
(2019) 10 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (c) No. 4852 Of 2018

Nageshwar Prasad Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(1)(a), 24(2)
Land Acquisition Act, 1894 — Section 1(b), 4, 5(a), 6, 11, 18
General Clauses Act, 1897 — Section 6, 6(1), 6(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 JH CK 0061

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Asit Baran Mahata, Jayant Franklin Toppo, Pratyush Kumar, Prashant Kumar Shrivastava

Final Decision : Dismissed

Judgement

1. The writ petition is under Article 226 of the Constitution of India whereby and whereunder direction has been sought for for initiating fresh proceeding under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. It is the case of the petitioner that the land in question has been acquired sometime in the year 1980-81 by virtue of a proceeding initiated being Land Acquisition Case No.46 of 1980-81 for the coal mining in Pundi Village, Mandu Block of District-Ramgarh in Khata No.73 Plot No.225 & 226 total area comprising of 0.19 acres. Award was prepared on 02.01.1989 in favour of grand-father of the petitioner but no compensation amount has been paid to the raiyats.

3. The petitioner, being dissatisfied with the quantum of the awarded amount by the land acquisition authority, has made reference under the provision of Section 18 of the Land Acquisition Act, 1894 which ultimately culminated into an order

passed by virtue of writ and award was prepared on 08.01.2007 as would appear from Annexure-2 to the writ petition but the beneficiary i.e., in whose favour the State has acquired the land has filed first appeal before this Court being First Appeal Nos.10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 & 25 of 2007 in which due appearance has been made by the petitioners and after hearing the parties an order was passed on 16.08.2019 determining the rate of the amount of compensation per decimal.

4. According to the petitioner, as yet since no amount of compensation has been paid, therefore, after enactment of the Act, 2013 proceeding initiated under the Act, 1894 will automatically vitiate in view of the provision of Section 24(2) of the Act, 2013 and thereby the petitioner is entitled to get fresh determination of the amount of compensation in the light of the provision of Act, 2013 but having not done so, the present writ petition has been filed.

5. Mr. J.F. Toppo, learned counsel for the State of Jharkhand as also Mr. Pratyush Kumar, learned counsel for the beneficiary, Tata Steel, have jointly submitted that it is not a case where the provision of Section 24(2) will have any application as because the possession of land has already been taken by the State of Jharkhand and has been transferred in favour of the beneficiary, respondent-Tata Steel as also the amount of compensation has been paid, thereafter, the petitioner being not satisfied with the quantum of compensation has made reference by taking aid of the provision of Section 18 of the Land Acquisition Act, 1894 in which adjudication has been made but the same has been assailed by the beneficiary before the first appellate court in which conclusion has been arrived at by fixing the quantum of compensation afresh, therefore, submission has been made that it is not a case of non-payment of amount of compensation rather the awarded amount as per the award prepared by the land acquisition authority has already been paid and the same has been accepted by the petitioner, thereafter reference has been made, being dissatisfied with the quantum of amount of compensation, as such the condition as has been stipulated for making applicability of the provision of Section 24(2) is not available.

6. This Court, after having heard the learned counsel for the parties and after considering their submissions, deem it fit and proper to first make reference of the provision of the applicable Act when the land has been acquired i.e., Land Acquisition Act, 1894.

7. Admittedly, since the land has been acquired while Land Acquisition Act, 1894 was in vogue by issuance of notice under Section 4, objection under Section 5(a), declaration under Section 6 and ultimately the award has been prepared and award has been passed under Section 11 of the Act, 1894.

The said provision provides the situation in case of dissatisfaction with the awarded amount for which a provision has been made under Section 18 of the Act, 1894.

The Central Act has come in supersession to the Land Acquisition Act, 1894 as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Act, 2013 contains a provision of repeal as also saving under Section 114 sub-section(1) thereof, is for repealment of the Land Acquisition Act, 1894 while sub-section (2) contains the saving clause which provides that the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal. Section 6 of the General Clauses Act, 1897 deals with the impact of repeal as also saving.

8. It is not in dispute that when act is being repealed by enactment of new act it will take its place to keep the interest of such concerned in whose favour any right has been accrued by virtue of the repealed Act what would be the position of any accrued right for which saving is to be made so that the right which has been accrued by virtue of repealed act may not be snatched away by virtue of supersession of the Act through the new Act.

There is no dispute about repealment and saving clause in this present case.

9. The Act, 2013 also contains a specific provision about deemed lapse of the proceeding initiated under the act, 1894, which reads hereunder as:

"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 his Act."

Sub-section (1) to Section 24 contains a situation as under 1(a) i.e., a situation where no award under Section 11 of the Land Acquisition Act, 1894 has been made and in that circumstances the provision of Act, 2013 was applied while Section 1(b) is a situation where an award under Section 11 has been made then such proceeding shall continue under the provision of the said Land Acquisition Act as if the said act has not been repealed.

Sub-section 1(b) contains an express provision about the impact of the Act, 1894 which provides that if any proceeding has been initiated under Section 11, the said proceeding will allow to be continued under the provision of the Act, 1894 as if such act has not been repealed.

Sub-section (2) provides exception with respect to certain factual situation i.e., in a case where award has been passed but the award has been made under Section 11, five years or more prior to commencement of the Act, 2013 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 appropriate Government if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provision of the Act, 2013.

Sub-section (2) to Section 24 thus provides a situation where the award is five years or more prior to the commencement of the act and either of the condition i.e., if the physical possession of the land has not been taken or the compensation has not been paid, the proceeding initiated under the Act, 1894 will automatically vitiate and fresh proceeding has to be initiated under the new act of the year 2013.

10. This Court further deem it fit and proper to refer certain judgments of the Hon'ble Supreme Court wherein the subject matter of Section 24(2) fell for consideration and the first judgment delivered in this regard is Pune Municipal Corporation vs. Harakchand Misirimal Solanki, reported in (2014) 3 SCC 183 wherein three judges Bench of the Hon'ble Supreme Court has been pleased to hold that so long as the amount has not been paid, meaning thereby, if the amount of compensation has not been paid in the pocket of the concern land loser, it cannot be said to be payment in true sense and the conclusion would be that the proceeding initiated under the Act, 1894 will vitiate.

The judgment of Pune Municipal Corporation vs. Harakchand Misirimal Solanki (supra) has been considered again by the same coram of the Hon'ble Supreme Court in the case of Indore Development Authority and Anr. vs. Shyam Verma and Ors., reported in (2018) 3 SCC 405 wherein divergent view has been expressed showing therein that if the land losers have committed wrong in not accepting the money for his own wrong they cannot be allowed to take advantage.

Ultimately the matter has been referred before the Constitution Bench for adjudication of the issues and now the matter is pending before the Hon'ble Supreme Court for its consideration. Further an order has been passed in the case of State of Haryana & Ors. vs. M/s G.D. Goenka Tourism Corporation Ltd. in Special Leave to Appeal No.8453 of 2017 whereby the High Courts have been requested to defer the hearing until a decision is rendered by the Larger Bench.

11. This Court has discussed these judgments only in order to see as to whether the fact of the case lead to applicability of Section 24 (2) of the act, 2013, it is for the reason that if it will be applicable then certainly it will not be proper for this Court to proceed for adjudication of the issue keeping into consideration the order of stay passed by the Hon'ble Supreme Court but if the fact of the case does not suggest about applicability of Section 24(2) certainly this Court may proceed for adjudicating the issue.

12. For deciding the aforesaid issue, the factual aspect again needs to be referred herein vis-a-viz the ingredients of sub-section (2) of Section 24 as has been referred hereinabove that the first condition for making sub-section (2) of Section 24 applicable is that the award has been passed 5 years or more prior from the date of the enactment of the Act, 2013 and the possession if not taken and amount of compensation if not paid.

13. In the light of this condition the factual aspect has been assessed by this Court wherefrom it is evident that the award has been passed certainly beyond the period of 5 years from the date of enactment of the Act, 2013 but it is evident from the pleadings that the possession has been taken as also the amount of compensation has been paid in favour of the petitioner as would appear from Annexure-2 which is an award passed in pursuance to the Land Acquisition Case No.46/80-81 arising out of Land Reference Case No.136 of 1992 21/88-89 and in the very next page i.e., page No.17 to the brief under column No.10 there is a reference of "Amount already paid by the collector Rs.7918.15" below that line "Balance to be paid Rs.29747.45".

14. This award clarifies the position about the question of payment of amount of compensation which since has been paid therefore, the condition as provided under sub-section (2) to Section 24 is not applicable.

In view of such finding based upon the factual aspect there is no difficulty to proceed in the matter for adjudication of the issues.

15. The further factual aspect which is not in dispute in this case is that the beneficiary i.e., Tata Steel Ltd. being aggrieved with the quantum of amount of compensation decided by the Land Acquisition Judge, Hazaribagh in Land Acquisition Case No.46 of 1980-81 has filed first appeal being First Appeal No.12 of 2007 with 10 to 25 of 2007.

16. Mr. Pratyush Kumar, learned counsel for the beneficiary has produced a copy of the judgment passed by this Court in first appeal wherefrom it is evident that

the land loser, the petitioner herein, has appeared before the First Appellate Court and contested the case and thereafter the adjudication has been made by allowing the appeal to the extent as indicated at paragraph 18 thereof with a direction to prepare the award, paragraphs 18 & 19 are being referred hereinbelow:

"18. Thus, from over all discussion, I hold that the compensation has to be paid to the land losers at the rate of Rs.1000/- per decimal along with all other benefits in place of Rs.1,200/- per decimal as fixed vide the impugned judgment and award dated 18.12.2006 (award signed on 08.01.2007) passed by the Sub Judge II-cum-Special Judge, Land Acquisition, Hazaribagh in Land Reference Case Nos. 145 of 1992, 146 of 1992, 144 of 1992, 141 of 1992, 137 of 1992, 142 of 1992, 139 of 1992, 136 of 1992, 134 of 1992, 140 of 1992, 138 of 1992, 143 of 1992, 148 of 1992, 132 of 1992, 147 of 1992 and 135 of 1992, arising out of Land Acquisition Case No.46 of 1980-81 / 21 of 1988-89.

19. These appeals, thus, stand allowed to the aforesaid extent. Awards to be prepared accordingly."

17. This Court also needs to refer herein the object and intent of sub-section (2) of Section 24 while putting such condition the Legislature has taken into consideration that in case of inaction on the part of the respondents why the land losers will suffer but herein there is no inaction on the part of the respondents since the possession of the land has been taken as also the amount of compensation has been paid although initially the petitioner was not satisfied with the quantum so the reference under Section 18 of the Act, 1894 has been agitated and on its conclusion the beneficiary being aggrieved with the adjudication made by the referral court has filed first appeal wherein direction has been given for preparation of the award in terms of the order passed therein, meaning thereby, it is a case of pending litigation and as such keeping the object and spirit of the provision of Section 24(2) of the Act, 2013, according to the considered view of this Court in a case of pending litigation the said provision cannot be made applicable since it has already been reflected hereinabove that the court has already paid as would appear from Annexure-2 and in that view of the matter, Section 24(2) of the Act, 2013 is not applicable.

18. Taking into consideration the factual aspect as has been discussed hereinabove, this Court, is of the view that the petitioner has failed to make out a case about applicability of Section 24(2) of the Act, 2013 and therefore, this Court is not inclined to interfere with the same.

19. In view thereof, the writ petition fails and stands dismissed.