
(2005) 07 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 256 of 1999

Laxman

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 1(2), 11, 15A
Land Acquisition Act, 1894 — Section 11, 15A, 17(4), 18, 4(1)
Rajasthan Land Acquisition (Amendment) Act, 1987 — Section 2

Citation : (2005) 4 RLW 2576 : (2005) 4 WLC 346

Hon'ble Judges : Ashok Parihar, J

Bench : Single Bench

Advocate : G.L. Pareek, for the Appellant; M.L. Avasthi, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Parihar, J.—To construct a terminal market, a Notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter to be referred to as the Act) was issued for acquiring 66.85 hectares of land. After issuance of the above notification, looking to the urgency in the matter, a notification u/s 6 as also u/s 17(4) of the Act was also issued on 27.12.1996. After completing necessary formalities, the Land Acquisition Officer sent the proposed award for approval to the State Government as required u/s 11 of the Act. After due notice to all the parties concerned by the State Government, the proposed award was approved by the State Government with certain modifications and consequent to the said approval the award was passed by the Land Acquisition Officer on 26.12.1998. The above award dated 26.12.1998 is under challenge in the present writ petition with a further prayer for de- acquiring of the land in question.

2. Learned Counsel for the petitioner, while heavily relying on the judgments of this Court in the case of Ranbir Dutta v. State of Rajasthan, decided by a learned Single Judge, reported in 1998 (2) Land Acquisition Laws page 52 and DB Civil

Appeal (Writ) No. 1098/2001, Lt General Kundan Singh v. The State of Rajasthan and Ors., decided by a Division Bench on 29.7.2003, has submitted that the State Government has no powers, whatsoever, to reduce the amount of compensation as proposed by the Land Acquisition Officer. It has been submitted that u/s 11 of the Act the State Government has no revisional powers.

3. Mr. B.L. Avasthi, learned Counsel appearing on behalf of the respondents, on the other hand, submitted that the whole award has been passed strictly as per the provisions of the Act and further on an application already been made by the petitioner for reference u/s 18 of the Act the matter now can only be decided by the competent court for enhancement of the compensation.

4. After having considered submissions of learned Counsel for the parties, I have carefully gone through the material on record as also the relevant provisions of the Act.

5. Relevant provisions of Section 11 of the Act are reproduced hereas under:-

"11. Enquiry and award by Collector.- [(1)] On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which may any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land and [at the date of the publication of the notification u/s 4, Sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:"

6. Section 15A of the Act is also relevant for the present purpose and the same is reproduced hereasunder:-

"[15A. Power to call for records, etc.- The appropriate Government may at any time before the award is made by the Collector u/s 11 call for any record to any proceedings (whether by way of enquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceedings and may pass such order or issued such direction in relation thereto as it may think fit:

Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable

opportunity of being heard.]"

7. It may be pertinent to mention here that the proviso to Section 11 and Section 15A were inserted by the Act 68 of 1984 w.e.f. 24.9.1984. A bare reading of the provisions as referred to above would show that final award can only be passed after previous approval of the appropriate Government and before making of such award u/s 11 the appropriate Government has also powers to call for the record of any proceedings for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceedings and may pass such orders or issue such directions in relation thereto as it may think fit provided that the appropriate Government shall not pass any such orders or directions without affording the affected persons a reasonable opportunity of hearing.

8. Admittedly, on an application filed by the Marketing Committee for fixing compensation as per prevalent market rate of the area in question, an opportunity of hearing was given by the State Government to the petitioner and other affected persons in regard to reduction of the compensation as proposed by the Land Acquisition Officer as is evident from the copy of reply filed by petitioner before the concerning authority as submitted along with the writ petition. The final award has been passed by the Land Acquisition Officer only after necessary enquiry been made on the level of the State Government as provided u/s 15A of the Act.

9. In both the judgments, as relied upon by the learned Counsel for the petitioner, provisions of the Act as referred above have not been properly considered, more so, the provisions of Section 15A of the Act have not even been referred to at all.

10. This Court in case of State of Rajasthan v. Deepa and Ors. 1992 (2) LJ 159 in para 15 has already held as under:-

"15. ... By Land Acquisition (Amendment) Act, 1984 (Central Act 68 of 1984), Sub-section (2) of Section 1 of the Land Acquisition Act, 1894 was amended. As a consequence thereof with effect from September 24, 1984, the Land Acquisition Act, 1894 stood extended to the State of Rajasthan and the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act No. 24 of 1953) stood repealed. This is also clear from Section 2 of the Land Acquisition (Rajasthan Amendment) Act, 1987. By this Act, Section 56 has been added in the Land Acquisition Act, 1894, Sub-section (1) of this section runs as under-

"(1) Consequent on this Act having been extended to the State of Rajasthan on the 24th day of September, 1984, hereinafter referred to as the date of extension, the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act No. 24 of 1953), hereinafter referred to as the State Act shall be deemed to have been repealed on the date of extension."

It makes the position crystal clear that the Rajasthan Land Acquisition Act

(Rajasthan Act No. 24 of 1953) stood repealed with effect from September 24, 1984."

11. In case of Ranbir Dutta (supra), the above provisions have not been considered at all. Even the Division Bench in case of Lt General Kundan Singh, while relying on the case of Ranbir Dutta (supra), has also referred to judgment of Supreme Court in case of Union of India (UOI) and Another Vs. Special Land Acquisition Officer and Others, . However, the judgment of the Supreme Court in the above case has been altogether on different facts. There the Supreme Court held that the State can not question the correctness of Award determined by the Land Acquisition Officer u/s 18 of the Act by seeking reference. It is rather very unfortunate that the counsel for both the sides did not bring the Amending Act 68 of 1984 to the notice of the Court in both the cases. Since the petitioner otherwise not entitled to relief as claimed under the law both the judgments are of no assistance to the petitioner. The judgments passed under misrepresentation and concealment can never be binding on other cases.

12. It is also relevant to mention here that the petitioner has already preferred an application u/s 18 of the Act for reference before the Land Acquisition Officer thus, now it is for the competent court to decide for enhancement of the compensation, if so required in accordance with law. Under the circumstances, the petitioner now cannot be allowed to challenge the award impugned and claim de-acquisition of the land itself, more so, when the whole proceedings are over long back and after possession been taken terminal market also having been constructed. Some benefit already given to similarly situated persons under the orders of the Court also do not create any right in favour of the petitioner if otherwise he is not entitled to the same.

13. Having considered entire facts and circumstances, no interference is called for by this Court under its writ jurisdiction. The writ petition is dismissed accordingly as having no merits.