
(2015) 04 JH CK 0088
In the Jharkhand High Court
Case No : Writ Petition (C) No. 536 of 2015

Indradeo Nayak

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2), 41

Citation : (2015) 4 AJR 297 : (2015) 2 JLJR 616

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Prasad, for the Appellant; Vineet Prakash, J.C. to (L and C),
Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking quashing of the entire land acquisition process in the light of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and for a direction to the respondents to start fresh acquisition process and to provide the benefits under Section 41 of the 2013 Act, the present writ petition has been filed.

2. The brief facts of the case are that, for acquisition of 123.67 acres of land in village-Tandwa, notification under Section 4 of the Land Acquisition Act, 1894 was published on 06.05.2006. The petitioner's father purchased land comprised in Khata No. 100, R.S. Plot Nos. 400 and 492, measuring 0.56 acre from one Tekni Devi by registered sale-deed on 20.06.1973. Similarly, mother of the petitioner purchased 0.051 acre of land from Ashni Devi and Tekni Devi by registered deeds of sale on 08.02.1974. It is stated that the petitioner's parents are in lawful possession over 1.07 acres of land in Mouza-Nayeparam of P.S.-Tandwa and they are paying rent to the State Government. The respondent Nos. 6 and 7 tampered the record and claimed compensation in respect of the said

land belonging to the parents of the petitioner and therefore, on 30.04.2003 a representation was made to the District Land Acquisition Officer. Since, neither the compensation has been paid to the petitioner's parents nor possession of 1.07 acres of land belonging to them has been taken, the petitioner has sought a declaration in terms of Section 24(2) of the 2013 Act.

3. The learned counsel for the petitioner referring to judgment in *Bimla Devi Vs. State of Haryana*, (2014) 7 SCALE 215 : (2014) 6 SCC 583 and in *Velaxan Kumar Vs. Union of India (UOI) and Others*(2015) 3 SCALE 119 and *Union of India (UOI) and Others Vs. Shiv Raj and Others*, AIR 2014 SC 2242 : (2014) AIRSCW 3388 : (2014) 6 SCC 564 , submits that in view of the mandate under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition with respect to 1.07 acres of land belonging to the petitioner's parents has lapsed. It is further submitted that though the respondents claim to have taken possession of the said land, admittedly no Panchnama was prepared evidencing taking over possession of the said land and therefore, the plea taken by the respondents is liable to be rejected.

4. Per contra, Mr. Prashant Pallav, the learned counsel appearing for the respondent-NTPC refers to Certificate of Possession (Form-17) and submits that NTPC has been given possession by the District Land Acquisition Officer on 29.08.2009. Compensation for the land in question was deposited and it was received by the respondent Nos. 6 and 7 against whom, a certificate proceeding for recovering of the compensation amount has been started. It is submitted that the petitioner during the acquisition process never raised any objection before the authority. The respondent-NTPC has already floated tender and awarded work to M/s. A.C.M.E. for the construction of pillars around the acquired land.

5. Before considering the rival submissions, decision of the Hon'ble Supreme Court in "*M/s. Competent Automobiles Co. Ltd. v. Union of India and others*" in Civil Appeal No. 5054 of 2008, has to be kept in mind. The Hon'ble Supreme Court has held thus,

2. "Each and every deeming operation under Section 24(2) requires unambiguously and unvaryingly that a factual conclusion be drawn about the passing of the Award under Section 11, of the 1894 Act, on or before 01.01.2009; further, the absence of compensation having been paid or the absence of possession having been taken by the acquirer, either of these, must be a proven point of fact, as a threshold requirement attracting the lapse."

6. Though the petitioner has claimed possession over the land in question and he has filed three supplementary-affidavits bringing on record photographs to support his claim that his parents are in possession of the land in question however, the petitioner has not indicated the nature of use of the land which was purchased way back in the years, 1973 and 1974. The photographs produced by the petitioner disclose vast stretch of barren land. There is no material to

conclude that the land shown in the photographs belongs to the petitioner's parents. Moreover, though it has been claimed that 1.07 acres of land belongs to his parents, the petitioner has not averred in the writ petition that he has moved this Court on behalf of his parents. The affidavit filed in support of the writ petition does not disclose that the petitioner has been authorised by his parents to file the writ petition. On the other hand, the respondent-NTPC has produced copies of Form-17 to assert that possession of the land in question has been handed over by the District Land Acquisition Officer on 29.08.2009. Insofar as, the payment of compensation is concerned, it is an admitted position that compensation was paid for the land in question. However, subsequently it was detected that the compensation has been paid to Respondent Nos. 6 and 7 and therefore, a certificate proceeding for recovering the compensation amount has been initiated. The respondents have stated that if the petitioner establishes his claim over the land in question, after recovering the amount from Respondent Nos. 6 and 7, the same would be paid to the original owner of the land in question. Insofar as, the contention that no Panchnama has been prepared by the respondent-authority to establish that possession of the land has actually been taken, I am of the opinion that in view of the fact that the petitioner has failed to establish possession over the land in question, the plea taken by the petitioner is liable to be rejected. The process of acquisition was completed in the year, 2007 itself and as noticed above, compensation was paid to the khatiyani raiyat. In *Velaxan Kumar Vs. Union of India (UOI) and Others*(2015) 3 SCALE 119 , the applicant asserted that he was in physical possession by making construction of one room and boundary wall prior to issuance of Notifications for acquisition and the same was build up by the time he moved the High Court for declaration under Section 24(2) of the 2013 Act. The Hon"ble Supreme Court noticed that the photographs produced alongwith affidavit clearly disclosed the physical possession of the applicant over the acquired land. In the above factual background, noticing that due process was not followed by the Acquisition Authority by preparing proper Panchnama in presence of independent witnesses and land holders, the Hon"ble Supreme Court held that in view of Section 24(2) of the 2013 Act the acquisition proceeding with respect to land of the applicant, lapsed. On the contrary in the present case, the petitioner has failed to produce any evidence conclusively establishing his physical possession over the land in question.

7. On the admitted facts, the indispensable quarries which the Hon"ble Supreme Court indicated in "*M/s. Competent Automobiles Company Limited*" case are not answered unambiguously and therefore, a declaration of lapse of acquisition under Section 24(2) of the 2013 Act cannot be made.

8. Considering the above facts, I find no merit in the writ petition and accordingly, it is dismissed.