
(2015) 03 JH CK 0062

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1577 of 2014

Ravi Shankar Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(1), 24(2)

Citation : (2015) 3 AJR 424

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Dilip Kr. Prasad and Jitesh Kumar, for the Appellant; Atanu Banerjee, G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking a declaration that the land acquisition proceeding initiated in L.A. Case No. 12 of 2005 and L.A. Case No. 13 of 2005 under Section 17 of the Land Acquisition Act, 1894 deemed to have lapsed under Section 24(2) of Right to Fair Compensation and Transparency under Land Acquisition, Rehabilitation and Resettlement Act, 2013, the present writ petition has been filed.

2. The brief facts of the case are that, the petitioner is the owner of homestead land and tree standing thereon in village Dundua and Raham. For construction of North Karanpura Super Thermal Power Project, vide Gazette Notification dated 31.05.2006, 28.02.2006 and 01.08.2006 about 2,300 acres of land in six villages in Chatra District was sought to be acquired under Section 17 of 1894 Act and accordingly, L.A. Case No. 12 of 2005 and L.A. Case No. 13 of 2004 were initiated. The petitioner was paid an amount of Rs. 30,629/- for 0.04 decimals of land and 11,76,468/- for residence on 27.12.2007. Additionally, the petitioner received award of Rs. 95,484/- for two bore-wells. The petitioner received

compensation for raiyati land and for standing tree for village Raham also on 14.11.2007. The Respondent No. 5-North Karanpura Super Thermal Power Project has paid an amount of Rs. 2,00,000/- in lump-sum as extra package. It is stated that the petitioner after receiving the award amount is in continuous possession of his land and the respondent-State has not taken actual physical possession, till date. It is stated that a meeting for resolving the dispute raised by Village Development Advisory Committee was held on 27.11.2013. It is alleged that the Resolution dated 27.11.2013 and 04.12.2013 were passed in connivance with some villagers and the respondents are forcing the villagers to execute agreement for avoiding the provisions of 2013 Act.

3. Heard the learned counsel for the parties.

4. Mr. Dilip Kumar Prasad, the learned counsel for the petitioner submits that the petitioner admits that the land in question was acquired by the respondent-State for construction of North Karanpura Super Thermal Power Project and the petitioner received compensation for his property however, the petitioner has remained in continuous possession of the land and his residence and therefore, in view of Section 24(2) of the 2013 Act, the acquisition of the petitioner's land has lapsed. In support of the above contention the learned counsel relies on decisions of the Hon'ble Supreme Court in "Velaxan Kumar v. Union of India and others", reported in 2015 AIR SCW 52ENDLAWFINDER and Union of India (UOI) and Others Vs. Shiv Raj and Others, and decision in Devendra Prasad Nayak Vs. State of Bihar and Others--> and further submits that the benefit intended to be extended to land holders as contained under Section 24(2) of the 2013 Act must be given to the petitioner.

5. As against the above, disputing the stand of the petitioner that he is in possession of the acquired land, Mr. Atanu Banerjee, the learned G.A. submits that the petitioner having received the compensation without any objection cannot turn around and contend that the acquisition has lapsed. Referring to certificate of possession, a copy of which is annexed as Annexure-C to the counter-affidavit filed on behalf of the respondent No. 5, Mr. Prashant Pallav, the learned counsel submits that the possession of the entire 2300 acres of land has been taken on various dates and handed over to the respondent No. 5 by the District Land Acquisition Officer.

6. Before considering the rival submissions, decision of the Hon'ble Supreme Court in "M/s. Competent Automobiles Co. Ltd. v. Union of India and others" in Civil Appeal No. 5054 of 2008, has to be kept in mind. The Hon'ble Supreme Court has held thus,

2. "Each and every deeming operation under Section 24(2) requires unambiguously and unvaryingly that a factual conclusion be drawn about the passing of the Award under Section 11, of the 1894 Act, on or before 01.01.2009; further, the absence of compensation having been paid or the absence of possession having been taken by the acquirer, either of these, must

be a proven point of fact, as a threshold requirement attracting the lapse." 7. In the counter-affidavit of the respondent No. 5, it is stated that for construction of pillars around the acquired land, after floating tender, the work has been awarded to M/s. A.C.M.E. The physical possession of land was delivered to respondent No. 5 between 01.04.2008 and 13.06.2009. After receiving compensation certain demands were raised by the displaced raiyats for their rehabilitation and in this connection meetings were held and rehabilitation package was finalised. It was agreed that the amount of Rs. 36,000/- per acre per year would be paid for the next 30 years with enhancement of Rs. 1000/- in every two years. Several other benefits have also been extended to the displaced raiyats. The learned counsel for the petitioner contends that the Resolution dated 27.11.2013 and 04.12.2013 was an eye wash and in fact, the displaced persons were forced to sign the agreement. The learned counsel for the respondents have vehemently disputed the claim of the petitioner and submits that more than 70% affected persons have already received the monetary benefits fixed under the Rehabilitation Policy. The learned counsel for the petitioner has referred to decision in "Union of India and Ors. v. Shiv Raj and Ors" (supra) case, wherein the Supreme Court has observed as under:

23. "...11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under the 2013 Act." 8. In so far as, the payment of compensation is concerned, the petitioner has admitted the same, however, disputing the stand of the respondents that possession has been taken, the learned counsel for the petitioner refers to decision in "Velaxan Kumar v. Union of India" and submits that, even if it is accepted that the possession was taken by the respondents, due procedure was not followed as Panchnama in presence of independent witnesses and land holders was not prepared by the respondents and thus, the respondents cannot contend that they have taken possession of the land in question.

9. From the materials brought on record, I find that though, the petitioner has taken a stand that he is in possession of the land in question and to substantiate his claim he has produced photographs taken on 23.02.2014, copies of which

have been filed as Annexure-6 series to the writ petition, a bare look at those photographs would only disclose vast track of barren land but without any habitation. The photographs produced by the petitioner disclose uncultivable land and there is no trace of the house of the petitioner which was acquired. The petitioner has claimed that his residential property has also been acquired however, the petitioner has not produced a single evidence indicating his possession over his house nor the photographs of his own house has been produced by the petitioner. Though, the petitioner has sought adjournment and he has filed supplementary affidavit dated 23.09.2014 and two rejoinder affidavits however, he has failed to produce any evidence indicating his possession over the land in question. The respondents have taken a specific stand that possession of the land in question has been taken, to which the petitioner has filed rejoinder affidavits, simply denying the stand of the respondents. In these facts the petitioner cannot be permitted to bring additional evidence on record. The petitioner is conscious of his legal rights, is apparent from the fact that barely two months after the new Act came into force, the petitioner filed the present writ petition. The pleading in the writ petition must be supported by evidence. The Writ Court cannot embark upon a roving enquiry.

10. In "Velaxan Kumar v. Union of India", the applicant asserted that he was in physical possession by making construction of one room and boundary wall prior to issuance of Notifications for acquisition and the same was build up by the time when he moved the High Court for declaration under Section 24(2) of the 2013 Act. The Hon"ble Supreme Court noticed that the photographs produced along with affidavits clearly disclosed the physical possession of the applicant over the acquired land. In the above factual background, noticing that due process was not followed by the Acquisition Authority by preparing proper Panchnama in presence of independent witnesses and land holders, the Hon"ble Supreme Court held that in view of Section 24(2) Act of 2013 the acquisition proceeding with respect to land of the applicant, lapsed. On the contrary in the present case, the petitioner has failed to produce any evidence conclusively establishing his physical possession over the land in question. The certificates of possession in Form-17 were issued by the District Land Acquisition Officer, Chatra on different dates. I have no reason to disbelieve the same. On the admitted facts, the indispensable quarries which the Hon"ble Supreme Court indicated in "M/s. Competent Automobiles Company Limited" case are not answered unambiguously and therefore, a declaration of lapse of acquisition under Section 24(2) of the Act of 2013 cannot be made.

11. In the result, the writ petition is dismissed.