(2022) 02 RAJ CK 0159

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 12012, 14306 Of 2015

Ram Gopal Yadav And Others APPELLANT

Vs

State Of Rajasthan And Others RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Rajasthan Tenancy Act, 1955 — Section 5(28)
Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act, 2013 — Section 19, 24, 24(1), 24(1)(a), 24(2), 25, 113, 114
Land Acquisition Act, 1894 — Section 3(f), 4, 5A, 5A(1), 6, 9, 11, 11A, 19, 25
General Clauses Act, 1897 — Section 6

Citation : (2022) 02 RAJ CK 0159

Hon'ble Judges : Sameer Jain, J

Bench : Single Bench

Advocate : Amit Kuri, Sarthak Rastogi, RP Singh, Virendra Lodha, Vikas Jain

Final Decision : Dismissed

Judgement

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Sameer Jain, J

1. Petitioners have preferred instant writ petitions praying for quashing and setting aside the impugned award dated 01/07/2015 passed by the respondent no.4-Land Acquisition Officer & Sub-Divisional Officer, Kishangarh, District Ajmer (hereinafter referred as 'LAO') in so far as the same relates to land of the petitioners having been acquired by the State Government for respondent No.3-Rajasthan State Industrial Development & Investment Corporation (hereinafter referred to as 'RIICO') for development of Industrial Area, Kishangarh Phase-VI.

2. For the sake of brevity and as the instant two writ petitions invoke the same cause of action and controversy on similar facts and identical questions of law, the same are being decided together and the same may be read as mutatis-mutandis. The lead file in the case is SB Civil Writ Petition No.12012/2015.

3. The respondents issued a notification dt. 14/06/2012 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as the 'Act of 1894') for acquisition of the land measuring 541.07 Bigha, situated in village Sanwatsar, Tehsil Kishangarh District Ajmer for industrial area Kishangarh Phase-VI.

4. The said notification dated 14/06/2012 was published in two widely circulated daily newspapers on 14/07/2012. In addition, the said notification was also locally affixed on the site on 19/07/2012.

5. In response to the said notification, objections were filed by the petitioners under Section 5A of the Act of 1894 before the LAO and the same were duly considered by the LAO.

6. On 04/06/2013, declaration was issued under Section 6 of the Act of 1894 for the area measuring 541.07 Bigha and the same was affixed locally on the site on 02/07/2013 as well as published in two widely circulated newspapers on 03/07/2013. On 01/07/2015, final Award of Rs.67.52 crore approximately incorporating additional amount of compensation under the provisions of The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the Act of 2013) was passed. On 31/08/2015, the amount of Award was sent by the RIICO to the LAO, Kishangarh vide cheque No.011878 and out of the total compensation as stated above, payment of compensation to the tune of Rs.63.37 crore approximately has been disbursed to 221 Khatedars out of 234 Khatedars as per the available records which amounts that almost 94% of the total compensation has already been given to the Khatedars. It has also come on record that on 05/02/2016, possession of area measuring 176.02 Bigha; on 31/03/2016, possession of area measuring 217.19 Bigha and on 14/06/2018, possession of 49.02 Bigha was taken by the State and handed to RIICO. It is also important to state that on 28/03/2016, the LAO deposited the rest of the award amount in the reference court. So, the facts suggest that entire amount of compensation has been duly disbursed in above terms and substantial possession out of 541.07 Bigha has been carried out. It is also to be considered that Kishangarh is a fast growing industrial area which is also called as Marble & Granite Mandi and not only in India but abroad, exports and domestic supplies are made. Recently, the Government has also acquired lands through their instrumentality like National Highway Authority of India, Indian Railways, Airport Authority and Rajasthan Housing Board to develop the said area as an industrial belt looking to non-availability of land for industries and close proximity to major cities of Rajasthan.

7. In this background, the above petitioners have filed these two writ petitions being aggrieved by the land acquisition proceedings carried out by the respondents.

8. The submission of the petitioner is that in terms of the Act of 1894, on account of non-application of mind by the LAO, while considering objections under Section 5A of the Act of 1894, the acquisition proceedings were initiated.

The LAO ignored to consider that the only source of livelihood of the petitioners is the land in question which gives them three crops anf is a cultivated and irrigated land. The LAO has not considered that there is an alternative land which is available in the adjacent area, residential area is also nearby and that the adjacent villages namely; Kali Doongri and village Tonkda have been included in the municipal limits of Kishangarh.

9. Learned counsel for the petitioners submitted that the acquisition proceedings are also illegal and bad because the procedure required for issuance of notice Section 9 of the Act of 1894 has not been followed and that the publication of declaration done on 03/07/2013 issued under Section 6 of the Act of 1894 has not been published in two prominent daily newspapers. Further, the award dated 01/07/2015 passed by the LAO suffers from non-application of mind and that the land in question is not acquired by the private company. Alternatively, learned counsel for the petitioners submitted also submitted that while calculating compensation under the Act of 2013, correct multiplier effect has not been given and the compensation amount has been wrongly calculated on a very lower side. Learned counsel further submitted that as 371 Bigha of land acquired by the Rajasthan Housing Board is adjacently situated which is a residential area, therefore, the present acquisition cannot be used for industrial purpose. The petitioners are in possession of land and have not accepted any cheque towards compensation. Lastly, during course of arguments, in addition to above, learned counsel for the petitioners relied upon judgment of the Apex Court in The Executive Engineer, Goshikhurd Vs. Mahesh & Ors. [SLP (Civil) Nos.13093-13094 of 2018], decided on 10/11/2021 and on relying upon the same, submission of learned counsel for the petitioners was that in terms of Para 20 of the said judgment, the proceedings under Section 24(1)(a) of the Act of 2013 are waived as by virtue of Section 25 of the Act of 1894, notification under Section 6 of the Act of 1894 was not issued within 12 months from January 1st, 2014. Learned counsel for the petitioners also relied upon the judgments rendered in Anil Kumar Gupta Vs. State of Bihar & Ors.: (2012)12 SCC 443; Raghbir Singh Sehrawat Vs. State of Haryana & Ors.: (2012)1 SCC 792; Kamal Trading Pvt. Ltd. Vs. State of West Bengal & Ors.: (2012)2 SCC 25; Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai & Ors.: (2005) 7 SCC 627; Vinod Kumar Vs. State of Haryana & Ors.: (2014)3 SCC 203 & Union of India Vs. Shiv Raj & Ors.: (2014)6 SCC 564 with reference to his above arguments towards opportunity of hearing not been granted as per provisions of Section 5A of the Act of 1894 and submitted that if the LAO has not applied his mind in a rational manner, the acquisition proceedings are liable to be set aside and that challenge to notifications under Section 4 and 6 of the Act of 1894 can be made at a belated stage also.

10. The above contentions were vehemently advanced by learned counsel-Mr. Sarthak Rastogi and endorsed by learned counsel-Mr. Amit Kuri for the petitioners.

11. Per-contra, the State being represented by learned Senior Counsel Mr. RP Singh, AAG and the RIICO being represented by learned Senior Counsel Mr. Virendra Lodha, it was contended that claim of the petitioners is invalid on account of the fact that the RIICO is an undertaking of the State Government which is constituted to accelerate the pace of industrialization in the State and Kishangarh being a Marble and Granite Mandi, having scarcity of industrial plots which are high in demand, expansion of VI Phase is highly required on account of the present litigation against the acquisition proceedings which has stagnated the development and is opposed to public interest, infrastructure development specially when enhanced amount of compensation has been determined under the Act of 2013.

12. The next contention of the respondents was that in addition to 5 phases, VI phase measuring 540.07 Bigha has been carried out qua the compensation and possession in acquisition proceedings to the extent of 94% as stated above. Equally, NHAI, Rajasthan Housing Board, Indian Railways and Airport Authority of India have also developed the said area and possession of remaining land measuring 98.03 Bigha on account of the petitioners has hindered the development.

13. The respondents have further submitted that in the light of above facts, the mandate required under Sections 4 and 6 of the Act of 1894 qua publication in widely circulated newspapers has been duly carried out, compensation in entirety has been deposited and realized by the Khatedars and the disputed money is accounted for in reference court. It is misrepresented that the land in question is a cultivated land, alternative land is available and that the land in question has not been acquired in public interest and on the contrary, the submission of the respondents was that the present writ petitions are not maintainable on account of the fact that the same were filed at a belated stage i.e. at the stage of award and that in terms of the judgment rendered by the Supreme Court in Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria & Ors.: (1996)4 SCC 579, the delay in challenging the acquisition proceedings after publication of award is only with an aim of compensation and is at a belated stage, there is no dispute on account of valid acquisition in the given situation. On this count alone, the respondents submitted that the present writ petitions are not maintainable. The respondents relied upon judgment rendered by the Apex Court in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors.: (1997) 1 SCC 134, and explained in Para no.10 which reads as under:-

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and

Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of say or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interest. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

14. It is further submitted by the respondents that the LAO and the respondents have duly complied with the law, the objections were appropriately considered by the LAO, the submission with regard to alternative land and other vacant land is a myth. It is a policy decision of the respondents and the acquisition proceedings have been carried out with wisdom and with no malafides. In reply to the submission of the petitioners with regard to availability of Charagah Land, as defined under Section 5(28) of the Rajasthan Tenancy Act, 1955, in village Kali Doongri and village Tonkda, it was submitted by the respondents that it is prerogative and policiy decision of the State Government that which land is suitable for the purpose of industrial development or in public interest and the petitioners cannot raise any finger unless the action is arbitrary and contrary to law. Qua same the reliance was placed upon Apex Court Judgment in The Executive Engineer, Goshikhurd Vs. Mahesh & Ors. (supra) an the proceedings lapsed under Section 25 of the Act of 2013 read in conjoin with Section 24(1)(a) of the Act of 2013, learned counsel for the respondents submitted that the

provisions of Section 24(1)(a) of the Act of 2013 only deal with the situation for calculation of compensation. They further submitted that the Supreme Court in its Constitutional Bench Judgment in Indore Development Authority Vs. Manoharlal & Ors.: (2020) 8 SC 129, has held in Para 366 that under the provisions of Section 24(1)(a), in case the award is not made as on 01/01/2014, the date of commencement of the Act of 2013, there is no lapse of proceedings and only compensation has to be determined. The provisions of Section 25 are qua Section 19 of the Act of 2013. They further submitted that in terms of Section 11A of the Act of 1894, the publication of declaration under Section 6 was made on 03/07/2013 and the award in terms of Section 11-A of the Act of 1894 was made within a period of two years on 01/07/2015. Hence, the argument of lapse of proceedings is not tenable.

15. This Court has considered the respective arguments advanced by the learned counsel for the petitioners as well as learned counsel for the respondents, records of the writ petitions, written submissions and the judgments cited at bar were also analyzed minutely.

16. This Court is of the considered view that in the case in hand, the land acquisition proceedings were carried out in the year 2012 in public interest and as per aims and objections of the Act of 1894 i.e. for the public purpose as defined under Section 3(f) of the Act of 1894. It is also a fact that Kishangarh is a Marble and Granite Mandi and popular throughout India as well as internationally and not only giving revenue to the Government, State & Central but also employment to lakhs of people and business to different parts of the country. Kishangarh is a brand in itself and is developing at rapid pace which can be visualized by the fact that acquisition proceedings in the nearby area are also carried out by the other State Instrumentalities like Indian Railways, Rajasthan Housing Board, Airport Authority of India, State and RIICO.

17. The present lis pertains to Kishangarh area and the VI Phase wherein admittedly, a total compensation of 67.52 crore has been disbursed to 221 Khatedars out of 234 Khatedars and possession has been taken leaving apart approximately 98 Bighas of land out of 541 Bighas of land i.e. only on account of the present two writ petitions, the whole industrial area is not developed and is at a stand-still pace on account of the status-quo interim order granted by this Court dated 19/05/2016 on account of two private petitioners only.

18. It has been settled in Indore Development Authority Vs. Manoharlal & Ors. (supra) that deemed lapse of proceedings initiated under the Act of 1894 is occasioned where the award under Section 11 of the Act of 1894 has been made five years or more prior to the date of commencement of the Act of 2013 and if two conditions under Section 24(2) of the Act of 2013 are cumulatively satisfied i.e. possession & compensation, there would be no lapse.

19. In the case in hand, the matter pertains to Section 24(1)(a) of the Act of 2013 wherein as per Indore Development Authority Vs. Manoharlal & Ors.

(supra), it has been specifically held in Para 366.1 that there is no lapse of proceedings under Cause 24(1)(a) of the Act of 2013. Under Section 24(1)(a) of the Act of 2013, only compensation has to be determined under the provisions of the Act of 2013. The analogy given in Indore Development Authority Vs. Manoharlal & Ors. (supra) can alternatively be established from the fact that as per provisions of Section 6 of the Act of 1894, notification was duly published on 03/07/2013 and under Section 11A of the Act of 1894, final award was quantified under the Act of 2013 within a period of two years on 01/07/2015. It is also worthwhile to mention that as per Section 114, Repeal and Saving clause, of the Act of 2013 read with Section 6 of the General Clauses Act, the affect of any right, privilege, obligation or liability will be continued and enforced under the existing law as if the law is not repealed.

20. In the light of above, reading cumulatively the judgment of Indore Development Authority Vs. Manoharlal & Ors. (supra), the provisions of the Act of 1894 in terms of Section 6, 11A and Sections 24, 25, 113 and 114 of the Act of 2013, this Court is of the view that there was no lapse of proceedings.

21. The judgment relied upon by learned counsel for the petitioners in The Executive Engineer, Goshikhurd Vs. Mahesh & Ors. (supra) also supports the view of the Apex Court in Indore Development Authority Vs. Manoharlal & Ors. (supra) and Para 14 of the same reads as under:-

"14. In paragraph 195 in Indore Development Authority (supra), the Constitution Bench held that the 2013 Act operates prospectively. Further, Section 114 of the 2013 Act effects a repeal but with certain savings, in accordance with Section 24. Thus, the acquisition proceedings are preserved under the 1894 Act till the stage of making of the award. Where an award is not made, the provisions relating to determination of compensation under the 2013 Act would apply; where the award is made, proceedings would continue under the provisions of the 1894 Act as if the said Act has not been repealed. Our interpretation of Section 24(1) of the 2013 Act respectfully follows this precedent."

22. Further, in The Executive Engineer, Goshikhurd Vs. Mahesh & Ors. (supra), it has been specifically held by the Apex Court in para 20 that intention of Section 24(1)(a) of the Act of Act of 2013 was twofold: (i) to give sufficient time to the authorities to determine compensation payable under the Act of 2013 and (ii) to ensure early and expedited payment to the landowners. The Apex Court in its aforesaid judgment has specifically held in Para 20 in following words:-

"This dictum is subject to the caveat state in paragraph 16(supra) that a declaration which has lapsed in terms of Section 11A of the 1894 Act would not get revived."

In other words, the Apex Court has specifically said that if under the provisions of Section 11A of the Act of 1894, two years' period is not lapsed and was running, the provisions of Section 25 and the cut-off date of 01/01/2014 will not apply with a limit of 12 months.

23. It is important to note that the provisions of Section 24 of the Act of 2013 have been drafted with a great wisdom by the legislature in as much as under Section 24(1)(a) of the Act of 2013, it has been specifically said that all provisions of the Act of 2013 will apply "only qua compensation" and not otherwise. Under Section 25 of the Act of 2013, there is no reference to Section 6 but only Section 19. A harmonious interpretation of both the Acts of 1894 and 2013 read with the judgment rendered by the Supreme Court in Indore Development Authority Vs. Manoharlal & Ors. (supra), will exhibit that in the present case, as the publication of declaration under Section 6 of the Act of 1894 was made on 03/07/2013 and the final award was passed on 01/07/2015, it was well within specified time under Section 11A of the Act of 1894 which stood as per saving clause under Section\ 114 of the Act of 2013 and on account of the judgment in Indore Development Authority Vs. Manoharlal & Ors. (supra), more specifically by placing reliance upon issue no.6 "whether Section 24 revives stale and barred claim" where the Apex Court held as under:-

"340. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification Under Section 4 of the Act of 1894. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit Under Section 24 as is apparent from proviso to Section 24(2) and the decision in Shiv Kumar and Ors. v. Union of India and Ors 358. We are unable to accept the submission on behalf of the landowners that it is by operation of law the proceedings are deemed to have lapsed and that this Court should give full effect to the provisions. It was submitted that lapse of acquisition proceedings was not contemplated under the Act of 1894, and there is departure made in Section 24 of the Act of 2013. Thus, Section 24 gives a fresh cause of action to the landowners to approach the courts for a declaration that the acquisition lapsed, if either compensation has not been paid or the physical possession has not been taken. The decision of this Court in the Mathura Prasad Bajoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy (1970) 1 SCC 613 was relied upon to contend that there cannot be res judicata in the previous proceedings when the cause of action is different; reliance is also placed on Canara Bank v. N.G. Subbaraya Setty and Anr. (2018) 16 SCC 228, where the decision of Mathura Prasad Bajoo Jaiswal and Ors. (supra) was followed as to belated challenges. Reliance was further placed on Anil Kumar Gupta v. the State of Bihar (2012) 12 SCC 443 in which it was held that vesting of land in the Government can be challenged on the ground that possession had not been taken in accordance with the prescribed procedure. The invocation of the urgency Clause in Section 17, can be questioned on the ground that there was no real urgency. The notification issued Under Section 4 and declaration Under Section 6 can be challenged on the ground of non-compliance of Section 5-A(1). Notice issued Under Section 9 and the award passed Under Section 11 can also be questioned on permissible grounds. Reliance has also been placed on Ram Chand and Ors. v. Union of India (1994) 1 SCC 4 to contend that inaction and delay on the part of the acquiring authority would also give rise to a cause of action in favour of the landowner.

359. The entire gamut of submissions of the landowners is based on the misinterpretation of the provisions contained in Section 24. It does not intend to divest the State of possession (of the land), title to which has been vested in the State. It only intends to give higher compensation in case the obligation of depositing of compensation has not been fulfilled with regard to the majority of holdings. A fresh cause of action in Section 24 has been given if for five years or more possession has not been taken nor compensation has been paid. In case possession has been taken and compensation has not been deposited with respect to the majority of landholdings, higher compensation to all incumbents follows, as mentioned above. Section 24 does not confer a new cause of action to challenge the acquisition proceedings or the methodology adopted for the deposit of compensation in the treasury instead of reference court, in that case, interest or higher compensation, as the case may be, can follow. In our considered opinion, Section 24 is applicable to pending proceedings, not to the concluded proceedings and the legality of the concluded proceedings, cannot be questioned. Such a challenge does not lie within the ambit of the deemed lapse Under Section 24. The lapse Under Section 24(2) is due to inaction or lethargy of authorities in taking requisite steps as provided therein.

366.1 Under the provisions of Section 24(1) (a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013."

24. Considering the provisions of Section 24(2) of the Act of 2013 and the judgment in the case of Executive Engineer, Goshikhurd Vs. Mahesh & Ors. (supra), this Court is of the view that in the present case, in the facts and circumstances, the proceedings of land acquisition have not lapsed, the same are legal, the objections under Section 5A of the Act of 1894 were duly considered, the act of the respondent for public purpose was justified and therefore, the writ petitions are liable to be dismissed specifically when 94% of Khatedars are compensated and 90% area is under physical possession.

25. The judgment relied upon by learned counsel for the petitioners of the Apex

Court in State of West Bengal & Others Vs. Debasish Mukherjee & Ors.: (2011) 14 SCC 187 pertains to service law and is not applicable in the facts and circumstances of the present case.

26. It is also made clear that on behalf of certain petitioners, a review application has been filed by Mr. Vikas Jain, Advocate for vis a vis withdrawal order. The said application is also dismissed as no view was taken by the court and hence, there is no review in a withdrawal application.

27. In the light of above, all applications stand dismissed. The interim order stands vacated.

28. The writ petitions are accordingly dismissed.

