(2015) 02 KL CK 0070

In the High Court Of Kerala

Case No : Writ Petition(C) No. 5335 of 2012 (N)

Rasheeda and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 18, 31, 31(2), 55

Citation : (2015) 2 KLJ 14 : (2015) 1 KLT 763

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

Advocate : B. Suresh Kumar, for the Appellant; Gikku Jacob, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—This is a claim for interest on the amount awarded as compensation in land acquisition on the premise that it was in revenue deposit for long and not deposited in court or disbursed.

2. Large tracts of land belonging to the petitioners were acquired and awards passed under Section 11 of the Land Acquisition Act, 1894 [hereinafter referred to as ''the Act'']. A total sum of Rs. . 1,03,34,528/- was due to the petitioners after the statutory deductions in Land Acquisition Case Nos. 25/08-09, 26/08-09 and 27/08-09. Exts. P1 to P3 notices issued by the Special Tahsildar informed the petitioners that the amount has been deposited in the District Treasury, Kollam as revenue deposit. The petitioners did not turn up during the award enquiry and encashed the amount from the Treasury only on 1.7.2011 about which there is no dispute. It is the case of the petitioners that the compensation amount should have been deposited in court and that a revenue deposit is not equivalent to court deposit. The petitioners claim interest on the sum of Rs. . 1,03,34,528/- at 15% per annum from the date of deposit (5.1.2009) till the date of realisation (1.7.2011).

3. The respondents who are the State, the District Collector and the Special Tahsildar emphatically deny their liability to pay interest on the compensation amount deposited. The respondents contend that they were justified in making a revenue deposit in view of Rule 13(2) of the Land Acquisition (Kerala) Rules, 1990 [''the Rules'' for short]. The respondents point out that this is not a case where the petitioners had not consented to receive the compensation amount. It is the case of the respondents that no contingency mentioned in Section 31(2) of the Act had arisen obliging them to deposit the amount in court instead of a revenue deposit.

4. I heard Mr. B. Suresh Kumar, Advocate on behalf of the petitioners and Mr. Gikku Jacob, Government Pleader on behalf of the respondents.

5. Let me see the contingencies under which the compensation amount was required to be deposited in court for which a cursory look at Section 31 of the Act is needed. It is as follows:-

31. Payment of compensation or deposit of the same in Court:- (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(emphasis supplied)

It cannot be said that the petitioners had not consented to receive the compensation amount in the absence of any refusal or protest as regards sufficiency or apportionment. The respondents were obliged to deposit the compensation amount in court only if the petitioners had not consented to receive the same which implied ''refusal''. Other contingencies such as non availability of a person competent to alienate the land or dispute as to the title or to the apportionment also did not exist. Mere delay in pocketing the compensation amount by the petitioners did not entitle them to be placed in a situation where they had ''not consented to receive'' it. None of the contingencies mentioned in Section 31(2) of the Act arose in the case on hand obliging the respondents to deposit the amount in court as contended.

6. There can be no dispute to the proposition in law that revenue deposit does not tantamount to court deposit as has been held in a series of decisions of the Supreme Court cited below:-

i) Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others,

ii) Ivo Agnelo Santimano Fernandes and Others Vs. Government of Goa and Another,

iii) Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others,

Prem Nath Kapur''s case (supra) as well as Ivo Agnelo Sanimano Fernandez''s case (supra) dealt with a dispute as regards apportionment of compensation wherein there was an obligation to deposit the amount in court. Pune Municipal Corporation''s case (supra) dealt with the meaning of the word ''paid'' in the context of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. None of the above decisions can come to the aid of the petitioners when no case for a deposit of the amount of compensation in court had been made out in terms of Section 31(2) of the Act.

7. The third respondent has rejected the claim of the petitioners by Ext. P5 order asserting that a revenue deposit of the compensation amount could be made in terms of Rule 13(2) of the Rules. Rule 13(2) of the Rules is as under:-

13. Notice of award and payment:-

(1) x x x x

(2) In case the awardees or their authorised agents fail to appear and accept the award or fail to apply for a reference to Court under Section 18, the amount due shall be paid into the treasury as Revenue Deposit payable to the persons to whom it is respectively due and vouched for in Form E. A notice intimating the deposit of the amount into the Treasury shall also be served on all the awardees and interested persons in Form No. 11."

The procedure enumerated under Rule 13(2) of the Rules has precisely been followed by the respondents in putting the amount of compensation in the District Treasury, Kollam as revenue deposit. The petitioners alert this Court by contending that the State Government can make rules only consistent with the Act as clarified under Section 55 thereof. The petitioners have sought to quash Rule 13(2) of the Rules on the ground that it is ultra vires the provisions of the Act and militates against Section 31(2) of the Act. But it is always a matter of prudence not to test the vires of the Rules if it is unnecessary for the disposal of the case and I hence refrain from doing so.

The Writ Petition is dismissed. No costs.