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**(2012) 01 CHH CK 0019**

**In the Chhattisgarh High Court**

**Case No :** Writ Petition C. No. 848 of 2011 and Writ Petition C. No. 1034 of 2011

Manoj Modi and Another and Arjunlal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

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**Date of Decision :** 27-01-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227, 300(A)

Land Acquisition Act, 1894 — Section 11, 23, 34, 4, 4(1)

**Citation :** (2012) 3 CGLJ 629 : (2012) 3 MPJR 13

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

Hon"ble Shri Satish K. Agnihotri, J.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. Since common facts and question of law are involved in these petitions, thus, they are being disposed of by this common order.

2. By these petitions, the petitioners seek a direction to the respondents to make payment of compensation to the petitioners in lieu of acquisition of their respective land and to pay the interest on the amount of compensation at the rate of 15% as per section 34 of the Land Acquisition Act, 1894 (for short `the Act, 1894").

3. The facts, in brief, as projected by the respective petitioners, are that the petitioners' land being survey number 369/3, 368, area 0.03 and 0.07 acre {in W.P.(C) No. 848/2011 (for short `the first petition"))} and 369/2 area 0.03 acre, {in W.P.(C) No. 1034/2011 (for short `the second petition"))} situated in village Jagdalla, District Janjgir-Champa were acquired by the State Government without initiating any process lawfully for the construction of Champa-Jagdalla, Kurda Road. The petitioners filed applications for grant of compensation in lieu of acquisition of their respective lands. On receipt of their applications, the

respondent No. 3 directed the respondent No. 4 to enquire into the matter and send the proposal within 7 days vide letter dated 09.12.2005 and 21.03.2007. (Annexure P/3 and P/4 to the first petition). Thereafter, the respondent No. 5 submitted the case and proposal report to the respondent No. 4 on 18.09.2007 (Annexure P/5 in the first petition) and on 16.10.2007 (Annexure P/5 in second petition). After receipt of the proposal from the office of the respondent No. 4 and 5, the Sub Divisional Officer (Revenue) Champa directed the respondent No. 4 to deposit 80% of the total compensation amount as per the provisions of the Act. The respondent No. 4, in turn replied that since no funds were available, the demand of the petitioners was refused vide communication dated 29.10.2007. Again, on 17.08.2009, after lapse of more than 17 months, the respondent No. 4 deposited the 80% of the compensation amount before the respondent No. 3 in the form of cheque, but the respondent No. 3 did not pay the said amount to the petitioners. Thus, these petitions.

4. Shri Shrivastava, learned counsel appearing for the petitioners would submit that the impugned action of the respondent authorities is illegal, arbitrary and against the well settled principles of law as the respondent authorised have deprived the petitioners of their lawful right of getting compensation, which was to be paid to the petitioners on account of acquisition of their respective lands. The respondent authorities have not followed the provisions of the Act, 1894 in its letter and spirit as the lands in question have been acquired by the authorities without affording proper opportunity of hearing to the petitioners, without obtaining consent of the petitioners or without issuing any notification as required under the provisions of the Act, 1894.

5. On the other hand, Shri Moorthy, learned counsel appearing for the State/respondents would submit that the land acquisition proceedings had already been initiated by the respondents and estimated amount of compensation has already been deposited with the Land Acquisition Officer. The Land Acquisition Officer, issued a memo for publication of notification u/s 4(1) of the Act, 1894. Therefore, it is clear that the determination of compensation and passing of the award is under process. Shri Moorthy would further submit that as and when the proceedings of land acquisition is completed, the compensation would be paid to the respective petitioners on the basis of the award passed by the Land Acquisition Officer. Shri Moorthy would next submit that since the land acquisition proceeding is under process, thus, this Court while exercising its power under Article 226 of the Constitution of India cannot assess the compensation in lieu of acquisition of land. Thus, this petition deserves to be dismissed. Lastly, he would submit that compensation amount would be payable to the petitioner, as early as possible after completion of the land acquisition proceedings.

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. Article 300A of the Constitution of India was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 (w.e.f. 20.06.1979) after the fundamental

right to property was deleted from the provisions of the Constitution of India. Article 300A provides that no person shall be deprived of his property save by authority of law. The right to property is a constitutional right and the land of the petitioners could not have been taken without following the process of law. The Act, 1894 provides for publication of preliminary notification u/s 4 of the Act, 1894, expressing intention of the Government to acquire the land for any public purpose.

8. Section 5A of the Act, 1894 provides for hearing of the objections and thereafter, publication of declaration of intended acquisition u/s 6 followed by other provisions providing for compensation to be computed and paid in accordance with the provisions of the Act, 1894 and the passing of the award u/s 11 of the Act, 1894.

9. In the case on hand, the petitioners have been deprived of their constitutional right as enshrined under Article 300A of the Constitution of India, since the day, the land came under acquisition for construction of the road. The submission of the State counsel that the government proposes to issue notification would not achieve the full object of the provisions of the Act, as the objection can be raised only in respect of the compensation not any other reason. Thus, it is just and proper to direct the authorities to take immediate steps to compute the compensation amount and pay the interest from the date of possession, till the amount is paid.

10. Section 23 of the Act, 1894 provides for determining compensation wherein the market value of the land at the date of publication of the notification u/s 4(1) of the Act, 1894 has to be considered. Thereafter, the damage sustained by the person interested at the time of the taking of possession of the land by the Collector, has also to be considered while determining the amount of compensation.

11. Section 11 deals with the enquiry of award by the Collector in respect of the objections (if any) which any person interested has raised pursuant to the notice u/s 9 of the Act, to the measurements made u/s 8 of the Act, 1894 and the value of the land should be determined at the date of the publication of the notice u/s 4(1) of the Act, 1894.

12. Section 11A of the Act, 1894, provides that the award shall be made by the Collector within a period of two years from the date of publication of the declaration. Section 16 of the Act, 1894 deals with the power to take possession. Bare reading of section 16 of the Act, 1894 makes it clear that the Collector on behalf of the State may take possession of the land free from all encumbrances, after the award has been passed u/s 11 of the Act, 1894.

13. This is a peculiar and unfortunate case wherein possession of the lands in dispute were taken three years before, the process for acquisition of the land was initiated by publication of the notice u/s 4(1) of the Act, 1894 only after 22.06.2011 as evident from letter dated 22.06.2011 (Annexure R/2) to the Controller, Government Printing Press, Rajnandgaon, from the Land Acquisition

Officer, Champa. Other provisions which had been made to ensure proper and just payment of compensation to the land owners, have completely been given a go bye. Thus, the date of publication of notice u/s 4(1) of the Act, 1894 is not very relevant, in the instant case.

14. In these cases, whether the land should be restored back to the petitioners on or before notice u/s 4(1) of the Act, 1894 was issued or the land owners should be paid damages for depriving them of the use of the land, without taking recourse to legal provisions of the Act, 1894.

15. Learned counsel appearing for the petitioners would submit that the petitioners are not interested to take back possession of the land in dispute on the ground that the possession was taken over about three years before publication of the notice u/s 4(1) of the Act, 1894. In view of that, the petitioners should be adequately compensated for the loss of their land and illegal deprivation dehors the constitutional and statutory provisions.

16. Section 5 and 5A of the Act, 1894 reads as under:

5. Payment for damage.-The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district, and such decision shall be final.

5-A. Hearing of objections.-(1) Any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub- section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final."

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

17. Now the question is as to whether the petitioners are entitled to interest on the compensation amount from the date of taking over of the possession of the land in question or from the date of publication of Section 4(1) notification ?

18. Law in this respect is well settled that u/s 4(1) of the Act, 1894 the market value shall be determined on the date of publication of notification u/s 4(1) and the interest shall be payable from the date of taking over possession of the land.

19. The Supreme Court in *State of Punjab v. Amarjit Singh and Another* observed as under :

12. Thus a person whose land is acquired is entitled to the following amounts under the Act :

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to the date of payment/deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period.

20. In *Udho Dass v. State of Haryana & Others*, the Supreme Court observed that if the land owners have been deprived of the compensation for a long period, grant of damages or compensation must be considered as if the land owners had been granted compensation amount at the time of acquisition of the land, it would have been possible for them to rehabilitate their holdings in some other place or use the money for some other purposes.

21. The scheme of the Act, 1894 contemplates acquisition of the land and payment of compensation only after award has been passed. Thus, any step taken by the State Government for taking possession over the land in dispute before passing of the award comes within the purview of damages and the same can be dealt u/s 5 of the Act, 1894. In that event, the Collector is directed to consider and determine the damages, caused to the petitioners on account of taking possession of the land illegally by the State, after affording proper opportunity of hearing to the petitioners. The payment thereon shall be made as expeditiously as possible, preferably within a period of four months.

22. In view of the above stated direction for payment of damages, the State/respondents are not exempted from determining the compensation payable to the petitioners, in accordance with provisions of section 23 of the Act, 1894 as early as possible, after affording the petitioners an opportunity of hearing and considering their objections, if any. It is ordered accordingly.

23. The petitioners shall be entitled to interest at the rate of 9% per annum for the first year from the date of taking over possession of their land and thereafter, at the rate of 15% per annum for the remaining period, till compensation amount is paid.

24. Resultantly, both the writ petitions are allowed.

25. There shall be no order as to costs.