. No. 2 had powers to review his earlier orders or not, the impugned order at Annex. 3, the order passed by the respondent No. 2 is required to be set aside for the reason that he himself has found in his order at Annex. 3 that the petitioners had in fact suffered loss and there was no dispute about the amount of compensation. Whether State should pay straight away to the petitioners on their application or the petitioners should be forced to approach the Court would be totally meaning less in this case. Having found that the petitioners were entitled for compensation and in fact when the compensation has already been ordered to them, then in my considered opinion, it was highly improper on the part of the Executive Engineer to raise subsequent quarries in his letter addressed to the respondent No. 2, particularly when he himself was present at the time of

hearing of compensation application. It was his duty to raise this type of objection at the time of hearing of the application and not after the passing of the award, unfortunately, the respondent No. 2 has not at all taken into consideration this aspect of the matter. When technical justice is pitted against substantial cause of justice then I am of the opinion that substantial justice must prevail. Even after the lapse of 8 years, unfortunately, the petitioners are without any compensation. It will be highly improper for this Court to ask the petitioners to approach the Civil Court for getting compensation after so many years and we do not know when civil suit will be decided and we also do not know whether they will be able to get the justice in time or not.

5. On merits also this petition is required to be allowed for the reason that the objections raised by the Executive Engineer in his letter dated 15.1.1992 were totally different, which has been mentioned in the order. Letter Annex. 2 and order at Annex. 3 is passed totally on a different ground. One cannot travel beyond the scope of review while reviewing the order. The question of jurisdiction was never raised by the Executive Engineer, but it was argued at the time of hearing by the learned Counsel for the State before the respondent No. 2. If the petitioners were entitled for compensation then it is hardly material whether it is paid by the State Govt. through the respondent No. 2, Assistant Colonisation Commissioner or by the aid and assistance of the Court, as per the decree passed by the Court. If the petitioners were forced to go to the Court then the State has also to suffer and ultimately the compensation has to be paid, therefore, it is desirable that the compensation should have been paid straight away by the State itself without forcing the petitioners to approach the court of law. Ultimately the decree is going to be passed in such type of cases, where State will be directed to pay not only the compensation amount but with cumulative interest at the rate of 18% p.a. from 1991 till the date they have suffered loss, this will also be not in the interest of State as well.

6. In view of the above discussion, this petition is allowed. The impugned orders at Annex. 3 and Annex. 2 are hereby set aside. The order at Annex. 1 passed by the respondent No. 2 is hereby restored. The respondents are directed to pay the amount of compensation as ordered by the respondent No. 2 and 9.2.1991 (Annex. 1) on or before 30.6.1999.

7. Accordingly, this petition is allowed. Whomsoever was the Executive Engineer, who addressed the letter dated 15.1.1992 to the respondent No. 2 is directed to pay special cost of Rs. 5000/- to the present petitioners which shall be paid on or before 30.6.1999. The concerned Executive Engineer has to bear that cost personally and not from the State.