
(1952) 12 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ No"s. 65 and 66 of 1952

Lalsingh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-12-1952

Acts Referred:

Constitution of India, 1950 — Article 19(5), 226, 31, 31(2)
Marwar Land Revenue Act, 1949 — Section 231, 231(1), 231(2), 231(3), 231(4)
Rajasthan (Protection of Tenants) Ordinance, 1949 — Section 12, 3, 4(1)

Citation : AIR 1953 Raj 173 : (1953) RLW 75

Hon'ble Judges : K.N. Wanchoo, C.J;K.L. Bapna, J

Bench : Division Bench

Advocate : Mahavirchand, for the Appellant; Kansingh, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—Theses are two connected writ applications. No. 65 is by Lalsingh & others who are Jagirdars. No. 66 is by Pema & others who are tenants of the same land. The land has been taken possession of by a private limited company which is the property of the President of India, and the State of Rajasthan has given possession to the Company. The present applications are with respect to agricultural holdings Nos. 1 to 26 in village Kavas also known as Madpura and Sar-ka-Par.

2. As the points raised in the two applications are the same, we propose to dispose them of by one judgment.

3. The case of the applicants" is that the Rajasthan Government started acquisition proceedings of the land in dispute under the Marwar Land Acquisition Act of 1947. They continued these proceedings from February 1952, to May 1952. Then suddenly on 11-6-1952 possession was taken of the land in dispute under the orders and the personal supervision of the Collector of Barmer in which district the land lies. The applicants contend that the action of the Collector was unjustified under the Marwar Land Acquisition Act, and the Collector could not

take possession of the land as even the notification required u/s 6, Marwar Land Acquisition Act, had not been issued. It was, therefore, prayed that a suitable writ, direction or order be issued to the State of Rajasthan and the Collector Barmer and the Revenue Secretary who are made opposite parties in this case.

4. The applications were opposed by the State of Rajasthan. No attempt was made to justify the taking of possession of the land in dispute under the Marwar Land Acquisition Act, 1947, It was stated that the Government was not properly advised in the matter at the initial stage, and therefore began proceedings under the Marwar Land Acquisition Act. The Assistant Government Advocate justifies the action taken by the Collector of Barmer in putting the Company in possession u/s 231, Marwar Land Revenue Act (No. 40) of 1949. His contention is that that section is a complete Code in itself, and provides the law and the procedure for taking into possession land under which mines exist. It is further stated that the State will take proceedings for payment of compensation, as required by sub-Section (4) of Section 231.

5. The cases came up for arguments on 17-11-1952; but, in view of the stand taken by the Assistant Government Advocate, further time was given, and finally arguments were heard on those lines on 3-12-1952. It is, therefore, unnecessary to consider whether the proceedings were properly carried on under the Marwar Land Acquisition Act, for the learned Assistant Government Advocate does not justify the proceedings under that Act. We have confined ourselves to the consideration of Section 231, Marwar Land Revenue Act, which is as follows:

"231. (1) Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by His Highness, the right to all minerals, mines and quarries shall vest in the Government which shall have all powers necessary for the proper enjoyment of such rights.

(2) The right to all mines and quarries includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram lines, and any other purposes which the Government may declare to be subsidiary to mining and quarrying.

(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right it is necessary that all or any of the powers specified in Sub-sections (1) and (2) should be exercised, the Deputy Commissioner may, by an order in writing subject to such conditions and reservations as he may prescribe, delegate such powers to the person to whom the right has been assigned:

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

(4) If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Deputy Commissioner, or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Marwar Land Acquisition Act, 1947.

(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Deputy Commissioner, unless the compensation has been determined and tendered to the persons whose rights are infringed.

(6) If an assignee of the Government fails to pay compensation as provided in Sub-section (4), the Deputy Commissioner may recover such compensation from him on behalf of the person entitled to it, as if it were an arrear of land revenue.

(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right which vests in and has not been assigned by the Government shall, without prejudice to any other action that may be taken against him, be liable, on the order in writing of the Deputy Commissioner, to pay a penalty not exceeding a sum calculated at the rate of fifty rupees per ton or a fraction thereof, of the minerals so extracted or removed:

Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Deputy Commissioner may impose.

Explanation -- In this section, "minerals" include any sand or clay which the Government may declare to have a commercial value or to be required for any public purpose."

6. An analysis of this section will show that Sub-section (1) lays down that unless it is expressly provided in the records of a settlement or by the terms of a grant made by His Highness, the right to all minerals, mines and quarries shall vest in the Government which shall have all powers necessary for the proper enjoyment of such rights. It is not denied by the applicants that the land, which has been taken over, or is intended to be handed over to the private limited Company, by the State of Rajasthan, has got minerals under it. It is also not shown by the applicants that there is any express provision in the records of any settlement, or in the terms of the grant in their favour, by which they have a right to the minerals. Under these circumstances, the minerals, which exist under this land, belong to the State of Rajasthan under Sub-section (1).

7. Sub-section (2) defines the extent of the right of the State. It gives the State right of access to land, under which minerals exist, for the purpose of mining, and the right to occupy

such other land as may be necessary for purposes subsidiary thereto. These

subsidiary purposes are also defined. Thus this sub-section gives the State the right to occupy the land under which minerals lie, and also the right to occupy other land for subsidiary purposes. It has been urged that no procedure has been provided as to how the State is to occupy the land which it wants for mining and subsidiary purposes, and that therefore, the procedure provided under the Marwar Land Acquisition Act, 1947, should be followed in these cases, also. We are of opinion that no such procedure is necessary where the State wants to occupy land under Sub-section (2). This will be further obvious when we consider Sub-section (4).

8. Sub-section (3) provides for the assignment of the rights by the State to any person. It also provides for delegation of powers specified in Sub-sections (1) and (2) on such person, subject to such conditions and reservations as the Deputy Commissioner may prescribe. There is a proviso to this sub-section, which says that no such delegation shall be made until notice is duly served on the persons affected, and their objections have been heard and considered.

9. Sub-section (4) then provides that if in the exercise of the rights conferred by the earlier sub-sections, the rights of any person are infringed by the occupation or disturbance of the surface of such land, compensation shall be paid for such infringement, and the amount shall be calculated by the Deputy Commissioner, or, if his award is not accepted, by the civil Court, as nearly as may be, in accordance with the provisions of the Marwar Land Acquisition Act, 1947. This sub-section clearly shows that the State has the right to occupy the land, and, if by such occupation the surface- rights of any person are infringed, compensation has to be paid. Therefore, the occupation by the State comes first and compensation comes afterwards if there is any infringement of any surface rights. This clearly shows that the elaborate procedure provided by the Marwar Land Acquisition Act, 1947, is not applicable to occupation of land by the State u/s 231. It is only after the State has occupied the land, and if there is any infringement of surface rights of anybody that compensation, has to be calculated and paid to the person whose surface rights have been infringed.

10. Sub-section (5) provides that an assignee shall not enter or occupy the surface of any land without compensation having been determined and tendered to the person whose right is infringed; but there is an exception to this inasmuch as the Deputy Commissioner can put the assignee in possession without compensation having been determined and tendered to such person.

11. Sub-section (6) provides that if the assignee fails to pay compensation, the Deputy Commissioner can recover such compensation from him as if it was an arrear of land revenue.

12. Sub-section (7) provides for penalties in case an unauthorised person extracts minerals.

13. This analysis of Section 231 clearly shows that it is a complete Code in itself where occupation of land, under which minerals lie, is concerned. In order,

therefore, that the applicants may be entitled to a writ, they have to show that the provision of this section have not been strictly complied with.

14. In the first place, it is urged that there has not been strict compliance with this section, because there has been delegation under Sub-section (3) and no notice, as required by the proviso to that sub-section, has been served on the applicants, and their objections have not been heard and considered. The proviso to Sub-section (3) will only come into operation if the Government has delegated to any person the powers under Sub-sections (1) and (2). The contention on behalf of the applicants is that the powers have been delegated in this case by the State of Rajasthan to the private limited company owned by the President and as such action should have been taken under the proviso. We are, however, informed by the learned Assistant Government Advocate that no assignment has yet taken place. The actual position, therefore, seems to be that possession has been handed over to the private limited Company, and it has started working; but this can only be as a nominee on behalf of the State of Rajasthan so long as the formal written assignment is not made. Therefore, whatever the private limited Company is doing up to now must be deemed to have been done by them on behalf of the State of Rajasthan.

Learned counsel for the applicants, however, points out to Para. (3) of the affidavit filed on behalf of the State, which is in these terms"

"That as the possession of the land has already been taken over on 24-4-1952 by the Company the non-petitioners have no further concern with the matter and now they are not in a position to do anything."

It is urged that this paragraph means that delegation has been made, and as there has been no compliance with the proviso to Sub-section (3) this Court should issue a writ or direction to the Company not to proceed further till the proviso is complied with.

We must say that the position taken up by the State is somewhat contradictory and Para. (3) of the affidavit appears to have been put down without sufficient thought. In Para. (2) it is said that the Company started negotiations with the Rajasthan Government for leasing the gypsum deposits in Kawas to the said Company. The Assistant Government Advocate states that the assignment has not yet been formally executed. So long, therefore, as the assignment is not executed, the State of Rajasthan cannot take up in law the position which they have taken in Para. (3) of the affidavit, namely that they have no further concern with the matter, and are not in a position to do anything. Till such time as the assignment is made, all the actions of the Company must be deemed in law to be on behalf of the Rajasthan State which has put the Company in possession. It may be pointed out that the assignment can be made under Sub-section (3) without notice to anybody; but if the intention is to delegate powers specified in Sub-sections (1) and (2) to the assignee, the law provides that such delegation should take place after notice has been duly served on all persons having rights

in the land affected, and their objections have been heard and considered. But as there is no proof of the assignment or any delegation yet, it cannot be said that delegation has been made in contravention of the proviso to Sub-section (3).

14a. It is next urged that no steps have yet been taken under Sub-section (4) for the determination and payment of compensation provided thereunder. It does appear that no such steps have yet been taken. But it has been stated on behalf of the State that they are prepared to pay compensation according to law to persons whose surface rights might have been infringed. The reason why there has been delay is said to be that the State has stopped all further action with respect to the land in dispute after the ad interim injunction was granted by this Court on 20-6-1952. We are assured that the State will now proceed to take steps under Sub-section (4) for the determination of compensation, and its payment. It is, therefore, premature for the applicants to complain that Sub-section (4) has not been complied with.

15. The next point, that has been urged is that Section 231, Marwar Land Revenue Act, is ultra vires under Article 19(5) of the Constitution, inasmuch as it imposes unreasonable restrictions on the exercise of the right to acquire, hold and dispose of property, conferred under Article 19(1)(f). There is, in our opinion, no force in this argument, as Article 19(1)(f) has no application to this case. u/s 231, the State takes possession of the surface of the land in order to carry on mining operations. The case, therefore, clearly comes under Article 31 of the Constitution, and not under Article 19(5). The State in this case is taking over possession, and is not imposing any restrictions whatsoever on the rights of the applicants. Article 19(5) has, therefore, no application whatsoever, and it is not necessary to consider the authorities dealing with Article 19(5) which were cited on behalf of the applicants.

16. Lastly, it was urged that Section 231 is ultra vires because it offends against Article 31(2) of the Constitution. That Article deals with taking possession of any property, and provides that such possession can be taken over for public purposes under a law, and the law should provide for compensation for the property taken possession of, and either fix the amount of the compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given.

17. The argument is that the land is not being occupied in this case for any public purpose. We cannot accept this argument. If the State owns all minerals subject to the exceptions contained in Section 231 (1), Marwar Land Revenue Act, the exploitation of these minerals is, in our opinion, clearly a public purpose, as it adds to the wealth of the country, helps in improving the standards of life of its people, and goes to make the country economically self-sufficient with respect to the minerals so worked.

Besides these general considerations, there are also certain special considerations in this case which appear from Para. (2) of the affidavit filed on

behalf of the State. These special considerations are that the Government of India have set up a very big factory at Sindri in Behar for the manufacture of artificial fertilisers and other chemicals. There is a great scarcity of food in India at present, and the manufacture of fertilisers on a large scale will help in solving the food problem. The factory at Sindri requires gypsum as the raw material for its manufactured products. These requirements can only be met from Marwar and Bikaner. Village Kavas, where this land lies, has a large deposit of gypsum. It is thus claimed that the exploitation of this deposit, under these circumstances, is obviously a public purpose. These facts have not been denied by the applicants. What they say is that even if these facts are correct, no public purpose can be established. It is enough to say that we do not agree with their contention in this respect, and are satisfied that the taking of possession of the land in this case was for a public purpose. The fact that part of the land occupied was actually needed for laying down a railway siding is immaterial, for construction of roads, railways or tram lines is one of the subsidiary purposes of mining for which land can be taken possession of under Sub-section (2) of Section 231. The action of the Rajasthan State, therefore, cannot be assailed on the ground that there was no public purpose for taking possession of this land.

18. It is then urged that the law, namely Section 231, Marwar Land Revenue Act, does not provide for compensation for the property taken possession of, and does not fix the amount of compensation, or specify the principles on which it should be fixed. Sub-section (4) in our opinion, clearly complies with these requirements. It says that compensation shall be given if the rights of any person to the surface of such land are infringed. It provides the manner in which the compensation shall be calculated, and the officers or Courts who will do so. It also lays down the principles for calculating the compensation, the principles being the same as in the Marwar Land Acquisition Act of 1947. It cannot, therefore, be urged that, the law is ultra vires because it does not provide for compensation, or because it does not specify the principles on which the compensation is to be determined.

19. Then it is urged that, in any case, Sub-section (4) does not provide for the manner in which the compensation is to be given. We are of opinion that this argument also has no force. Sub-section (4) says that the assignees shall pay to such persons such compensation for infringement as may be determined by the Deputy Commissioner, or if his award is not accepted, by the civil Court. It is urged that the manner of payment is not specified. We are of opinion that the said section lays down that the compensation shall be paid. This clearly means that the compensation will be paid in one lump sum in cash. If the intention of the legislature was that the compensation was to be paid in any other manner than by a cash payment in one lump sum, it would have made it clear in Sub-section (4) of Section 231, Marwar Land Revenue Act. As the words used in Sub-section (4) are merely "shall, pay", they mean that the payment will be made in one lump sum in cash. Section 231, therefore, fully complies with Article 31(2) of the Constitution, and we hold it to be intra vires.

20. It only remains to consider another argument on behalf of the State, namely that the applicants have an equally beneficial, convenient and effective remedy by way of a civil suit open to them, and therefore no writ should be granted in their favour. We are of opinion that it is not necessary to consider this point in detail for Section 231(5), Marwar Land Revenue Act, authorises even an assignee to take possession of the land with the previous sanction of the Deputy Commissioner, even though compensation has not been determined and tendered to the person whose right is infringed, while Section 231(2) gives the right to the State to take possession of the land. In view of these two sub-sections both the applications must fail and it need not be decided whether the applicants had another remedy open to them.

21. One last argument urged on behalf of the tenants may be noticed. Reliance is placed on Section 4, Rajasthan (Protection of Tenants) Ordinance (No. 9) of 1949. Section 4(1) reads as follows:

"So long as this Ordinance is in force in_ any area of Rajasthan, no tenant shall be liable to ejection or dispossession from the whole or a part of his holding in such area on any ground whatsoever."

Section 3 of the Ordinance provides that

"the provisions of this Ordinance and of any rules made thereunder shall have effect, notwithstanding anything to the contrary in any other law or rule, order, instrument or usage having the force of law, in any part of Rajasthan."

It is urged, therefore, that this Ordinance overrides the provisions of other laws and the tenants, at any rate, could not be ejected. This argument, however, overlooks Section 12 of this very Ordinance which is as follows:

"Nothing in this Ordinance shall apply to a trespasser or to a tenant who has been dispossessed of his holding or a part thereof for the reason that the land has been acquired by the Government for any public purpose."

In this case we have held that the land has been taken possession of by the State of Rajasthan for a public purpose. Under these circumstances, Section 12 applies and not Sections 3 and 4, and the tenants cannot object to possession being taken over by the State.

22. There is no force, therefore, in these applications, & they are hereby dismissed. We order parties to bear their own costs as the Assistant Government Advocate did not support the case on the basis of the Marwar Land Acquisition Act under which the proceedings had been started. The ad interim injunction is discharged.