(2018) 04 RAJ CK 0165

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8261, 8219 of 2016

M/s. Aman Granites Pvt. Ltd. @APPELLANT@Hash Union of India

Date of Decision : 11-04-2018

Acts Referred:

National Highways Act, 1956 — Section 3A, 3D
Rajasthan Land Revenue Act, 1956 — Section 22
Constitution of India, 1950 — Article 300A

Citation : (2018) 04 RAJ CK 0165

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Sandeep Shah, Akshiti Singhvi, O.P. Boob, Vineet Sanadhya

Final Decision : Disposed Off

Judgement

Heard learned counsel for the parties and perused the material available on record.

By way of this writ petition, the petitioners herein have approached this court for directing the respondent Land Acquisition Officer to release the

compensation for their land acquired by the respondent National Highway Authority of India for the purpose of construction of the National Highway

8 in tune with the award dated 16.11.2015.

The petitioners claim to have purchased industrial plots of land in the Village Amberi, Tehsil Girwa, District Udaipur in the year 1988 and developed

the same and set up marble units thereupon.Â The notification for acquisition of the land was issued on 07.11.2014 under Section 3A of the National

Highways Act, as per which 0.1250 hectares of lands owned by each of the petitioners in Survey Nos.2811/1044 and 2810/1044 respectively were

notified for acquisition and the description thereof was clearly mentioned as private industrial land.Â An assessment was made by the Land

Acquisition Officer and vide intimation dated 16.11.2015, rate of the industrial lands located adjacent to the road was evaluated at Rs.1601/- per

square feet.Â The lands acquired from both the petitioners were evaluated for compensation to the tune of Rs.5,63,32,687/- and Rs.5,63,32,686/-

respectively.Â However, while passing the final award on 03.06.2016, the Land Acquisition Officer did not account for compensation towards

acquisition of lands of the petitioners and instead, compensation has been only awarded for the structures raised on the disputed chunks of land.Â The

petitioners have, thus, approached this court by way of these writ petitions seeking to assail the action of the respondent Land Acquisition Officer in

not considering and compensating the value of the land acquired while issuing the questioned award Annex.8 dated 03.06.2016.

The Land Acquisition Officer and the State of Rajasthan have filed replies, wherein varying defences have been raised against the prayers made in

these writ petitions.Â At one point of time, the State authorities took a plea that the lands in question were not owned by the petitioners and only

privilege to operate the industry was conferred upon them under the deeds, which are termed as licences.Â It is mentioned that a licencee, upon

acquisition of the leased Government land, is not entitled to claim determination of market value of such land and to receive compensation in lieu

thereof because the land continues to vest with the State Government and no interest could be created thereupon in favour of the licencee.Â

Nevertheless, upon a direction being given by this court to keep the original record available, today MR. O.P. Boob, learned Government Counsel, has

filed an additional affidavit of the SDO, Badgaon, wherein it is clearly stated that the land in question was agricultural land owned by the

Government.Â The same was set apart and reserved for industrial usage by the District Collector, Udaipur while exercising powers under Section 22

of the Land Revenue Act and thereafter, the industrial plots in question were allotted and sold to the petitioners.Â However, it is averred in the

affidavit that the land was never got converted to industrial category and no conversion charges or development charges were determined or

recovered from the allottees and thus, at least they can claim compensation at the rate of agricultural land.

Per se, the said plea taken in the additional affidavit is falsified from a bare perusal of the lease deeds issued in favour of the petitioners.Â Clauses

Nos.4(3), 4(4), 4(5) and 4(6) of the deeds clearly convey that the development charges would be charged from the allottees and that the plots in

question were being allotted in accordance with the Rajasthan Industrial Areas Allotment Rules, 1959 and that the allottee would be required to set up

a marble industry on the plot in question within a period of two years, failing which the land would revert back to the Government.Â It is not in dispute

that the notified cost of land was charged from the petitioners when the lease deeds in question were issued for the industrial plots.Â It is also not in

dispute that both the petitioners had set up marble industries on their respective allotted plots and were operating the same when the acquisition

proceedings occurred.Â Indisputably the nature of the land is described in the Revenue record as private industrial land.

In this background, this court is of the firm opinion that the plea of the State Government that no rights were conferred upon the petitioners in relation

to the lands in question and that the petitionersâ?? rights thereupon are not saved by Article 300-A of the Constitution of India is per se untenable.Â

Manifestly, the land in question was allotted to by the petitioners upon payment of the prescribed rate after being setting apart for industrial usage way

back in 1988.Â At that point of time, manifestly, the area in question was totally undeveloped and the petitioners were pioneers, who purchased the

industrial plots and contributed to the upliftment of the entire location by setting up marble industries in a hitherto undeveloped area.Â The National

Highway Authority, which is the acquiring authority has duly acknowledged the petitionersâ?? rights over the plots in question in the notifications

under Section 3A and 3D by describing the same to be private industrial land.

Mr. Boob tried to portray from the original record that the DLC rate charged from the petitioners was of agriculture land and thus, at best they can

get compensation at that rate.Â

The said argument is per se fallacious for the reason that the Collector took a decision to convert the nature of the entire area from agricultural to

industrial usage and whatever rate was prescribed by the competent authority for such category of land was paid by the petitioners in lieu of issuance

of the 99 years lease deeds.Â Furthermore, owner of another industrial unit named Perfect Thread Mills, which was placed exactly at par with the

petitioners has been awarded compensation for acquisition of a similarly located piece of land allotted under the very same scheme and the

compensation has been evaluated and paid for the acquired land at the industrial rates, as is evident from the award dated 11.08.2006 placed on record

with the rejoinder.Â

In this background, this court is of the firm opinion that the petitioners deserve the relief claimed for in the writ petitions and are entitled to receive

compensation for their industrial land acquired by the respondent National Highway Authority of India in addition to the compensation awarded for the

removal of structures raised thereupon.Â The impugned award Annex.8 dated 03.06.2016, whereby the petitioners were assessed as being entitled to

compensation only on account of demolition of structures raised on their lands and were deprived of compensation for acquisition of their industrial

land is hereby modified. The respondent National Highway Authority of India has already assessed compensation payable to the petitioners by treating

the land in question to be private industrial land vide correspondence dated 16.11.2015.Â Thus, the Land Acquisition Officer is directed to make

payment of compensation to the petitioners in accordance with the above communication with interest applicable as per law within a period of three

months from today.Â Both the writ petitions are allowed in these terms.Â The stay petitions are disposed of.Â No order as to costs.