

(2015) 05 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : CWP No. 3899 of 2014

Jai Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24

Citation : (2015) 05 SHI CK 0030

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : J.L. Bhardwaj, for the Appellant; Vivek Singh Attri, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. The petitioner through this writ petition claims the hereinafter extracted relief:--

"That a writ in the nature of certiorari may kindly be issued for quashing the award passed under Section 11 of the Land Acquisition Act, 1894 dated 31.3.2014 by the respondent No. 3 and further writ in the nature of mandamus may kindly be issued directing the respondents to determine the compensation as per the provisions of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay the compensation to the petitioner excluding the amount paid through cheque dated 29.5.2014 amounting to Rs. 2,21,460/- which amount has been received by the petitioner under protest and justice be done."

2. The facts apposite to determine the controversy besetting the parties at contest are, that the land of the petitioner had been subjected to acquisition in

the year 2007 and on consummation of the acquisition proceedings, an award comprised in Annexure P-7 has been rendered by the Land Acquisition Collector. In pursuance to acquisition of land of the petitioner, the respondents between 2007 to 2010 constructed a road named "Dabrot to Mehandi Road". Given the factum of construction of the road aforesaid, at the instance of the respondents over and upon the land of the petitioner, obviously then the necessary and apt sequel is that the petitioner has lost possession thereof rather the respondents have come to possess the contentious land. The aforesaid fact of the petitioner having lost possession of his land rather the respondents having come to acquire physical possession of the land is of utmost significance as it impinges upon the attraction or upon the applicability of Sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "New Act", whereunder the petitioner has canvassed that compensation qua his land be re-determined. A reading of hereinafter extracted apt Sub-section (2) of Section 24 of the "New Act" loudly communicates, that the proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), hereinafter referred to as the "Old Act" would come to lapse, and, even the award rendered on consummation of acquisition proceedings initiated under the aforesaid Act would have no significance, rather it would be enjoined upon the authorities concerned to re-initiate proceedings qua acquisition of land under the "New Act", only in the event of an award having been rendered five years or more prior to the commencement of the "New Act". However, in the instant case given the uncontroverted fact of the award qua the land of the petitioner under the "Old Act", having been rendered in the year 2014, hence not 5 years or more prior to the commencement of the "New Act", so as to enjoin or warrant a finding that the award under the "Old Act" necessitates annulment or rescission. In sequel, it has to be concluded that when the prime condition envisaged initially in Sub-section (2) of Section 24 of the "New Act" for unsettling the award rendered under the "Old Act" has remained un-satiated or unfulfilled, besides it, when entwined with the enjoined necessity of contemporaneous substantiation of the conjoint condition with it in as much as, of possession of the land of the petitioner having not been taken by the respondents, too stands ousted by the uncontroverted fact of the respondents having constructed a road "Dabrot to Mehandi " between 2007 to 2010. In sequel, the argument of the learned counsel for the petitioner qua the purported fulfillment of initial condition spelt out under the New Act stands enfeebled.

"(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 the Act."

3. Moreover, the alternative condition constituted, in Sub-section (2) of Section 24 of the "New Act" for rendering an award announced under the Land Acquisition Act, 1894, to face rescission or annulment, thereupon facilitating initiation of proceedings under the New Act and re-determination of compensation thereunder, is of substantiation by the petitioner of compensation having been not paid or disbursed to him qua his land having been previously subjected to acquisition. The factum of initiation of proceedings under the "Old Act" stands uncontested. On consummation of the proceedings for acquisition launched under the "Old Act" an award was announced and compensation was determined in favour of the petitioner, The compensation determined in favour of the petitioner qua his land subjected to acquisition under the "Old Act" has been portrayed by paragraph 5 of the reply furnished by the state to have come to be disbursed and received by the petitioner. Consequently, when compensation qua his land has been paid to the petitioner, even the condition in the alternative to the initial condition for construing the proceedings under the "Old Act" to have lapsed, arising from the proven fact of nonpayment of compensation to the petitioner for his land which was subjected to acquisition stands obviously then un-satiated or unaccomplished. Consequently, for reiteration given the acceptance of compensation by the petitioner, he cannot contend before this Court that he has fulfilled or satiated the alternative condition spelt out in Sub-section (2) of section 24 of the New Act. Consequently, he is interdicted from canvassing before this court that the proceedings for acquisition of his land launched under the "Old Act" stood lapsed and that compensation qua his land be determined afresh under the New Act. Besides, when the alternative condition comprised in Sub-section (2) of section 24 of the New Act mandates a statutory embargo or estoppel against the petitioner to claim re-determination of compensation under the "New Act" in case he receives compensation determined under the "Old Act". For reiteration, given the admitted fact of his having received compensation, though determined under the "Old Act", the statutory bar aforesaid estops him to espouse before this Court that the acquisition proceedings initiated qua his land under the "Old Act" stand lapsed. In view of above, there is no merit in this petition same is dismissed accordingly.