

(2016) 08 JH CK 0087

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5204 of 2014.

Kanti Mahanty Rohini - Petitioner @HASH The State of Jharkhand

Date of Decision : 24-08-2016

Acts Referred:

Citation : (2017) 1 AIRJharR 608 : (2016) 4 JBCJ 271 : (2016) 4 JLJR 82

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Jitendra Singh, Sr. Advocate, Mr. Sumeet Gadodia and Mr. Akshay Kr. Mahato, Advocates, for the Petitioner; Mr. Himanshu Kr. Mehta, A.A.G., Ms. Manjusri Patra, J.C. to A.A.G., Mr. Shrestha Mehta, J.C. to H.K. Mehta, Advocate, for the State

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioner no. 1 is the wife of Late Kanti Mahanty Kumar Swami. Petitioners No. 1's husband Late Kanti Mahanty Kumar Swami was the son of the recorded raiyat Kanti Mahanti Appa Rao in whose name lands contained in Plot nos. 574, 575 and 576 in Khata No. 31, Mouza Asanbani, Thana no.325, P.S. Chandil, District Saraikella Kharsawan having an area of 1.16 acres were recorded. The land contained in Plot nos. 571, 572 and 573 in Khata No. 169, Mouza Asanbani, Thana no.325, P.S. Chandil, District Saraikella Kharsawan having an area of 1.99 acres stood recorded in the name of grand-father of the husband of the petitioner no.1 namely Palki Rama Rao. These two parcels of land were acquired in Acquisition Proceedings No. 70/1980-81 under the Land Acquisition Act, 1894 for the purposes of Swarnrekha Multipurpose Project. Petitioner no.2 is the vendee of petitioner no.1 to whom the aforesaid lands were sold through registered sale deed dated 18th June, 2007. These two petitioners have joined in the present proceedings seeking declaration that the entire land acquisition proceeding in connection with the aforesaid pieces of land has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the grounds that

compensation has not been paid to the land losers/awardee but admittedly was deposited in the Government Treasury and not in Court, possession whereof was though allegedly taken as per the stand of the respondents in their counter affidavit.

3. Both the writ petitioners had earlier approached this Court in W.P.(C) No. 5106 of 2010 seeking release of the land in question in their favour on the ground that it was neither acquired for the Swarnrekha Multipurpose Project nor required by the State Government. They relied upon the letter dated 13th September 2007 obtained under Right to Information as per which a proposal for release of land was mooted. During pendency of the said writ petition an I.A. No. 4766 of 2014 was preferred seeking addition of a new prayer for issuance of an appropriate writ or declaration that the entire land acquisition proceeding in connection with the land involved in the said case had lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 taking the same plea that the compensation amount had been admittedly deposited in Government Treasury and not in Court. By order dated 12th September 2014 a Coordinate Bench of this Court (Annexure-8) was pleased to refuse the addition of new prayer in the said writ petition holding that it would require the petitioners to plead and prove entirely different set of facts from the pleadings in the writ petition and it resultantly cannot be allowed as it would change the very nature of the said writ petition itself. It was however observed that the prayer which has been sought to be added by the petitioners, can be subject matter of a separate writ petition. The said writ petition was finally dismissed by a judgment dated 7th November, 2014 (Annexure-9 to the rejoinder affidavit). Petitioners preferred a Letters Patent Appeal against the judgment passed in W.P.(C) No. 5106/2010 but chose to withdraw the same as they had already filed a separate writ petition i.e. the present matter. The Letters Patent Appeal was dismissed as withdrawn by order dated 7th February, 2015 in L.P.A. No. 531 of 2014.

4. One additional fact to be taken note of is that the respondent-State has instituted a Title Suit bearing No. 25/2011 for cancellation of the sale deed dated 18th June 2007 before the Court of Civil Judge, Senior Division at Seraikella. By the said sale deed petitioner no.1 had transferred the land in question in favour of the petitioner no.2.

5. In the background of these facts, petitioner no. 2 cannot be held to have a cause of action for seeking the instant relief in the nature of a declaration that the entire land acquisition proceeding in connection with the aforesaid pieces of land has lapsed in view of the provisions of Section 24 (2) of the Act of 2013 as his rights are subject matter of the pending suit before the competent court. Therefore, the writ petition prosecuted by the petitioner no. 1 is only being considered on merits.

6. The provisions of Section 24 of the Act of 2013 which are relevant to the issues raised herein are being quoted hereunder:

"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.

7. The 2nd proviso introduced by Amended Ordinance of 2014 is also quoted hereunder:

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for the purpose shall be excluded."

8. Petitioners have contended that in terms of Section 24 subsection(2), the proceedings have lapsed as the award referred to in section 12(2) notice under the Act of 1894 at page 28 of the counter affidavit is dated 27th March, 1984 i.e., much more than five years period stipulated for applicability of lapsing provisions under Section 24(2) in the circumstances that compensation has not been paid to the land-losers nor has it been deposited in the Court where the references may have been made. It is submitted that Annexure-6 bearing letter no. 95 dated 20th April, 2010 of Special Land Acquisition Officer no. 1, Swarnrekha Project, Mango to the Deputy Secretary, Water Resources Department, Govt. of Jharkhand on the subject relating to acquisition of instant

pieces of land clearly contains the remarks that the compensation amount was deposited in the Treasury on 7th August, 1985 in respect of acquisition made under both Khata no. 31 and Katha no. 169 over the plots described therein in the name of father-in-law and grandfather-in-law of petitioner no.1. It is submitted that Annexure-7, letter dated 23rd June, 2014 bearing no. 687 addressed to the Secretary, Water Resources Department by the Administrator, Swarnrekha Project, Adityapur also evidences that the structures existing on the plot in question are in a dilapidated stage unfit for present use unless repairs are undertaken.

9. Reliance is also made to the statements made at para 12 and 13 of the counter affidavit, where the respondents indicate the fixation of compensation for the acquired land of an area of 1.10 acres under Khata no. 31 in respect of father-in-law of petitioner no. 1 and an area of 1.99 acres in respect of khata no. 169 in the name of grandfather of husband of petitioner no. 1 was made at the time of acquisition. Reliance is also placed on the averments made at para-16 of the counter affidavit, where the Respondents have stated that the land acquisition proceeding was concluded and after taking possession of acquired land, office buildings and go-down were constructed, but on non-acceptance of compensation, the same was deposited in Treasury under Revenue Head. It is submitted that the conditions incorporated in Section 24(2) have therefore been satisfied in the facts of the present case beyond dispute. Therefore, the acquisition should be declared as lapsed in view of law laid down by the Apex Court in the case of *Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others* reported in (2014) 3 S.C.C 183 by a three Judges Bench of the Apex Court and followed in the subsequent judgment rendered in the case of *Karnail Kaur and others v. State of Punjab and others* reported in (2015) 3 SCC 206 and in the case of *Radiance Fincap Private Limited and others v. Union of India & Ors.* reported in (2015) 8 SCC 594 as also two recent judgments rendered in the case of *Rattan Singh v. Union of India and others* reported in 2015 SCC OnLine SC 1287 and in the case of *Vijay Latka & Anr. v. State of Haryana & Ors.* reported in 2016 SCC on-line SCC 503. Therefore, petitioners are entitled to the reliefs, prayed for.

10. Counsel for the Respondent-State submits that there is no doubt that the acquisition proceedings were concluded in terms of the provisions of the Act of 1894 long back and compensation was also awarded for the property in question. After placing the provisions of Section 31 of the Act of 1894, it is submitted that if the petitioners or the original land-losers did not come forward to accept the compensation amount despite notice issued as contained in Annexure-A dated 31st January, 1985 and under Section 12(2) dated 22nd May, 1984, the respondent authorities were obliged in law to deposit the amount of compensation in the treasury. Petitioners almost after 29 years of acquisition have become wise by approaching this Court for a declaration that the acquisition proceedings have lapsed in view of the provisions of the Act of 2013. It is further submitted that the 2nd proviso to Section 24(2) has been inserted

with effect from 1st January, 2015 and also taken note of in the judgment rendered in the case of Karnail Kaur (Supra) by the Apex Court at paragraph 24. The second proviso would in effect dilute the time period of 5 years stipulated in sub-section 2 of Section 24, as the compensation amount in question has remained deposited in an Account maintained for the purpose with the Treasury since 7th August, 1985. The prayer of the petitioner therefore should not be allowed at this stage of time.

11. I have considered the submissions of the parties at some length and gone through the relevant materials pleaded including the judgments relied upon by them. The relevant material matrix noticed herein above, do present an undisputed state of facts that upon acquisition being made in Land Acquisition Case No. 70/1980-81 in the year 1984 for the aforesaid pieces of land in question, the compensation awarded was not paid to the petitioners in terms of ratio rendered by Apex Court in the case of Pune Municipal Corporation (Supra) rather it was deposited in the treasury on 7.8.1985. On such undisputed state of facts, on the material issue relating to the lapsing of acquisition proceedings under Section 24(2) of the Act 2013 it is now apposite to refer to the opinion of the Apex Court as contained in paragraph nos. 14 to 19 of the report in the case of Pune Municipal Corporation (supra). They are being reproduced hereunder as they lay down the law on the subject:-

"14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it, (ii) there is no person competent to alienate the land, and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power

to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/ persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section [subsection (2) of Section 24]. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part-V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.1.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes, relying upon the earlier decision in Prem Nath Kapur, has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of

the State to pay interest subsists till the amount has not been deposited in court."

12. Perusal of the opinion of the Apex court specially at para-14 quoted herein above leaves no further room of doubt that if the Collector due to any of the contingency contemplated in Section 31(2), is prevented from making payment of compensation to the persons interested, who are entitled to compensation, then the Collector is required to deposit the compensation in the Court to which reference under Section 18 may be made. It is therefore clear that the existence of a reference before the Reference Court may not be necessary. In case no one comes forward to make an objection in respect of the award in question, the Collector is under an obligation to deposit the compensation amount in court. It has been held that deposit of amount of compensation in Government Treasury cannot be taken to be equivalent to payment of compensation to the landowners/ persons interested (Para-19 quoted supra). This condition has not been complied in the present land acquisition proceeding in question.

13. Now let us advert to the submission of the State counsel on the effect of the amendment to Section 24(2) of the Act by insertion of the 2nd proviso.

14. The 2nd proviso to sub section (2) of Section 24 was inserted by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 with effect from 1st January, 2015. It, therefore, cannot operate retrospectively to oust the cause of action of the petitioners raised in the instant writ petition instituted on 25th September, 2014 before coming into force of the instant amendment. The Apex Court in the case of Karnail Kaur (Supra) at para 24 and also in the case of Radiance Fincap Private Limited (Supra) at paragraph 4 of the report after referring to the precedent on the ambit and scope of Amending Act have held that Amendment Act which affects substantive rights can be presumed to be prospective in operation unless made retrospective either expressly or by unnecessary.

15. The opinion of the Apex Court as contained in paragraph nos. 2 to 4 in the case of Radiance Fincap Private Limited (Supra) are being reproduced hereunder:

"2. ?..... Therefore, the contention urged on behalf of the respondents that in view of promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 on 31-12-2014, by inserting the proviso to sub-section (2) of Section 24 of the Act, the period of stay obtained in the judicial proceedings shall be excluded for computation of five years" period to hold that the acquisition proceedings are lapsed and, therefore, the said provision does not enure to the benefit of the applicants, cannot be legally accepted by us in view of the law laid down by this Court in Garikapati Veeraya v. N. Subbiah Choudhry. Para 23, which is relevant is reproduced hereunder: (AIR p. 559)

"23. From the decisions cited above, the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really

but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

3. The aforesaid case (Garikapati case) is further approved by the Constitution Bench of this Court in Shyam Sunder v. Ram Kumar. Paras 24, 26, 27 and 28 of the judgment, which are relevant are reproduced hereunder: (SCC pp. 41-43)

"24. In Garikapati Veeraya v. N. Subbiah Choudhry this Court observed as thus: (AIR p. 533, para 25)

"25. ? The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

26. In Hitendra Vishnu Thakur v. State of Maharashtra this Court laid down the ambit and scope of an amending Act and its retrospective operation as follows: (SCC p. 633, para 26)

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly-defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

27. In *K.S. Paripoornan v. State of Kerala* (SCC at p. 636) this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus: (SCC para 67)

"67. In the instant case we are concerned with the application of the provisions of sub-section (1-A) of Section 23 as introduced by the amending Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending. (See Halsbury's Laws of England, 4th Edn., Vol. 44, Para 922.)"

28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless the amending Act provides otherwise."

4. The right conferred upon the landholders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the above said sub-section without giving retrospective effect to the same. Taking into consideration

the fact that we have allowed similar matters in *Magnum Promoters (P) Ltd. v. Union of India* and in other appeals also by following the earlier decisions of this Court with regard to taking physical possession of the acquired land by the Land Acquisition Collector, which are extensively referred to in the above judgment, promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was made on 31-12-2014, which is prospective in nature and, therefore, it cannot be applied to their cases."

16. The Apex Court has clearly opined that the instant amendment under the Ordinance of 2014 is prospective in nature and would not defeat a cause of action already raised.

17. As an upshot of the aforesaid discussions, the reasons recorded and in view of the admitted fact that the compensation awarded was not deposited in court rather kept in treasury since 7.8.1985 after declaration of the Award on 27.3.1984, the rigors of section 24(2) of the Act of 2013 would apply to the instant acquisition. Accordingly, the acquisition of the aforesaid pieces of land being Plot nos. 574, 575 and 576 in Khata No. 31 having an area of 1.16 acres and Plot nos. 571, 572 and 573 in Khata No. 169 having an area of 1.99 acres, both under Mouza Asanbani, Thana no.325, P.S. Chandil, District Saraikella Kharsawan in Acquisition Proceedings No. 70/1980-81 is declared to be lapsed.

18. Accordingly, the writ petition is allowed.