

(2011) 09 CHH CK 0048
In the Chhattisgarh High Court
Case No : Writ Petition No. 2555 of 2011

Rajkumar Sahu and Others	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Constitution of India, 1950 — Article 300A
Land Acquisition Act, 1894 — Section 11, 4, 5A, 6

Citation : AIR 2012 Chh 17

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : H.S. Patel, for the Appellant; Arun Sao, Government Advocate, for State, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The petitioner seeks a direction to the respondents to compute and award the compensation against the acquisition of portions of their lands from Khasra Nos. 688/ 3,686/6 & 601 of the petitioners respectively. The brief facts, in nutshell, as projected by the petitioners, are that the petitioners are residents of village-Amandula, Tahsil Malkharoda, District-Janjgir-Champa. The petitioners were owners of the lands, as stated herein :

(See Table below)

2. A part of the above stated lands came under submergence in Pota Sendras Miner

(Contd. on 2nd col.)

S. No.

Name of Land Owner

Khasra No.

Total Rakba

Portion of Land Submerged

1.

Rajkumar/Arvind Sahu

686/3

1.16 Acre

0.18 Acre

2.

Rajkumar/Arvind Sahu

686/6

0.45 Acre

0.20 Acre

3.

Nanki Dau Chandra

601

0.70 Acre

0.18 Acre

Canal constructed by the State Government in the year 1999, without acquisition and payment of compensation.

3. The petitioners made representation for computation and grant of proper compensation to the authorities time and again and recently on 28-3-2009 (Annexure P-2 colly.). The Collector directed the Land Acquisition Officer/respondent No. 3 vide letter dated 25th April, 2009 to take actions for payment of compensation. Till date, nothing has happened and no compensation has been paid.

4. On the other hand, Shri. Sao, learned counsel appearing for the State respondents submits that as per the information, the land of the petitioner No. 3 had not come under the submergence. A portion of land in Khasra No. 601 and 0.016 acre in Khasra No. 600 had come under consideration and there is also a dispute with regard to ownership of the land. So far as the land belonging to petition Nos. 1 & 2 is concerned, it is submitted that an area of 0.18 acres out of Khasra No. 686/3 & 0.12 acres out of Khasra No. 686/6 had submerged. It is further submitted that the State has decided to initiate acquisition proceedings by issuing a notification u/s 4 of the Land Acquisition Act, 1894 (for short "the Act, 1894").

5. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. Article 300A of the Constitution of India was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 (w.e.f. 20th June, 1979), after the fundamental right to property was deleted from the provisions of the Constitution of India. Article 300A provides that no person shall be deprived of his property save by authority of law. The right to property is a constitutional right and the land of the petitioners could not have been taken without following the process of law. The Act, 1894, provides for publication of preliminary notification u/s 4 of the Act, 1894 expressing intention of the Government to acquire the land for any public purpose.

7. Section 5A of the Act, 1894, provides for hearing of objections and thereafter publication of declaration of intended acquisition u/s 6 followed by other provisions providing for compensation to be computed and paid in accordance with the provisions of the Act, 1894 and the passing of the award u/s 11.

8. In the case on hand, the petitioners have been deprived of their constitutional right as enshrined under Article 300A of the Constitution of India, since the day, the land came under submergence in the canal constructed by the State Government. The submission of the State counsel that the Government proposes to issue notification would not achieve the full object of the provisions of the Act, as the objection can be raised only in respect of the compensation not any other respects. Thus, it is just and proper to direct the authorities to take immediate steps to compute the compensation amount and pay the interest from the date of possession, till the amount is paid.

9. The Supreme Court in State of Punjab Vs. Amarjit Singh and Another, observed as under :

12. Thus a person whose land is acquired is entitled to the following amounts under the Act:

(a), (b), (c) xxx xxx xxx

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to the date of payment/de-posit at the rate of 9% per annum for the first year and 15% per annum for the remaining period.

10. It is accordingly ordered that the respondents shall invite objections of the petitioners in respect of the compensation, thereafter, compute the compensation and pay the compensation with solatium and interest thereon in accordance with law, to the landowners, as early as possible, preferably within a period of four months.

11. Having regard to the facts situation of the case, wherein, the petitioners were deprived of their constitutional rights for a period of about ten years, it is expedient to award a sum of Rs. 1,00,000/- (One lakh) as cost to each petitioner

Nos. 1 & 2 and in case the land was owned by the petitioner No. 3. the same amount shall be paid to the petitioner No. 3 also, as cost. In view of foregoing, the petition is allowed to the above-extent.