

(2015) 11 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12213/2014

Ram Kishore and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 9
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2015) 11 RAJ CK 0058

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : D.K. Dixit for Ajay Kumar Bajpai, for the Appellant; Sumit Khandelwal for Ajay Singh Khangarot, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present petition has been filed by the petitioners through their power of attorney holder, seeking directions against the respondents not to undertake the process of regularizing the plots of land bearing Khasra No. 353 (old) i.e. Khasra Nos. 419 and 420 (new) of Village Manpura Deori @ Golyavas, Tehsil Sanganer, District Jaipur (hereinafter referred to as "the land in question"), and to treat the acquisition proceedings pertaining to the land in question as having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013"). The petitioners have also sought to declare that the award dated 13/6/1991 in respect of the land in question is nonest.

2. It is sought to be submitted by the learned counsel Mr. D.K. Dixit for the petitioners that the petitioners were in possession of the land in question, which was sought to be acquired by the respondent State for the development of Prithviraj Nagar Scheme, and an award was also made on 13/6/1991 in respect

of the said acquisition, however the possession thereof was not taken by the respondents, but on the basis of forged documents some wrongdoers had encroached upon the said land on the ground that the said land was allotted to them by the Shankar Bhawan Grah Nirman Sahkari Samiti. He further submitted that the petitioners therefore had filed the criminal and civil cases against the said encroachers, and the concerned Court had directed the parties to maintain the status quo, however the JDA was bent upon regularizing the said plots carved out on the land in question in favour of the encroachers. Relying upon the provisions contained in Section 24(2) of the Act of 2013, and the decision of this Court in case of Jhutharam & Ors. vs. State of Rajasthan & Ors, in S.B. Civil Writ Petition No. 2442/2015, he submitted that the petitioners having not been paid compensation nor the possession of the said land having been taken from the petitioner by the respondents for a period of five years after the award was made, the land acquisition proceedings had stood lapsed.

3. At the outset, it is required to be mentioned that the petition has been filed by the petitioners through power of attorney holder Shri Shankar Lal Sharma. The issue of filing of writ petition through power of attorney holder or through somebody else is no more res-integra. The Supreme Court in catena of decisions held that the legal rights that can be enforced in writ jurisdiction must be the rights of the petitioner himself/herself, who complains of infraction of such right and approaches the Court for relief. The existence of a right and infringement thereof are the foundation of the exercise of jurisdiction under Article 226 of the Constitution of India, and such right has to be the personal or individual right of the petitioner. Beneficial reference of decision of Supreme Court in case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , in case of State of Punjab Vs. Suraj Parkash Kapur etc., in case of The State of Orissa Vs. Madan Gopal Rungta, , in case of Cyril E. Fernandes Vs. Sr. Maria Lydia and Others, be made in this regard. The petition therefore having been filed by the so called power of attorney on behalf of the petitioners deserves to be dismissed on that ground alone. It is also required to be noted that apart from the fact that the original power of attorney has not been produced on record, from the copy it appears that no such power to file the present petition was given by the petitioners to the alleged power of attorney holder Shankar Lal Sharma and therefore the petition deserves to be dismissed.

4. It is further required to be noted that the petitioners had already filed a writ petition being No. 10807/2014, seeking similar prayers as prayed for in the present petition, however the same was withdrawn with the permission to file fresh petition as per the order dated 27/10/2014. Since the order is silent as to why the liberty to file the fresh petition was granted, though it was dismissed as withdrawn, the present petition filed by the petitioners on the same grounds and on the same cause of action as such would not be maintainable. However since the liberty has been granted by the Court, the present petition is decided on merits also.

5. So far as the contents of the petition are concerned, apart from the fact that they are absolutely vague in nature it is nowhere stated by the petitioners that they had ever challenged the acquisition proceedings before or after the award was made on 13/6/1991. From the copy of the award produced on record, it appears that none of the petitioners had participated in the proceedings after the service of notice under Section 9 of the Land Acquisition Act, 1894. There is also no explanation coming forth as to why the said award dated 13/6/1991 was not challenged by the petitioners till this date, and why it is for the first time that the said award is being challenged by way of the present petition. Though the petitioners have come out with the case that the possession of the land in question was not taken by the respondents from them, it appears from the averments made in the petition itself and from the documents on record that the petitioners were not in possession of the land in question, and the same was in possession of the society, namely, Shankar Bhawan Grah Nirman Sahakari Samiti. Admittedly, the land was acquired for the development of Prithviraj Nagar Scheme, and the said acquisition proceedings were being monitored by the High Court, and the respondent JDA was also proceedings further with the allotment of plots pursuant to the order passed by the High Court. It appears that the petitioners had filed some reference proceedings against the JDA in the JDA Appellate Tribunal, but the said reference proceedings were dismissed for default by the said Tribunal, as transpiring from the reply of the JDA filed in the suit of the petitioners (Annexure-1).

6. The petitioners having failed to establish any legal right over the land in question and to show any infringement of such right, the present petition as such does not find any merit and deserves to be dismissed, more particularly, when it is filed through the power of attorney holder. Under the circumstances, the provisions of Section 24 of the Act of 2013 also would not be attracted. There is no document whatsoever produced by the petitioners to show that their interest in the land in question had continued after the passing of the award.

7. In that view of the matter, the petition being devoid of merits is dismissed. By this order, the stay application and other pending application, if any also stand dismissed.