

(2023) 08 SIK CK 0004
In the Sikkim High Court
Case No : Writ Appeal No. 04 Of 2023

NHPC Limited

APPELLANT

Vs

State Of Sikkim And Others

RESPONDENT

Date of Decision : 04-08-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 9, 11, 11A
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 4, 19, 23, 24, 24(1), 24(1)(a), 25, 26, 27, 28, 29, 30

Citation : (2023) 08 SIK CK 0004

Hon'ble Judges : Biswanath Somadder, CJ; Bhaskar Raj Pradhan, J

Bench : Division Bench

Advocate : Jorgay Namka, Simeon Subba, Abishek Tamang, Zangpo Sherpa, Sujan Sunwar, A. Moulik, Ranjit Prasad

Final Decision : Allowed

Judgement

1. Janga Bahadur Chettri (being the private respondent no.4 herein) filed a writ petition before this Court seeking compensation of Rs.10,82,01,083/- (Rupees ten crores, eighty-two lakhs, one thousand and eighty-three only) along with interest @ of 12% per annum against the State of Sikkim, District Collector, NHPC Limited (being the appellant herein) and the Secretary, Land Revenue & Disaster Management Department, Government of Sikkim. He complained that although his property was acquired, compensation had not been granted to him.

2. Admittedly, the acquisition proceedings had been initiated under the Land Acquisition Act, 1894 (the 1894 Act). Although, notice under section 4, declaration under section 6 and notice under section 9 of the 1894 Act had been issued, no award under section 11 of the said Act of 1894 had been passed.

3. In the meanwhile, on 01.01.2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 2013 Act) was brought into force in the whole of India including the State of

Sikkim.

4. On 25.06.2014, assessment for compensation for acquisition of the writ petitioner's property at Rs.73,42,232/- (Rupees seventy-three lakhs, forty-two thousand, two hundred and thirty-two only) was made and 80% thereof, amounting to Rs.58,73,786/-(Rupees fifty-eight lakhs, seventy-three thousand, seven hundred and eighty-six only), was paid to the writ petitioner.

5. The District Collector made an Award dated nil under section 23 of the 2013 Act for an amount of Rs.8,18,39,019/-(Eight crores, eighteen lakhs, thirty-nine thousand and nineteen only). The Award was then forwarded on 30.07.2016 by the District Collector to the Secretary, Land Revenue and Disaster Management Department along with compensation statement at revised rate and house compensation requesting to claim the said amount for payment to land owner. On 10.11.2016, the District Collector again sent a communication to the Secretary, Land Revenue and Disaster Management Department, resubmitting the compensation statement bill and requested to realise the amount of Rs.11,40,74,869/- (Rupees eleven crores, forty lakhs, seventy four thousand, eight hundred and sixty-nine only). The writ petitioner filed the writ petition, since inspite of representation, the writ petitioner did not receive the remaining amount.

6. The learned Single Judge examined the writ petition and the rival pleadings including the various correspondences filed and concluded that NHPC Limited had no objection to the compensation computed by the District Collector and directed NHPC Limited to pay compensation to the writ petitioner upon duly deducting the amount already received.

7. The present writ appeal has been filed by NHPC Limited against the judgment dated 30th September, 2022 passed by the learned Single Judge.

8. Heard Mr. Jorgay Namka, learned Senior Advocate for NHPC Limited, Mr. Zangpo Sherpa, learned Additional Advocate General for the State respondents and Mr. A. Moulik, learned Senior Advocate for Janga Bahadur Chettri, the writ petitioner (being the private respondent no.4 herein).

9. Section 24 of the 2013 Act reads:-

"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 this Act.?

10. Section 25 of the 2013 Act provides for the period within which an award is required to be made. It states:-

"25. Period within which an award shall be made.—The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate government shall have the power to extend the period of twelve months if in its opinion, circumstances exists justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.?

11. In Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation vs. Mahesh & Others (2022) 2 SCC 772, the Hon'ble Supreme Court held:-

"30. A rational approach so as to further the object and purpose of sections 24 and 26 to 30 of the 2013 Act is required. We are conscious that Section 25 refers to publication of a notification under Section 19 as the starting point of limitation. In the context of clause (a) to Section 24 (1) of the 2013 Act there would be no notification under section 19, but declaration under section 6 of the 1894 Act. When the declarations under section 6 are valid as on 1.1.2014, it is necessary to give effect to the legislative intention and reckon the starting point. In the context of section 24(1)(a) of the 2013 Act, declarations under section 6 of the 1894 Act are no different and serve the same purpose as the declarations under section 19 of the 2013 Act.

31. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section

25 of the 2013 Act would commence from 1.1.2014, that is, the date when 2013 Act came into force. Awards passed under clause (a) to Section 24(1) would be valid if made within twelve months from 1-1-2014. This dictum is subject to the caveat stated in paras 20 to 23 (supra) that a declaration which has lapsed in terms of section 11-A of the 1894 Act before or on 31.12.2013 would not get revived."

12. Section 11A of the 1894 Act provides:

"11A. Period within which an award shall be made.—(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.—In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.?

13. The facts before us reveal that before the period of two years provided in section 11A of the 1894 Act expired, the 2013 Act was enforced on 01.01.2014. Therefore, the declaration under section 6 of the 1894 Act was still valid on 31.12.2013 as the declaration under section 6 of the 1894 Act was made on 05.03.2013. The prescribed period of twelve months under section 25 of the 2013 Act from the date of publication of the declaration under section 19 of the 2013 Act [read section 6 of the 1894 Act vide Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation (supra)] would lapse on 05.03.2014. The Award under the 2013 Act was made on 30.07.2016. As such, the Award under section 23 of the 2013 Act, made on 30.07.2016, had also lapsed by efflux of time.

14. In the facts and circumstances of the instant case, as stated above, the impugned judgment passed by the learned Single Judge is set aside and the writ petition is dismissed. It will be open to the appellant herein (NHPC Limited) to take consequential steps in accordance with law.

15. The writ appeal is allowed and stands disposed of accordingly.