
(2014) 12 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1811 of 2014 in Civil Writ Petition No. 8289 of 2014

Rajendra Prasad and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 72

Land Acquisition Act, 1894 — Section 11, 17, 4, 6

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2015) 2 CDR 566 : (2016) 1 RLW 590

Hon'ble Judges : Sunil Ambwani, Acting C.J.; J.K. Ranka, J

Bench : Division Bench

Advocate : Sandeep Pathak, Advocates for the Appellant; Mahendra Goyal, Advocates for the Respondent

Judgement

1. We have heard learned counsel appearing for the appellants and learned counsel appearing for the respondent-Jaipur Development Authority. This Special Appeal is directed against the order dated 29.10.2014, passed by learned Single Judge, rejecting the stay application in S.B. Civil Writ Petition No. 8289/2014, filed with a prayer to quash the Notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, "the Act of 1894"), (invoking powers under Section 17 of the Act of 1894), dated 22.01.2003 and 29.09.2003 respectively. The prayers have also been made to set aside the impugned Awards dated 29.07.2005 and 17.11.2006; to quash the entire land acquisition proceedings, and to hold that the acquisition proceedings have lapsed under the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the Act of 2013"), which has come into force on 01.01.2014.

2. Learned Single Judge has rejected the stay application on the ground that the land was acquired by the Notifications issued under Sections 4 and 6 of the Act

of 1894 (invoking powers under Section 17 of the Act of 1894), dated 22.01.2003 and 29.09.2003, of which the possession was also taken, and the Awards were declared, on 29.07.2005 and 17.11.2006. The petitioners had, on the issuance of notifications, entered into a contract with the respondents, to accept 15% of the developed land, in lieu of compensation. He found that the petitioners had subsequently encroached upon the land, which they had surrendered, and have filed the writ petition only after their possession, as encroachers was sought to be removed by the JDA.

3. Learned counsel appearing for the JDA has raised preliminary objection about the maintainability of the writ petition. He submits that the JDA has not been impleaded, and instead, Deputy Commissioner, Zone-12, JDA, has been impleaded as respondent No. 4. The writ petition as well as this Special Appeal thus suffer from fatal error of non-joinder of necessary party. The JDA, being acquiring body, against whom all allegations have been made, was necessary party to the proceedings.

4. Learned Single Judge did not accept the preliminary objection on the ground that the contention is "only for mis-description of the party. The Deputy Commissioner, Zone-12, JDA, has been impleaded as party, and has also filed a reply to the averments made in the writ petition. He held that the technical error in not impleading the JDA, is not fatal to the writ-petitioners.

5. On merits of the stay application, learned Single Judge observed that having accepted allotment of 15% developed land on giving affidavits, the petitioners cannot contend that they were not given compensation of the land. He held that the possession was taken of the land, after compensation by way of 15% of developed land was accepted by the petitioners themselves in lieu of the land surrendered, there was no need to examine after about eight years the question, as to whether allotment of developed land would amount to compensation under Section 24(2) of the Act of 2013.

6. Section 24 of the Act of 2013, provides as follows:--

"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 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 the 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."

7. In the present case, the land was acquired vide Notifications under Sections 4 and 6 of the Act of 1894, dated 22.01.2003 and 29.09.2003, respectively. The respondents had annexed the possession memos of different dates of the year 2007, by which possession of the land was taken, and also annexed the allotment letters. for various plots by lottery of the developed land, along with the reply to the petitioners-appellants to establish that not only possession was taken, but compensation was also paid, as agreed by the petitioners by way of allotment of developed land.

8. Learned counsel appearing for the appellants would submit that the subject scheme, namely Ramalyawala Dairy Scheme, for which the land was acquired by the State Government for JDA, has since been abandoned, the possession was taken only on papers, and the land was recorded in the name of the State. The physical possession of the land has not been taken so far. The documents of possession, do not bear the signatures of the appellants, and that there was no notice given for allotment of developed land by way of compensation, nor any lease deed of the land which was proposed to be allotted, has been executed. The provisions of Section 24(2) of the new Act of 2013 have been explained by Hon"ble Supreme Court in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , and Union of India (UOI) and Others Vs. Shiv Raj and Others, . He submits that in D.B. Special Appeal (Writ) No. 1539/2014-Virendra Singh & Ors. v. State of Rajasthan & Ors., by a judgment dated 29.10.2014, a Division Bench of this Court, after examining the aforesaid judgments as well as the judgment of this Court in Jaipur Development Authority Vs. Lalaram and Others, , held that sub-section (2) of Section 24 of the new Act of 2013, was applicable in respect of the plots of Shri Virendra Singh and others, in the matters of acquisition of land for the Ring Road, to be constructed in the city of Jaipur by the State Government. In the facts and circumstances of the case which are almost similar, the acquisition of land, in view of sub-section (2) of Section 24 of the Act of 2013, will be deemed to have lapsed.

9. We have heard learned counsel for the appellants and examined the record and find that in the present case, prima-facie sub-section (2) of Section 24 of the Act of 2013, is not attracted. The land was acquired by issuing Notifications

under Sections 4 and 6 of the Act of 1894, dated 22.01.2003 and 29.09.2003, applying the provisions of Section 17 of the Act of 1894, under which, after acquisition, the land vests, free of all encumbrances, in the State. The land was acquired for developing a Dairy Project, to shift the dairies in the city of Jaipur outside the municipal limits. After the subject scheme, the Ramalyawal Extension Dairy Scheme was also introduced, and that in the schemes, out of 574 plots, 500 plots have been allotted for the dairies, to be shifted outside the city of Jaipur.

10. So far as the question of possession is concerned, the possession memos and the revenue records, would prima facie establish that the possession was taken in the year 2006-07, and that the land is recorded in the name of State for JDA since thereafter. In view of the documents of possession, it cannot be said, at this stage, that the appellants were never dispossessed. The documents of possession demonstrate that the land, which was acquired, was taken into possession, and was handed over to the JDA, and was recorded in the name of the State since thereafter. The allotment by way of lottery and the issuance of allotment letters, would also show that a contract, entered into between the appellants and the respondents for allotment of 15% developed land, in lieu of compensation, was acted upon in the year 2008.

11. The appellants before us, neither challenged the land acquisition proceedings notified in the year 2003, nor the taking over of possession from them in the year 2006-07. They also did not challenge the payment of compensation, for which they had entered into an agreement and had also submitted their affidavits. The appellants also failed to make representations before filing the writ petition for getting possession of the allotted land and execution of the lease deed of the land. In view of silence of the appellants for the last about 8 to 10 years, and waking up only after their encroachments were sought to be removed, they are not entitled to any interim relief during the pendency of the writ petition.

12. In the facts and circumstances placed before us, in which possession of the land, as directed in the year 2006, was taken, and allotments were made, in lieu of compensation in the year 2008, the provisions of sub-section (2) of Section 24 of the Act of 2013, are not attracted, for claiming that the acquisition has deemed to have lapsed, the ratio of the judgments of the Supreme Court cited by the learned counsel for appellants in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.* (supra), *Sree Balaji Nagar Residential Association vs. State of Tamil Nadu* (supra), and the judgment of a Division Bench of this Court in *Virendra Singh & Ors. v. State of Rajasthan & Ors.* (supra), are not attracted in the present case.

13. In the end, it is submitted by learned counsel appearing for the appellants that if the stand taken by the JDA that the appellants have encroached upon the land after the possession was taken over from them, is accepted, no action was taken by issuing any notice to the appellants under Section 72 of the JDA Act,

which raises a presumption that the appellants have been continuously in possession of the land, and were never dispossessed.

14. We are not impressed with this submission inasmuch as non-issuance of notice under Section 72 of the Act by itself, would not establish that the appellants were not dispossessed, and that they have not encroached upon the land, subsequent to taking over the possession from them, for which sufficient evidence by way of possession memos, is available on record.

15. In the circumstances, we do not find that learned Single Judge has committed any error in rejecting the stay application. The Special Appeal is merit less and is, accordingly, dismissed.