

(2014) 10 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Misc. Application No. 3989 of 2014 in Civil Writ Petition No. 3441 of 2014

Ram Narain Dhabhai and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24 24(2) 24(2)

Citation : (2015) 3 CDR 1141

Hon'ble Judges : Banwari Lal Sharma, J

Bench : Single Bench

Advocate : P.P. Choudhary, Sr. Advocate assisted by Ankur Mathur and Sanjeet Purohit and M.S. Singhvi, Sr. Advocate Assisted by Vikas Balia, Advocate for the Appellant; P.R. Singh, AAG, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Banwari Lal Sharma, J.

1. The matter came up on the application filed by the applicant-Aishwarya College Education Sansthan under Article 226 of the Constitution of India read with order 1 Rule 10 CPC for its impleadment as party respondent. The brief facts of the case are that writ petitioners Ram Narain Dhabhai and Chain Shankar Dhabhai filed the writ petition on 07.10.2014 under Sec. (Art.) 226 of the Constitution of India against the respondent No. 1. The State of Rajasthan, 2. The Urban Improvement Trust, Udaipur, 3. The Special Officer-Land Acquisition Officer UIT, Udaipur and 4. The District Collector, Udaipur and prayed for following relief:--

"(1) The land acquisition proceedings with regard to the land in question initiated in the year 1990 may kindly be declare to have been lapsed by virtue of Section

24 (2) of the LA Act of 2013;

(2) The petitioners may kindly be declared to be true and absolute owner of the land in question by virtue of the fact that the land acquisition proceeding already been lapsed;

(3) The respondent UIT, Udaipur may kindly be restrained from disturbing the physical possession of the petitioners from the land in question;

(4) Any other relief which this Hon"ble Court deems just and proper in favour of the petitioners, may kindly be granted and

(5) The cost of the writ petition be allowed in favour of the petitioners."

2. The applicant Aishwariya Education Sansthan filed an application under Art. 226 of the Constitution of India read with Order 1, Rule 10 Civil Procedure Code, 1908 stating therein that the applicant has been allotted 20,000 sq. meters land out of Khasara No. 4298, 4299 to 4303, 4342 to 4358 and 4383 of village Bhuwana, Tehsil Girwa, District Udaipur which is also subject matter of the present writ petition. Thus, in the present petition, if any order is made in favour of the petitioner, the same will adversely affect the rights of the applicants and the applicant is necessary party to this writ petition. Lastly prayed that this application may be allowed and applicant may be impleaded as party respondent in the writ petition.

3. In reply filed by the writ petitioners it was stated that writ petitioners preferred the writ petition praying for a declaration to be made under Sec. 24 of the Land Acquisition Act of 2013 for declaring land acquisition proceedings to be lapsed on the ground that in case of the petitioners, neither the physical possession over the land in question was taken nor the amount of compensation has been paid to the petitioners till date. It was further averred in reply that both the pre-conditions of Sec. 24 of the LA Act of 2013 were satisfied, therefore, declaration was prayed for getting the land acquisition proceedings lapsed under the said provision. It was also averred that controversy involved in the writ petition can very well be decided in presence of the petitioners as well as respondents parties itself and no other third party is necessary or proper party to the litigations. Lastly it was prayed that the application filed by the applicant may be dismissed.

4. Heard learned counsel for the parties and perused the material available on record.

5. Mr. M.S. Singhvi, learned Sr. Advocate, appearing on behalf of the applicant, has submitted that the entire edifice of the writ petition is based on the notice dated 10.02.2014 issued by the Tehsildar, UIT, Udaipur whereby, the petitioners were asked to remove illegal encroachment made over the land allotted to the applicant way back in the year 2008. He further submitted that the petitioners have made out a case that the possession of the land is lying with them. While the notice itself says that the land in question had been allotted to the applicant

and in pursuant to allotment the applicant had deposited requisite amount to the UIT, Udaipur. The petitioners challenged the allotment made in favour of the applicant through writ petitions (writ petitions bearing, Nos. S.B. Civil Writ Petition No. 7734/2010 and S.B. Civil Writ Petition No. 1049/2012) and the said writ petitions came to be dismissed by this Court vide its judgment and order dated 06.08.2013. Pursuant thereof, the licenses have also been issued and possession of the land in question have also been handed over to the applicant. Thereafter the petitioners challenged the judgment and order Dt. 06.08.2013 by filing appeals before the Division Bench of this Court which were registered as D.B. Civil Special Appeal (Writ) No. 671/2013 and 1114/2013. On 03.10.2013, the appeal No. 671/2013 came up for consideration before the Division Bench of this Court and after hearing the arguments, the interim application of the petitioners was rejected while observing that the possession of land in question has already been handed over to the applicant. He further submitted that after rejection of interim application the petitioners filed various applications including second stay application for recalling the order Dt. 03.10.2013 and the applicant filed reply thereof and the matter is being adjourned due to non-pursuance of the applicant and the application for recalling the order Dt. 03.10.2013 is still pending. Meanwhile, writ petitioners without impleading the applicant as party respondent and without disclosing the fact of allotment of land in question made in favour of the applicant and rejection of interim application by the Division Bench have filed the present writ petition. Therefore, the applicant is necessary and proper party to the writ petition so the application may be allowed and the applicant may be ordered to be impleaded as party respondent in the writ petition.

6. The learned counsel for the applicant has placed reliance on the judgments delivered in the case of Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others, , Surinder Singh Vs. Central Government and Others, and Bhaskar Laxman Jadhav and Others Vs. Karamveer Kakasaheb Wagh Education Society and Others, .

7. Per contra, Mr. P.P. Choudhary, learned Sr. Advocate, appearing on behalf of the petitioners non-applicants, submitted that the award was passed against a dead person and only paper possession was taken and that too by the Tehsildar whereas only Collector can take possession. It was also submitted that the petitioners have constructed a room and boundary wall over the land in question and the present writ petition has been filed seeking declaration under Sec. 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013) that the land acquisition proceedings stood lapsed and thus submitted that the controversy involved is in between the petitioners and the respondent authorities and the applicant or any other party is neither necessary nor proper. It was, therefore, prayed that the application filed on behalf of the applicant may be dismissed. He has placed reliance upon the judgment of the Hon"ble Supreme Court in Pune Municipal Corporation & Anr. v. Harakchand Misrimal Solanki &

Ors., Civil Appeal No. 877 of 2014, decided on 24.01.2014 and Vidhya Sagar v. State of Rajasthan & Ors., S.B. Civil Writ Petition No. 6686/2005, decided on 19.05.2014.

8. I have considered the submissions made by the learned counsels for the parties.

9. So far the questions relating to legality of allotment to the applicant, deposition of award amount and physical possession over the land in question etc. are concerned, they go to the merits of the case and at this stage, the same cannot be considered while considering the application for impleadment as party respondent. At this stage, the Court can only consider as to whether the writ petition can be decided without impleading the applicant or not and whether the applicant is a proper or necessary party in the writ petition or not.

10. In the present case, the petitioners through writ petition prayed for declaration by virtue of Sec. 24 of the LA Act of 2013 for declaring the entire land acquisition proceedings initiated in the year 1990, with regard to land in question belonging to the petitioner as lapsed and direction have also been sought that the petitioner may be declared true and absolute owner and also to restrain the respondent UIT, Udaipur not to disturb the physical possession of the petitioner for land in question. While "applicant has been allotted 20,000 sq. meters land which is subject matter of the present writ petition.

11. In D.B. Civil Special Appeal (Writ) No. 671/2013 Ram Narain Dhabliai & Anr. v. State of Raj. & Anr. The application of the writ petitioners was rejected and it was observed that:

"Whereas the learned counsel for the appellants contend that they (appellants) are in possession, Mr. M.S. Singhvi, learned counsel for the respondent No. -4 (Aishwariya College of Education), has produced a copy of the report dated 08.08.2013 prepared by the authorities of the U.I.T. to the effect that the possession of the land in question had been, pursuant to the judgment and order impugned in the instant appeal, delivered to the respondent No. 4.

After hearing learned counsel for the parties and on balancing equities, we are of the view having regard to over all facts and circumstances of the case, more particularly to the report dated 08.08.2013 that no interim relief, at this stage as prayed for, is called for. Hence prayer for interim relief is rejected."

12. In D.B. Civil Special Appeal (Writ) 1114/2013 Chain Shankar & Anr. v. State of Raj., & Anr., the Division Bench of this Court has passed the following order:

"We may, considering the facts and circumstances of the case, make it clear that there is no interim order in the present appeal and that it will be open to the respondent No. 4 (Aishwariya College of Education) to continue to develop the land and also take necessary approvals for recognition subject to result of these proceedings. We also make it clear that the matter will not be adjourned on the next date and if no one appears, without any substantial cause, the Court may

dismiss the appeals."

13. Section 24(2) of the Land Acquisition Act of 2013 reads as under:

"Section 24(2) "Notwithstanding anything contained in sub-section (1) in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the 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 compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it is so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act."

14. From bare perusal of the language of above section three things are considerable.

"1. Award under Section 11 of Land Acquisition Act 1894 has been made five years or more prior to the commencement of the Act of 2013.

2. Physical possession of the land has been taken or not.

3. Compensation has been paid or not."

15. Here, in the case in hand, as per applicant, the land in question was allotted to the applicant Aaishwarya College vide order Dt. 18.08.2008 and in lieu thereof it has taken the possession and has developed the land. Moreso, the allotment to the applicant - Aaishwarya College was challenged by way of filing writ petition but the same was dismissed and the said judgment of the learned Single Judge was also challenged by filing Special Appeal and the Division Bench of this Court did not grant any stay order. However, vide order Dt. 07.08.2014, the Division Bench made it clear that there was no interim order and that it will be open to the applicant to continue to develop the land and also take necessary approval for recognition subject to result of those proceedings.

16. The writ petitioners claim their possession on the land in question while the applicant claims his possession and in previous litigations initiated by the writ petitioners the applicant is party which shows that the writ petitioners are aware regarding the allotment of the land in question in favour of the applicant.

17. Thus, if any relief is granted in the present writ petition in favour of the writ petitioners, will surely affect the rights of the applicant..

18. If the person whose presence before the Court is necessary in order to enable the Court to adjudicate and settle all the questions involved in the matter effectively and completely, should be impleaded as party. Avoidance of multiplicity of the proceedings is also one of the objects of impleading the party. Impleadment can be ordered by the Court when it finds that in absence of the applicant seeking impleadment as party to the writ, the controversy raised in the writ can not be settled effectively and completely. It is true that the acquisition proceedings were initiated under the old Land Acquisition Act, 1894 through the

Notification Dt. 21.02.1990 and the award was passed on 06.04.1996 and as per "Kabja Prapti Patra", the possession was taken on 15.06.2001. Thereafter 20,000 sq. meters of land was allotted to applicant which is also subject matter of the writ petition. On this 20,000 sq. meters of land, applicant claims his possession while the writ petitioners claim their possession and this issue can be decided only after hearing the applicant in writ petition.

19. In Surinder Singh's case (supra), the Hon'ble Supreme Court has held that subsequent purchaser in sale held during pendency of petition had sufficient interest in the proceedings and thus had right to be afforded an opportunity of hearing.

20. In the case of Thomson Press (India) Ltd. (supra), the Hon'ble Supreme Court held that a transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation.

21. The land was acquired and thereafter award was passed on 06.04.1996 and thereafter the same was deposited in the Court. Thereafter, the land stood in the name of the Government in the revenue record. In the year 2008, 20,000 sq. meters of land was allotted in the name of the applicant Aaishwarya College and a Division Bench of this Court, permitted the applicant Aaishwarya College to continue with the development of the land. Thus, prima facie, the applicant Aaishwarya College has right to be heard in the matter. Thus, in view of the above, I am of the view that the applicant Aaishwarya College is necessary and proper party and, therefore, the application deserves to be allowed,, which is hereby allowed and the applicant -Aaishwarya College is directed to be arrayed as party-respondent No. 5 in the present writ petition and the petitioners are directed to file amended cause title within a period of one week from today.