

(2016) 01 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 9787, 9788, 9789, 9790, 10072/2014 and 8413/2015

Jawaluddin and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 32
Land Acquisition Act, 1894 — Section 11, Section 4, Section 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24

Citation : (2016) 01 RAJ CK 0040

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : R.K. Mathur, Sr. Advocate and Aditya Mathur, for the Appellant; Ashish Sharma for Rajendra Prasad, Amit Kuri and Parag Rastogi, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—1. All these petitioners in their respective petitions have challenged the Land Acquisition Proceedings initiated by the respondents in respect of their respective lands under the provisions contained in Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894") and have prayed that the said proceedings have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013"). The petitioners have also prayed that the respondent No. 2 i.e. the Land Acquisition Officer may not proceed with the proceedings before the Civil Judge, (Senior Division), Ajmer in their respective land acquisition cases.

2. At the outset, the learned counsels for the respondents have drawn the attention of the Court that all the petitioners had earlier filed the petitions, challenging the land acquisition proceedings and seeking directions against the

respondents that the notification under Section 4, declaration under Section 6, and the award made under Section 11 be quashed and set aside, being contrary to the provisions of the Act of 1894. The petitioners in the said petitions had also prayed to direct the respondents to give 25% developed land (20% residential purpose and 5% commercial purpose) in lieu of lands sought to be acquired. The learned counsels for the respondents have also drawn the attention of the Court that the petitioners have suppressed the material facts of filing the earlier petitions by not mentioning the same in the present petition.

3. On such submissions being made by the learned counsels for the respondents, the Court had called for the original files of the petitions filed by the petitioners earlier. The details thereof are as under:--

4. It is also required to be noted that the said petitions filed by the petitioners earlier except the petition No. 9175/2009 were disposed of by the Court vide the common order dated 25th August, 2009. The relevant part thereof reads as under:--

".....

In these writ petitions, the petitioners have not only challenged the validity of the acquisition proceeding, but have also challenged the omission on the part of the UIT in not granting them the benefit of circulars issued by the Government from 26.05.2000 to 02.11.2007. During the course of arguments, the learned counsel for the petitioners did not press the challenge made to the validity of the acquisition proceeding, instead he confined himself to the omission committed by the UIT.

.....

For the reasons stated above, the petitioner are directed to submit their applications before the UIT. The UIT is directed to consider the petitioners' cases in the light of the circulars issued by the Government, namely circulars dated 26.05.2002, 16.02.2002, 16.10.2007 & 02.11.2007. The UIT is expected to pass a speaking order while deciding the case. The UIT should decide their case within a period of six months from the date of receipt of their applications. In case any adverse order would be passed against the petitioners, the petitioners shall be at liberty to challenge the same. Simultaneously, the petitioners shall be at liberty to challenge the validity of acquisition proceeding also".

5. From the aforestated order, it clearly appears that the learned senior counsel Mr. R.K. Mathur who was appearing for the petitioners in the said petitions also, had not pressed for the challenge made by them to the validity of acquisition proceedings and had confined themselves to the omission committed by the UIT in not considering their cases for allotment of 25% developed land in lieu of various Circulars of the Government, and accordingly the earlier petitions were disposed of by the Court. Despite the said order passed in the said petitions, the petitioners, without uttering a word about their filing of the said earlier petitions

and about the Court passing the common order therein, have filed the present petitions, challenging the land acquisition proceedings initiated under the Act of 1894 of the ground that they have lapsed in view of Section 24(2) of the Act of 2013.

6. It is sought to be submitted by the learned senior counsel Mr. R.K. Mathur for the petitioners that such non-mentioning of the disposal of the earlier petitions was inadvertent and not deliberate. He also submitted that earlier petitions and the orders passed therein had no bearing on the present petitions, which have been filed in view of Section 24(2) of the New Act of 2013. Relying upon the notices received by the petitioners (Annexure-1), he submitted that the respondent No. 2-Land Acquisition Officer had deposited the cheques towards the compensation after 1/1/2014 before the Civil Court, and therefore it could not be said that the petitioners were paid the compensation before 1/1/2014, i.e. prior to coming into force the Act of 2013. Mr. Mathur has relied upon the decision of this Court in case of *Jhutharam & Ors. v. State of Rajasthan* (S.B. Civil Writ Petition No. 2442/2015) decided on 15/10/2015, to submit that where an award under Section 11 was made five years prior to commencement of the Act of 2013, but the physical possession of the law was not taken or the compensation was not paid, the proceedings would be deemed to have lapsed.

7. None of the submissions of Mr. Mathur deserve any consideration in view of the fact that the petitioners have suppressed material facts from the Court. As stated hereinabove, the petitioners have not disclosed true and correct facts, and have suppressed the material facts, namely, filing of the writ petitions earlier, challenging the land acquisition proceedings initiated under 1894 and then giving up the said challenge during the course of arguments and confining their prayer to the extent of considering their cases for the allotment of 25% of the developed land in lieu of the various Circulars of the Government. The said facts being very material for the purpose of challenging the land acquisition proceedings in the present set of petitions, such suppression can not be taken lightly, more particularly, when the petitioners have invoked the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. It is needless to say that the petitioners are duty bound to disclose all correct and material facts in their petitions while invoking the jurisdiction under Article 226 of the Constitution failing which their petitions can not be considered on merits and would be liable to be dismissed.

8. In this regard, a very pertinent observations made by the Supreme Court in case of *K.D. Sharma v. Steel Authority of India Limited & Ors*, , (2008) 12 Supreme Court Cases 481 deserved to be reproduced and are reproduced as under:--

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court

must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners*, in the following words:

"..... It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it."

9. In case of *Kishore Samrite v. State of Uttar Pradesh & Ors*, , (2013) 2 Supreme Court Cases 398 also, the Supreme Court taking very serious view of abusing the process of law has observed in para 32 as under:--

"32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are

entitled to any relief.

32.2. The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs".

10. The submission made by the learned senior counsel Mr. R.K. Mathur that such mistake was inadvertent cannot be believed, inasmuch as not only all the petitioners were same in both the sets of petitions i.e. the earlier set of petitions and the present one, the learned counsel for the petitioners is also same. When the petitioners did not press for the challenge to the validity of the acquisition proceedings during the course of arguments of the earlier petitions as transpiring from the order itself, suppression of such facts cannot be taken as an inadvertent omission by any stretch of imagination. The petitioners therefore being guilty of suppression of material facts, the present petitions are liable to be dismissed with costs, without being considered on merits.

11. However, on merits also there is no substance in the petitions. There is nothing on record to suggest that the petitioners are in possession muchless in legal in possession of their respective lands as alleged by them in the petitions. It appears from the common order dated 25/8/2009 passed in earlier petitions, that some proceedings under Section 90-B of the Tenancy Act were also pending against them. It also appears from the notices issued by the Civil Court that the Land Acquisition Officer had already deposited the compensation before the Civil Court, (Senior Division), Ajmer vide the cheques dated 20/12/2013 in case of all petitioners except in case of Civil Writ Petition No. 8413/2015. In any case, all the petitioners having failed to disclose all material and correct facts on record, rather suppressed the material facts are guilty of misusing the process of law and hence the present petitions are liable to be dismissed with cost.

12. In that view of the matter, all the petitions are dismissed with cost of Rs.

10,000/- to be paid by the petitioners for each of the petitions to the respondents within two weeks from the date of this order. By this order, the stay applications and other pending applications, if any also stand dismissed. Copy of this order be place in each connected files.