
(2019) 08 JH CK 0133
In the Jharkhand High Court
Case No : Writ Petition(C) No.2234 Of 2019

Prabha Devi

APPELLANT

Vs

Eastern Coal Field Limited And Ors

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Coal Bearing Areas (Acquisition And Development) Act, 1957 — Section 6, 14, 14(2), 14(5), 14(6), 14(8), 17, 17(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0133

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Deependera Kumar Singh, Vishal Rai, Rajesh Lala, Vernika

Final Decision : Disposed Of

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder direction has been sought for upon the respondent- Eastern Coalfield Limited to withdraw the communication dated 19.03.2019 and restrained the respondent Company in releasing awarded amount in the account of Keshowati Deti.

2. The petitioner who happens to be the daughter of respondent No.5 is claiming the compensation amount by virtue of being the co-sharer of the ancestral property which has been acquired under the provision of Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as the Act, 1957).

The petitioner being aggrieved with the communication dated 19.03.2019 issued by the authority of the Eastern Coalfield Limited (Annexure-1) whereby and whereunder information about the Aadhar Card and the Joint Account, has been sought to be furnished from respondent No.5 for deposit the amount of compensation with a direction to disburse it from the other claimant in accordance with genealogical table and if the said Act would not be performed,

she will be held to be responsible for the same.

3. This matter was heard on 23rd June, 2019 and an order was passed to implead the said Keshowati Devi as respondent No.5 along with an order of ad-interim relief restraining the respondent not to disburse the further amount in the account of the said Keshowati Devi.

4. Learned counsel for the petitioner has submitted that as yet no counter affidavit has been filed.

5. Mr. Rajesh Lala, learned counsel appearing for the Eastern Coalfield Limited, has submitted by referring to the provision of Section 14 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 which contains provision for method of determining the compensation wherein as per the Section 6 thereof, which pertains to adjudication in case of dispute with respect to entitlement of compensation, the same shall be apportioned by the Tribunal among such persons and in such manner as it thinks fit.

Therefore, submission has been made by the learned counsel for the respondent that since the petitioner is claiming apportionment of the amount of compensation and there are other legal heirs apart from the petitioner, therefore, this Court is not the proper adjudicatory body to adjudicate by apportioning the amount of compensation in favour of one or the other co-sharer.

6. In response, learned counsel for the petitioner has submitted that although at the time of filing of the writ petition the amount of compensation has not been deposited in the account of Mossomat Keshowati Devi, but on instruction, he submits that a sum of Rs.1,03,00,000/- has been deposited in the account of said Keshowati Devi W/o. Late Harihar Pandit and therefore, by taking aid of the provision of Section 17 of the Act, 1957 he submits that after depositing the said amount, the determination cannot be made about the apportionment of the amount of compensation as per the provision of Section 14 of the Act, 1957.

7. This Court, after having heard the learned counsel for the parties and after going across the provision of Section 14 as also Section 17 of the Act, 1957, deem it fit and proper to first examine the aforesaid provision before passing any order.

The Section 14 of the as also Section 17 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 which reads hereunder as:-

14. Method of determining compensation.-(1) Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a Judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person

having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall after hearing the dispute, make an award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to any proceedings under this section.

1[(8) The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath;

(iii) reception of evidence on affidavits;

(iv) requisitioning any public record from any court or office;

and

(v) issuing commissions for examination of witnesses.]

17. Payment of compensation.-(1) Any compensation payable under this Act may be tendered or paid to the persons interested entitled thereto, and the Central Government shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2).

(2) If the persons interested entitled thereto shall not consent to receive it or if there be any dispute as to the sufficiency of the amount of compensation or the title to receive it or the apportionment thereof, the Central Government shall deposit the amount of compensation with the Tribunal:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

[Provided further that every person who claims to be an interest be entitled to prefer a claim for compensation before the Tribunal (or not) including the person referred to in the preceding proviso shall be entitled to prefer a claim for compensation before the Tribunal:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to prefer any such claim before the Tribunal.]

(3) When the amount of compensation is not paid or deposited as required by this section, the Central Government shall be liable to pay interest thereon at the rate of five per centum per annum from the time the compensation became due until it shall have been so paid or deposited.

It is evident from the provision of Section 14 of the Act, 1957 which provides a provision of method for determining the amount of compensation.

Sub-section (1) thereof pertains to the situation where an agreement between co-sharers/claimants.

While sub-section (2) to Section 14 of the Act, 1957 speaks about where no such agreement can be reached the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a Judge of a High Court for the purpose of determining the amount.

Sub-section (5) to Section 14 of the Act, 1957 stipulates that the Tribunal shall after hearing the dispute make an award determining the amount of compensation which appears it to be just and specified the person or persons to whom the compensation shall be paid and; in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

Sub-section (6) to Section 14 of the Act, 1957 thereof provides that where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

Sub-section (8) to Section 14 of the Act, 1957 stipulates that the Tribunal in the proceedings before it shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908.

Section 17 of the Act, 1957 provides that provision of payment of compensation if found to be payable under this Act may be tendered or paid to the persons interested entitled thereto, the Central Government shall pay to them unless prevented by some one or more of the contingencies mentioned in sub-section (2).

Sub-section (2) to Section 17 of the Act, 1957 thereof provides that if the

persons interested or entitled thereto shall not consent to receive it or if there be any dispute as to the sufficiency of the amount of compensation or the title to receive it or the apportionment thereof, the Central Government shall deposit the amount of compensation with the tribunal, provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount and further provided that the interested person shall be entitled to prefer a claim for compensation before the Tribunal.

8. This Court after going across both the statutory provisions has found that in a case of dispute about the apportionment of the amount of compensation, the same is to be adjudicated by the Tribunal as provided under sub-section (6) to Section 14 of the Act, 1957.

While Section 17 provides that the case of payment of the amount of compensation the same can be received by the claimant but in a situation if arises like that the sufficiency of the amount of compensation of the title to receive it then the amount needs to be deposited with the tribunal and can also be accepted without being prejudiced with the right.

9. So far as the facts of this case in hand is concerned, admittedly, the specific prayer has been made for restraint upon the authority to deposit the amount of compensation in the account of Mossomat Keshowati Devi, respondent No.5 and therefore, this Court after taking the admission of the petitioner since he is placing reliance upon the Annexure-1 is of the view that on the date of filing of the writ petition, no amount was deposited in the account of said Keshowati Devi and as such, at the time of filing of the writ petition the determination regarding the apportionment of the amount ought to have been agitated by filing of an appropriate application before the Tribunal for its adjudication as provided under sub-section (6) to Section 14 of the Act, 1957.

10. However, on oral instruction it has submitted by the learned counsel for the petitioner that in course of pendency of the writ petition a sum of Rs.1,03,00000/- have been deposited in the account of the said Keshowati Devi.

However, Mr. Rajesh Lala, learned counsel for the respondent has shown his ignorance with respect to the aforesaid aspect of the matter, be that as it may, since the question of apportionment of the amount of compensation has been agitated and as would appear from Annexure-1 that the petitioner is claiming to be one of the co-sharer entitled to get the amount of compensation, and Annexure-1 suggests that there are other co-sharers as also appear from page-89 to the paper book which contains a genealogical table, therefore, this Court sitting under Article 226 of the Constitution of India, cannot be said to be effective remedy for disbursement of the amount as per the admissibility/entitlement of one or the other co-share holder.

11. Since as on the date of the filing of the writ petition the amount of compensation has not been deposited but however as submitted by the learned counsel for the petitioner some amount has been deposited, therefore, as would

appear from the provision of Section 17(2) of the Act, 1957 that in case of any dispute disbursement of amount of compensation, the Central Government shall deposit the amount and hence, even if the amount has not been deposited before the tribunal as required to be deposited under the provision of Section 17(2) of the Act, 1957, the Forum as available under Section 14 of the Act, 1957, cannot be waived out that too in such a case where there are so many claimants seeking apportionment of the amount of compensation.

12. This writ petition is accordingly, disposed of accord liberty to the petitioner to approach before the Tribunal by making an appropriate application to the effect that certain amount has been deposited in the account of Mossomat Keshowati Devi, with the valid proof for its consideration by the Tribunal within a period of four weeks from the date of receipt of copy of this order.

The Tribunal is further directed to hear the respondent Eastern Coalfield Limited and if found that any amount pertaining to the acquisition of land to be disbursed in favour of one or the other co-sharers, has been deposited in the account of Mossomat Keshowati Devi the appropriate steps would be taken by issuing a direction upon the said Keshowati Devi to refund the said amount to be deposited with the Tribunal and thereafter, adjudicate upon the quantum of the amount of compensation by hearing all the co-sharers by taking a decision in this regard within a period of three months from the date of receipt of said application.

13. Accordingly, the writ petition stands disposed of.