

(2016) 09 AHC CK 0152
In the Allahabad High Court
Case No : Writ C. No. 15804 of 2016.

Prahlad Singh And 6 Others - Petitioners @HASH State of U.P. And 2 Others

Date of Decision : 26-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 10 ADJ 668 : (2016) 6 AILJ 377 : (2016) 6 AllWC 5672 : (2017) 121 ALR 1 : (2016) 4 CivilJ 868 : (2017) 135 RD 193 : (2017) 1 RJ 225 : (2016) 4 UPLBEC 3403

Hon'ble Judges : Tarun Agarwala and Amar Singh Chauhan, JJ.

Bench : Division Bench

Advocate : Kshitij Shailendra and Sumit Daga, Advocates, for the Petitioners; C.S.C, for the Respondents

Final Decision : Allowed

Judgement

1. In spite of a stop order, no counter affidavit has been filed. As oral request was made by learned Standing Counsel to grant further time to file the counter affidavit. Such request is rejected since there was a stop order by an earlier order of the Court dated 26.9.2016 granting the respondents three week's and no more time to file a counter affidavit.

2. The petitioners' father Kashmira Singh was the original tenure holder of the land in question being Khasra No. 311-M measuring 0.8350 hectares in village Lohari Khurd, Pargana Charthawal, Tehsil Sadar, District Muzaffarnagar. The name of Kashmira Singh was recorded in the revenue record. Upon his death, petitioners' name was recorded in the Khatauni of 1420 Fasli to 1425 Fasli. The petitioners' land was acquired sometimes in the year 1974-75. Pursuant to Notification issued under Sections 4 and 6 of the Land Acquisition Act, objections were filed by the petitioners which was rejected. For reasons best known to the respondents the award insofar as the petitioners are concerned, was not made under Section 11 of the Land Acquisition Act. The award of the co-sharers was however made. The petitioners were forcibly dispossessed from the land in the year 2014. Being aggrieved by this forceful dispossession, the petitioners filed

Civil Misc. Writ Petition No. 52791 of 2014 which was disposed of by an order dated 07.10.2014 directing the petitioners to make a representation before the Collector, Muzaffarnagar who would decide the same by a reasoned and speaking order. The petitioners made a representation which was disposed of by an order dated 18.2.2016. The Collector, in its order, admitted that the land of the petitioners has been acquired and that neither the award has been made nor compensation has been paid. It has also been indicated that compensation was kept in the revenue deposit. The Collector has further directed the Special Land Acquisition Officer, Muzaffarnagar to determine the compensation by taking the market value of the land as existed in the year 1981 which was the date when the respondents deposited the amount in respect of other land holders in the revenue deposit.

3. The petitioners being aggrieved by the said order has filed the present writ petition.

4. Having heard the learned counsel for the parties, we find that the Land Acquisition Act has been repealed with effect from 01.01.2014 in view of Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013). With effect from 01.01.2014, the new Act of 2013 has come in force. Section 24(1)(a) of the Act provides that where no award under Section 11 of the Land Acquisition Act has been made, then compensation has to be determined under the Act of 2013. Section 26 of the Act 2013 provides the criteria for determining the market value of the land by the Collector. Proviso to Section 26 of the Act states that the date for determination of market value shall be the date on which the notification has been issued under Section 11 of the Act of 2013.

5. In the instant case, the notification was issued under the Act of 1894 which has now been repealed. The question that arises for consideration as to what would be the appropriate date for determination of the market value of the land in question. As per impugned order, the Collector has directed the Special Land Acquisition Officer to determine the market value of the land on the date when the compensation was deposited in the revenue deposit. Prima facie this direction appears to be arbitrary. We find that under Section 113 of the Act, the Central Government has the power to make such provision or give such direction in case any difficulty arises for implementation of the Act.

6. For facility, Section 113 of the Act of 2013 is extracted hereunder:

"113. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

7. In pursuance of the aforesaid provision, the Central Government has issued a D.O. No. 13013/01/2014-LRD(Pt.) dated 26.10.2015. In the said D.O., an issue was raised by Government of Maharashtra at Item No. 3 which is extracted hereunder:

"For calculation of market value, under section 24(1)(a), reference date should be 01.01.2014 (commencement of RFCTLARR Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894."

8. The opinion given by the Government of India is extracted hereunder:

"The reference date for calculation of market value, under section 24(1)(a) should be 01.01.2014 (commencement of RFCTLARR Act, 2013), as the Section reads "in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, 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. Under section 26 reference date is date of preliminary notification, but section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 01.01.2014) with a view to ensure that the land owners/farmers/affected families get enhanced compensation under the provisions of the RFCTLARR Act, 2013 (as also recommended by Standing Committee in its 31st report)."

9. The Government of India has forwarded the aforesaid direction to all the Principal Secretaries of States/Union Territories for information and necessary action.

10. In our opinion the order issued by the Central Government is required to be implemented uniformly by all the State Governments and Union Territories including the State of U.P. There is no reason why the Collector should not apply the market value as existing as on 01.01.2014 on the land in question.

11. In the light of the aforesaid, the impugned order passed by the Collector, Muzaffarnagar dated 18.2.2016 is modified to the extent that compensation is required to be determined under Section 24 of the Act of 2013. The market rate of land would be such as applicable as on 01.01.2014 as per the D.O. of the Central Government dated 26th October, 2015. Such determination shall be made by the Collector/Special Land Acquisition Officer within six weeks from the date of production of a certified copy of this order and payment would be released accordingly within two weeks thereafter.

12. We also find from the impugned order that the compensation was kept in the revenue deposit. The Supreme Court in the case of Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, 2014 (3) Supreme Court Cases 183 held that compensation is required to be deposited in the court

and deposit of compensation amount in the Government treasury was of no avail and cannot be held to be equivalent to compensation paid to the land owners. The issue involved in this case is squarely covered by the said decision of the Supreme Court.

13. The writ petition is allowed.