

(2017) 04 RAJ CK 0187
In the Rajasthan High Court
Case No : 578 of 2015

Ranjit Singh Meena

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

[General Clauses Act, 1897](#), [Section 3](#), [Section 2](#), [Section 24](#), [Section 56](#) -
Rajasthan General Clauses Act, 1955, Section 6, Section 27 -

Citation : (2017) 04 RAJ CK 0187

Hon'ble Judges : M.N. Bhandari

Bench : SINGLE BENCH

Advocate : R.N. Mathur, G.P. Kaushik, Sovit Jhanjharia, Rajendra Prasad, S.P. Singh

Judgement

1. By this writ petition, a declaration is sought for lapse of acquisition of various khasras of Village - Chainpura, Tehsil - Sanganer, Jaipur. It is as per section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Resume of the facts

2. A Notification under section 4 of the Rajasthan Land Acquisition Act, 1953 (for short "the Act of 1953") was published on 21.8.1969 to acquire certain lands of Village - Chainpura, Tehsil - Sanganer, Jaipur. Notification under section 6 of the Act of 1953 was then issued on 22.4.1973 though, according to the petitioner, it was issued on 28.2.1973. The award was passed thereupon on 17.5.1975. The compensation arising out the acquisition of land was deposited with the Civil Judge, Jaipur City, Jaipur. The amount so deposited was not accepted by the khatedars thus, as per direction of the civil court, cheques were issued in the name of khatedars.

3. A writ petition bearing CW 942/1974, Neta v. State, was filed to challenge the acquisition. The said writ petition was decided on 8.5.1975. Another writ petition

bearing CW 743/1975, Tarya v. State & Ors., was filed thereupon and has been decided on 19.3.1978.

4. The petitioner, thereupon, filed another writ petition before the Division Bench of this court. The writ petition bearing CW 3534/2010 was also dismissed by this court vide its judgment dated 13.8.2012. The writ petition before the Division Bench was to seek regularisation of land alleging that even after passing of the award, possession thereof was not taken thus petitioners are entitled to get regularisation of land and prayer was also made for proceedings under section 90B of the Rajasthan Land Revenue Act, 1956. The writ petition was dismissed thereby prayer of regularisation of the land in favour of the petitioners was not accepted.

5. This writ petition has been filed to seek lapse of the acquisition proceedings in reference to section 24 of the Act of 2013. It is on the pretext that possession of the land remains with the petitioner even after passing of the award thus by virtue of section 24(2) of the Act of 2013, acquisition of land lapsed thus necessary declaration may be made. Legal issues raised by the petitioner

6. Learned counsel submitted that even after acquisition of land, physical possession thereof was not taken from the petitioner thus by virtue of section 24(2) of the Act of 2013, acquisition has been lapsed and, accordingly, a declaration be made.

7. It is stated that even if acquisition of land was under the Act of 1953, proceedings are to be treated under the Land Acquisition Act 1894 (for short "the Act of 1894") in reference to the Land Acquisition (Rajasthan Amendment) Act, 1987 (for short "the Act of 1987"). By the Act of 1987, Central Act was made applicable in the State of Rajasthan and the acquisition of land under the Act of 1953 has been saved and to be treated under the Act of 1894. By virtue of it, sub-section (2) of section 24 of the Act of 2013 would apply.

8. A further reference of section 6 and 27 of the Rajasthan General Clauses Act, 1955 (for short "The Act of 1955") has been given. It is to demonstrate that with the deemed repeal of earlier legislation, saving is made by treating the proceedings under the Act of 1894.

9. A reference of the judgment of the Apex Court in the case of "State of Kerala & Ors. v. Mar Appraem Kuri Company Limited & anr.", (2012) 7 SCC 106 has been given. The judgment aforesaid is in reference to section 6 of the General Clause Act, 1897.

10. A further reference of the judgment in the case of "Chief Inspector of Mines and anr. v. Karam Chand Thaper", AIR 1961 SC 838 has been given. The judgment therein was in reference to section 24 of the General Clauses Act, 1897.

11. In the light of the aforesaid submissions, prayer is made to declare the acquisition of land as lapsed in view of section 24 of the Act of 2013. Arguments of the side opposite

12. Mr Rajendra Prasad, Additional Advocate General, submitted that acquisition of land was challenged unsuccessfully earlier also and, recently, before the Division Bench by maintaining CW 3534/2010. The writ petition was dismissed vide judgment dated 13.8.2012. The petitioner is now seeking lapse of acquisition of land in reference to section 24 of the Act of 2013. The declaration aforesaid is sought without disclosing relevant facts. It would come out from perusal of the writ petition where reference of the acquisition of land has been given without narrating as to under which Act it took place. The silence on the issue is deliberate and shows conduct of the petitioner because lapse of land acquisition under section 24 of the Act of 2013 can be if the proceedings were earlier initiated under the Act of 1894 followed by an award under section 11 of the said Act. In the instant case, acquisition was not under the Act of 1894 but it was under the Act of 1953. The petitioner has not even enclosed any of the Notifications issued under the Act of 1953 followed by an award. It is to hide the facts aforesaid.

13. An additional affidavit was subsequently filed to cover his case under section 6 and 27 of the Act of 1955 but conduct of the petitioner is such which does not entitle him to get relief.

14. It is further stated that proceedings for acquisition of land was initiated and completed under the Act of 1953, that too, much prior to the amending Act of 1987. The award in the case was passed on 17.5.1975 i.e. almost 12 years prior to the amending Act of 1987 which was brought to give effect the Land Acquisition Act, 1894 in the State of Rajasthan.

15. The petitioner has advanced an argument to treat acquisition of land under the Act of 1894 in reference to the saving clause of the Act of 1987 and the Act of 1955. It is in ignorance of the fact that as and when repeal of the Act is made with new enactment or deemed repeal, the acts, order or decision under the repeal Act are saved. The saving of those acts, orders or decision etc does not mean that it is always taken under the new Act or deemed repeal. Section 6 of the Act of 1955 is to save any actions, decisions or orders passed under the repealed enactment.

16. Learned Additional Advocate General further submitted that acquisition proceedings in the case in hand came to an end in the year 1975 itself when the award was passed. The land vested in the then Urban Improvement Trust, Jaipur (UIT, Jaipur), now, the Jaipur Development Authority, Jaipur (JDA, Jaipur). It has been recorded in the name of the UIT, Jaipur on passing of the award. If the possession of petitioner exist, it remains to be trespass though possession of the land does not lie with the petitioner.

17. A reference of the judgment of the Supreme Court in the case of "Pratap & anr. v. State of Rajasthan & ors.", (1996) 3 SCC 1 has been given. In the said case, same situation was considered by the Apex Court with the finding that once land vest in the government free from all encumbrances then subsequent

Validating Act to bring into effect the Act of 1894 would not apply to the acquisition under Rajasthan Urban Improvement Act, 1959 (for short "the Act of 1959"). The acquisition therein was under the Act of 1959 and as per section 52(1), the land vest in the government on issuance of the Notification. In the said case also, acquisition proceedings were initiated and completed before making Act of 1894 applicable in the State of Rajasthan. Therein, amendment in the Act of 1959 was made initially in the year 1987 but without assent of the President thus it was again brought in the year 1990. Section 60A of the Act of 1959 was amended by the Rajasthan Urban Improvement (Amendment and Validation) Act, 1990. The acquisition was challenged in reference to section 11A. The Apex Court held that section 11A or the Validation Act of 1990 would not apply once the land vest in the government. In the light of the judgment aforesaid, the prayer made by the petitioner may not be accepted. The acquisition proceedings cannot be treated to be under the Act of 1894 for application of section 24 of the Act of 2013 once acquisition was completed much prior to the Act of 1987 so as to bring the Act of 1894 in effect. The prayer is accordingly made to dismiss the writ petition.

18. I have considered rival submissions of the parties and perused the record. Finding of the Court on the issues raised by the petitioner

19. the lapse of acquisition of land is sought in reference to section 24 of the Act of 2013. The facts relevant to the case have already been given in the resume of facts.

20. This court is first considering the argument of learned counsel for respondents about conduct of the petitioner. The perusal of pleading of the writ petition does not show disclosure of acquisition of land under the Act of 1953. The petitioner has not enclosed any of the Notifications issued under the Act of 1953 or even the award. The fact aforesaid is material for the reason that section 24 of the Act of 2013 is applicable if the proceedings for acquisition was initiated under the Act of 1894 and sub-section (2) of section 24 of the Act of 2013 would apply if award has been passed under section 11 of the Act of 1894. The conduct of the petitioner is thus writ large. The subsequent additional affidavit cannot condone the aforesaid.

21. In any case, this court is not dismissing this writ petition on the aforesaid ground but the facts aforesaid are relevant, thus discussed.

22. The prayer of the petitioner is flowing from section 24 of the Act of 2013 thus it would be gainful to reproduce the provision aforesaid - "Section 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,-

(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 subsection (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the 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 this 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.

23. Section 24 of the Act of 2013 applies if the proceedings for acquisition of land were initiated under the Act of 1894. The lapse of acquisition under sub-section (2) would be if award was passed under section 11 five years prior to commencement of the Act of 2013 and physical possession has not been taken or compensation has not been paid. They are relevant if the acquisition is under the Act of 1894.

24. In the instant case, acquisition proceedings were initiated under the Act of 1953 and even the award was passed under the said Act itself. The Central Legislation of 1894 was existing but in absence of the Notification to apply it in the State of Rajasthan, the Act of 1953 was governing acquisition till the year 1984. The State of Rajasthan brought the Land Acquisition (Rajasthan Amendment) Act, 1987 to insert section 56 to make the Act of 1894 applicable in the State.

25. The Act of 1894 became applicable in the State of Rajasthan since 24.9.1984 as is coming out from section 56 inserted in the Act of 1894. The acquisition in hand was completed in the year 1975 itself i.e. much prior to coming into effect the Act of 1987. Section 2 and 56 of the Act of 1987 apart from section 3 pertaining to repeal and saving are reproduced hereunder for ready reference -

"2. Insertion of new section 56 in the Land Acquisition Act, 1894 - After section 55 of the Land Acquisition Act, 1894 (Central Act 1 of 1894), herein after referred to as the principal Act, the following shall be added, namely :-

"56. Provisions consequential to the extension of this Act to the State of Rajasthan.- (1) Consequent on this Act having been extended to the State of Rajasthan on the 24th day of September 1984, herein after referred to as the date of extension, the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of

1953), hereinafter referred to as the State Act, shall be deemed to have been repealed on the date of extension.

(2) Where in any proceeding under the State Act pending on the date of extension, the State Government, the Collector or the Court has, on or after the said date and before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987, done anything, taken, any action or made any order which is at variance with that as is provided in this Act, such thing action or order shall, subject to the other provisions of this section be deemed to have been done, taken or made under and in accordance with the provisions of this Act and such proceeding shall not be re-opened or reviewed or liable to be challenged on the ground of not being in accordance with the provisions of this Act.

(3) All things done, actions taken or order made in regard to acquisition of any land for the Union on or after the date of extension and before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987 shall be deemed to have been done, taken or made under the direction of the Union.

(4) Where any proceeding pending under the State Act on the date of extension or instituted after the said date, a declaration under section 6 or an award under section 11 has been made after any of the respective periods as specified in section 6 or section 11-A, as the case may be, has expired, the said period or the periods, as the case may be, shall be deemed to have been extended upto the date of such declaration or award. In a proceeding pending on the date of commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987, such period or periods shall be deemed to have been extended upto, and the declaration or the award, as the case may be shall be made within, one year and two year respectively after such commencement.

(5) When the Collector has before taking possession of any land on or after the date of extension and before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987 not tendered and paid eighty per centum of the compensation in accordance with sub-section (3-A) of section 17, such possession shall not be liable to be challenged on that ground in any Court. The Collector shall in such a case tender and pay that amount within three months after such commencement.

(6) Any person convicted and punished under the State Act before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987 shall not be liable to enhanced punishment as provided in section 46.

(7) Notwithstanding anything otherwise contained in clause first of sub-section (1) of section 23, in determining the amount of compensation to be awarded in a proceeding pending on the date of extension, the market value of the land at the date of the publication of the order under section 4 of the State Act shall be taken into consideration.

(8) In a proceeding where the amount of compensation has been determined before the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987, whether by the Collector or by the Court, the amounts in addition to the market value of the land as specified in sub-section (1-A) and sub-section (2) of section 23 shall be further paid after adjustment of any sum paid earlier under the said sub-sections, by the Collector to the persons to whom compensation was payable or paid. These amounts shall be payable in every proceeding and in regard to every award as specified in sub-sections (1) and (2) of section 30 of the Land Acquisition (amendment) Act, 1984 (68 of 1984).

(9) Where, in the cases as specified in sub-sections (2) and (3) of section 30 of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) interest is payable or has been paid under section 28 or section 34, the amount of such interest shall be redetermined and paid after adjustment of any sum paid *** under the said sections by the Collector at the respective rates specified in and in accordance with the provisions of the said sections as amended by the said Act.

(10) In a matter where award has been made after the date of extension and section 28-A is applicable, an application under the said section, if not made earlier, may be made within three months from the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987.

(11) Notwithstanding the coming into force of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the first proviso to sub-section (1) of section 11 shall become applicable in the State of Rajasthan on the commencement of the Land Acquisition (Rajasthan Amendment) Act, 1987.

3. Repeal and Savings. (1) The Land Acquisition (Rajasthan Amendment) Ordinance, 1986 (Ordinance No. 3 of 1987) is hereby repealed.

(2) Notwithstanding such repeal all things done, action taken or orders made under the principal Act as amended by the said Ordinance shall be deemed to have been done, taken or made under the principal Act as amended by this Act."

26. The provisions quoted above show that the Act of 1894 was made applicable in the State of Rajasthan since 24.9.1984. Section 56(2) envisaged saving of the order or any action taken prior to the Act of 1987 which is at variance with the Act of 1894. In that case, it is deemed to have been done or action is taken under and in accordance to the Act. The prayer to treat acquisition of land under the Act of 1894 has been made without realising that as per the Act of 1987, previous action or decisions etc. are saved and deemed to be under the Act of 1894 if they are at variance to the Act and not otherwise.

27. In the present case, the award was passed in the year 1975 and the land vested in the UIT, Jaipur free from all encumbrances. The acquisition is not shown to be at variance to the Act of 1894. The act of 1987 would not apply on those cases where land has already vested in the UIT prior to the Act of 1987 which has been made applicable since 24.9.1984 and not prior to it. It is even in

view of the judgment of the Apex Court in the case of Pratap (supra). Reference of paras 11, 12 and 13 of the judgment of the Apex Court in the case of Pratap are quoted hereunder - "11. From the facts narrated herein above it is clear that the Central Act was extended to the State of Rajasthan only after the land in question had vested in the State Government with the publication of the notification under Section 52(1) on 10th October, 1984. Once the vesting of the land in the State Government, free from all encumbrances, was completed, the subsequent extension of the Land Acquisition Act, 1894 to the State of Rajasthan and the amendments made by the Amending Acts to the Rajasthan Urban Improvement Trust Act becomes wholly irrelevant and of no consequence. Neither the amendments nor the extension of the Central Act can have the effect, in law or otherwise, of divesting the State of ownership of the land which had already been vested in it.

12. The provisions of Sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition Act, 1894. Just as publication of a notification under Section 52(1) vests the land in the State, free from all encumbrances, as provided by Section 52(4), similarly when possession of land is taken under Section 17(1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 5-A and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In *Satendra Prasad Jain v. State of U.P.*, AIR 1993 SC 2517, this Court held that once possession had been taken under Section 17(1) and the land vested in the Government then the Government could not withdraw from acquisition under Section 48 and the provisions of Section 11-A were not attracted and, therefore, the acquisition proceedings would not lapse on failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17(3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in *P. Chinnanna v. State of A.P.*, (1994) 5 SCC 486, and *Awadh Bihari Yadav v. State of Bihar*, (1995) 6 SCC 31. In view of the aforesaid ratio it follows that the provisions of Section 11-A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end.

13. It was contended by the learned counsel for the respondents that the State had complied with all the legal requirements in the present case. Our attention was drawn to Section 60-A of the Amending Act and the Validating Act and it was submitted, and in our opinion rightly, that Sub-section (3) of the Amending Act and Sub-section (4) of the Validating Act only required the making of the award and payment of money within the period stipulated therein. The facts narrated herein above show that this was done. In any case non-compliance with the provisions of this sub-section will not in any way affect the vesting of the land which has already taken place with the publication of the notification dated 20th

April, 1984. The provisions of Sub-section (4) of Section 60-A of the Validating Act are analogous to Section 17-A of the Land Acquisition Act and as held in the aforesaid decisions of this Court non-compliance with the said provisions will not in any way amount to the divesting of acquisition which has taken place or the acquisition proceedings having lapsed."

28. The paras quoted above show that even though the Central Act was extended to the State of Rajasthan but if the land vested in the State prior to it then the Validation Act was not applied to treat acquisition under the Act of 1959. The same is the position herein as the land vested in the UIT with passing of the award thus Act of 1987 would be of no consequence and otherwise it made applicable since 24.9.1984. Section 3 of the Act of 1987 save the action taken under the principal Act as amended by the Ordinance of 1986. The aforesaid does not apply to this case because action herein was not under the principal Act.

29. It was also held that even section 11A of the Act of 1894 would not apply if award has not been passed within two years of declaration under section 6 of the Act. The judgment aforesaid was given in reference to the Act of 1959 but the ratio propounded therein applies to the facts of this case.

30. On passing of the award, land vest in JDA with its ownership. It was even recorded in the name of the UIT, Jaipur after the award. In the light of the fact aforesaid and in view of the finding in para 11 of the judgment in the case of Pratap (supra), amending Act would be of no consequence or applicable to the proceedings under the Act of 1953. In the circumstances aforesaid, the Act of 1987 would have no effect or application to the acquisition already completed much prior to it and otherwise saved by section 6 of the General Clauses Act, 1955.

31. In the light of the discussion made above, acquisition of land in the case in hand cannot be treated under the Act of 1894, that too, by deeming clause. If the intention of the Legislature in bringing section 24 of the Act of 2013 would have been to cover all the acquisition and even by deeming fiction, it would have been incorporated in a different manner and not in reference to the Act of 1894 only.

32. Section 24 of the Act of 2013 would not apply to the acquisition initiated and completed under the Act other than the act of 1894. Any enactment and deemed repeal with saving clause are for limited purpose. It can even to avoid repugnancy as was considered by the Apex Court in the case of "State of Kerala & ors. v. Mar Appraem Kuri Company Limited & anr", (2012) 7 SCC 106 (supra). The issue about express and implied repeal was considered in reference to the Central Legislation while the State Act was operating on the same subject matter. The application of section 6 of the General Clauses Act was for the saving of decisions and orders etc. Paras 87, 89 and 90 of the said judgment are reproduced hereunder for ready reference - "87. In T.S. Baliah v. T.S.

Rengachari, 1969 3 SCR 65, the underlying principle of Section 6 of the General Clauses Act, 1897 is explained as under:

5.....The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General Clauses Act therefore will be applicable whenever there is a repeal of an enactment. In such cases consequences laid down in Section 6 will follow, unless, as the Section itself says, a different intention appears in the repealing statute.

(emphasis supplied)

89. In the above circumstances, Section 6 of General Clauses Act, 1897 came for interpretation before this Court. It was held: (Mohar Singh case, AIR p. 88, para 8)

8.....We cannot subscribe to the broad proposition that Section 6 is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases unless the new legislation manifests a contrary intention or incompatibility. Such incompatibility has to be ascertained from a consideration of all relevant provisions of the new law and mere absence of a saving clause by itself is not material.

(emphasis supplied)

90. Applying the tests laid down in the above judgments of this Court, when a State law is repealed expressly or by implication by a Union law, Section 6 of the General Clauses Act 1897 applies as to things done under the State law which are so repealed, so that transactions under the State law before the repeal are saved as also any rights and liabilities arising under the State Act, prior to the enactment of the Central Act. Repeal of an enactment is a matter of substance. It depends on the intention of the Legislature. If by reason of the subsequent enactment, the Legislature intended to abrogate or wipe off the former enactment, wholly or in part, then, it would be a case of pro tanto repeal."

33. The finding recorded therein shows purpose of section 6 of the General Clauses Act. It is to save things done under the repeal law thus argument of learned counsel for petitioner in reference to section 6 and 27 of the General Clauses Act need to be dealt with in the light of the judgment referred to above i.e. to save the things done under the repealed Act and not for any other purpose. Section 56 of the Act of 1894, as amended, is to be read in the manner it has been brought and has been explained earlier in this judgment. It is to save the things done, any action taken or the orders passed which are at variance to the Act of 1894. The things done under the Act of 1953 and are not at variance are not to be considered under section 56 of the Act. The Act of 1987 has been given effect since 24.9.1984 thus the proceedings completed prior to it are otherwise to be governed by the Act of 1953 and are saved by the Act of 1955. The award passed in this case in the year 1975 would be treated to be under the

Act of 1953 and those proceedings having been concluded in the said year itself, section 24 of the Act of 2013 would not apply. It cannot be taken to be a case of initiation of proceedings under the Act of 1894 and even passing of the award under section 11 of the said Act. In view of the above, acquisition proceedings cannot be declared to have lapsed in this case.

34. In view of the discussion made above, I do not find any merit in this writ petition. Hence, it is dismissed. Writ petition dismissed.