
(2015) 05 AHC CK 0086

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30997 of 2015

Ishwar Chand Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 24, 4, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 2(1)(b), 24, 24(1)(a), 24(1)(b), 24(2)

Citation : (2015) 6 ADJ 762 : (2015) 112 ALR 98 : (2015) 4 AWC 3957 : (2015) 129 RD 288 : (2015) 3 UPLBEC 1969

Hon'ble Judges : Arun Tandon, J; Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : V.K. Jaiswal, for the Appellant; Mahendra Pratap, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. The petitioner before this Court seeks quashing of the notification dated 13.7.2012 and dated 14.8.2013 issued in exercise of power under Section 4 and Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as Act 1884) respectively. He has also prayed for quashing of the award dated 30.12.2013 as modified on 27.5.2014. The petitioner has also prayed for a writ of mandamus commanding the respondents to prepare a fresh award in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. We have heard Sri V.K. Jaiswal, learned counsel for the petitioner, Sri Mahendra Pratap on behalf of the Respondent Development Authority as well as standing counsel.

2. From the records of the writ petition it is apparent that the notification under Section 4 and under Section 6 of the Act of 1894 published on 21.7.2012 and 16.8.2012 respectively. The award in respect of the land acquired was made on 30.12.2013, (reference Annexure No. 4 in the present writ petition.) It is further

apparent from the record that the modifications were made in the said award under the order dated 27.5.2014 by the Special Land Acquisition Officer/ Additional District Magistrate, Finance and Revenue, Irrigation Ghaziabad.

3. According to the petitioner since the date of notification of the award is subsequent to the enforcement of Act of 2013 i.e. subsequent to 1.1.2014, the entire proceedings stands vitiated. In the alternative it is contended that in fact award has been made subsequent to the enforcement of Act, 2013, thus compensation has to be determined in accordance with the provisions of the Act 2013 in view of Section 24(1)(a) of the Act 2013 while in the fact the compensation has been determined under the old Act, the entire award is bad. It is also stated that since possession of the land has not been taken and compensation has not been paid, the entire proceedings must lapse in view of Section 24 of the Act of 2013.

4. For the appreciating the controversy raised on behalf of the petitioner it would be worthwhile to reproduce Section 24 of the 2013 Act as the entire submissions made by the counsel for the petitioner revolve around the various clauses of the said section.

"Section 24 Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases--(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 (1 of 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 holdings 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." 6. From the date on which Section 4 and Section 6 notification were published as well as from the

date of the original award, it is apparent that the proceedings for land acquisition had been initiated under the old Act of 1894 to 1.1.2014. From a simple reading of Section 24 of the said Act it is apparent that the award if the award not been made upto the date of the enforcement of Act of 2013 i.e. 1.1.2014 then the compensation has to be determined in accordance with the provisions of the Act of 2013. In case the award has already been made before 1.1.2014 i.e. the date of commencement of the Act of 2013, the proceedings of the acquisition shall not be deemed to have lapsed under the old Act as per Section 2(1)(b) of Act 2013 meaning thereby that the proceeding subsequent to the award would continue under the old Act.

6. We may record that Section 24(2) comes into play only in cases where the award has been made five years prior to the commencement of the Act of 2013 i.e. five years prior to 1.1.2014. Sub-section 2 has no application in cases where proceedings have been initiated under the old Act and award had been made either within a period of five years from the date of commencement of Act of 2013 or where the award still to be made on the date of commencement of the Act 2013. Since in the facts of the case, we find that the award had been made prior to the commencement of the Act of 2013, the acquisition proceedings in our opinion are covered by Section 24(1)(b) of the Act.

7. Counsel for the department has pointed out that the amendment which has been made under the order dated 27.5.2014 is in respect of only two plots namely 1016 and 1017 which are not the tenure holding of the petitioner.

8. Counsel for the respondent in reply submits that the award has been modified in respect of the entire acquisition.

9. We have no hesitation to record that any amendment in the award under the order dated 27.5.2014 would only relate back to the date of the main award. However, we may not express any final opinion on that subject inasmuch as on such issue would depend upon the amount of compensation which the tenure holder can claim. However, we have no doubt in our mind by holding that at least the acquisition proceedings will not lapse and the only issue which would survive for consideration with regard to the relevant date of the original award would be the quantum of compensation to be paid and its determination.

10. We may record that if a tenure holder is not satisfied with the quantum of the compensation determined under the award he has the remedy of making a reference under Section 18 of the Land Acquisition Act. Therefore, in the facts of the case, we are of the opinion that the petitioner must be asked to seek his remedy in the matter of quantum of the compensation to which he would be entitled by making an appropriate application for reference under Section 18 of the old Act. The writ petition is disposed of.