

(2015) 08 GAU CK 0040

In the Gauhati High Court

Case No : WP (C) Nos. 2673, 2266 and 2269 of 2014

RNT Plantations Ltd. and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 12(2)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1)(a)

Citation : (2015) 4 GLT 190

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : S.K. Kejriwal and U.K. Nair, for the Appellant; Sheikh Noor Mohammad, G.A., for the Respondent

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J.—Heard Mr. S.K. Kejriwal, learned counsel appearing for the petitioner in W.P.(C) No. 2673/2014 and W.P.(C) No. 2269/2014 and Mr. U.K. Nair, learned counsel appearing for the petitioners in W.P.(C) No. 2266/2014. I have also heard Mr. Sheikh Noor Mohammad, learned State Counsel appearing for the respondents. These three writ petitions raise common questions of law based on more or less similar facts, and therefore, they are heard together and disposed of by this common judgment and order. In fact, all the writ petitions had been clubbed together for hearing in the cause-list.

2. The question that has arisen for consideration is as follows: If an award under the provisions of the Land Acquisition Act, 1894, for short, the Act of 1894, had not been passed prior to the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for short, the Act of 2013, whether the award has to be passed on the basis of the principles laid down under the Act of 1894 or under the Act of 2013?

3. In all the three writ petitions, the State respondents had filed affidavits.

4. Shorn of unnecessary details, it will be appropriate to briefly indicate the relevant facts bearing in mind the question begging an answer from this Court.

5. In W.P.(C) No. 2673/2014, in respect of P.L.A. Case No. 7/2006, award was made by the Deputy Commissioner, Sivasagar under Section 11 of the Act of 1894 on 5.2.2014 as demonstrated by Annexure - D, which is a form of notice under Section 12(2) of the Act of 1894 which mandates the Collector to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

6. In paragraphs 16 and 18 of the affidavit filed in W.P.(C) No. 2673/2014, it is stated that Land Acquisition Estimate was approved on 30.12.2013.

7. In W.P.(C) No. 2266/2014, arising out of L.A. Case No. 1/2008, estimate of the probable cost of acquiring land was prepared on 16.07.2013 and the same was returned back to the Deputy Commissioner, Tinsukia by a letter dated 20.11.2013, issued by the Deputy Secretary to the Government of Assam, Revenue and D.M. (LR) Department requesting to furnish revised land acquisition estimate. Revised land acquisition estimate was submitted on 20.12.2013 to the Additional Chief Secretary to the Government of Assam, Revenue and D.M. Department through the Managing Director, Assam Industrial Development Corporation Limited. The Assam Industrial Development Corporation Limited, in its turn, submitted the final award statement to the Additional Chief Secretary to the Government of Assam, Revenue and D.M. (LR) Department on 31.12.2013 for approval and sanction. Annexure -10 of the writ petition shows that approved copies of the land acquisition estimate was forwarded to the Deputy Commissioner, Tinsukia on 06.01.2014 for taking necessary action from his end.

8. The facts in W.P.(C) No. 2269/2014 are same with that of W.P.(C) No. 2266/2014.

9. It is to be noted at this stage that writ petitioner in W.P.(C) No. 2269/2014 is area estate, namely, Gillapukri Tea Company Limited and the writ petitioners in W.P.(C) No. 2266/2014 are labourers/occupiers of land belonging to the tea estate.

10. The learned counsel for the petitioners have submitted that the Act of 2013 had received the assent of the President on 26.09.2013. The same was published in the Gazette of India (Extra-Ordinary) on 27.09.2013 and the Act of 2013 came into effect on 01.01.2014. In terms of Section 24 thereof, no award having been passed before coming into force of the said Act of 2013, a fresh award is required to be passed by the Collector in terms of the provisions of the Act of 2013. It is submitted by Mr. Kejriwal and Mr. Nair, in reference to W.P.(C) No. 2266/2014 and W.P.(C) No. 2269/2014, that after approval was accorded by the appropriate Government, though the Collector was enjoined to pass an award based on the estimate forwarded to the appropriate Government which was approved, it does not appear that any such award had been passed. It is submitted by them that whether or not an award is passed consequent upon

approval given by the appropriate Government is of no consequence, as in the meantime, the Act of 2013 had come into play and a fresh exercise has to be carried out in terms of the provisions of the Act of 2013. Learned counsel for the petitioners fairly submit that some amount was paid to the petitioners by way of compensation.

11. Mr. Sheikh Noor Mohammad, learned State Counsel does not dispute that the award came to be passed in W.P.(C) No. 2673/2014 on 05.02.2014 and that approval was communicated to the Collector by the appropriate Government after coming into force of the Act of 2013 in W.P.(C) No. 2266/2014 and W.P.(C) No. 2269/2014.

12. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

13. Section 11(1) of the Act of 1894, amongst others, requires the Collector to make an award under his hand in respect of the true area of the land; the compensation which in his opinion should be allowed for the land; and the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him. The first proviso to Section 11 (1) of the Act of 1894 provides that no award shall be made by the Collector without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in that behalf. The second proviso to Section 11(1) provides that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in that behalf.

14. Materials on record in the instant cases go to show that the appropriate Government did not make any order authorising the Collector to pass an award without approval of the appropriate Government. It is also evident that in both the land acquisition cases, approval was granted by the appropriate Government.

15. Annexure - E of W.P.(C) No. 2673/2014, which is a Gazette Notification, shows that the Central Government had appointed 01.01.2014 as the date on which the Act of 2013 shall come into force.

16. The Act of 2013 was enacted as the Act of 1894 was found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property and it also did not address the issues of rehabilitation and resettlement to the affected persons and their families. Statement of objects and reasons also go to show that the benefits under the Act of 2013 would be available in all the cases of land acquisition under the Act of 1894 where award has not been made or possession of land has not been taken.

17. At this stage, it will be relevant to take note of Section 24(1)(a) of the Act of

2013:

"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(1 of 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;"

18. Thus, Section 24(1)(a) provides that in any case of land acquisition proceeding initiated under the Act of 1894, when no award under Section 11 of the Act of 1894 had been made, then, all provisions of the Act of 2013 relating to the determination of compensation shall apply. In other words, if no award has been made under the provisions of the Act of 1894 before the Act of 2013 had come into force, it will be mandatory to apply all provisions of the Act of 2013 relating to the determination of compensation. As a logical corollary, it follows that a fresh exercise has to be carried out by the Collector to pass an award.

19. In the facts of these cases, it is an admitted position that awards were not passed prior to the coming into force of the Act of 2013. That being the position, the writ petitions are allowed directing the Collector to pass award, in accordance with law as per the provisions relating to determination of compensation in terms of the Act of 2013. Such exercise shall be completed within a period of 4 (four) months from to-day. The amount paid to the petitioners will be deducted from the amount payable to the petitioners as per fresh award.