
(2019) 01 MP CK 0040
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8257 Of 2016

Savita Bai@Manak Bai

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Code of Civil Procedure, 1908 — Order 21 Rule 11
Arbitration and Conciliation Act, 1996 — Section 23(1), 31, 34, 36
National Highway Act, 1956 — Section 3G, 3G(5), 3H(1), 3H(2)

Citation : (2019) 01 MP CK 0040

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : V.K. Jain, Dewansh Mishra, Anita Sharma

Final Decision : Allowed

Judgement

1. The petitioner has filed the present writ petition against the inaction of the respondent/s in not paying compensation to the petitioner.

2 The petitioner is an agriculturist and is a resident of village - Bikhron, Tehsil-Dharampuri, District - Dhar. He is the owner of agricultural lands bearing survey no. 85/3/2 admeasuring 0.600 hectare. The said land was acquired by respondent no. 1 for four-lane National Highway Project of respondent no. 2. After issuance of notification and demarcation under the provisions of National Highway Act, 1956 (hereafter referred to as " the Act of 1956), an award was passed by respondent no. 2 on 30/09/2007. By this award, a total compensation of the petitioner's land was assessed to Rs. 73,82,130/-. Against the said award, respondent no. 3 filed an application under section 23 (1) of the Arbitration and Conciliation Act, 1996 (hereafter referred to as ' the Act of 1996), before the Additional Commissioner and Arbitrator, Indore Division, Indore. The said application was rejected by the Arbitrator on 13/08/2009. Thereafter, on 22/08/2009, the petitioner filed an application before the respondent no. 2 for payment of amount of compensation as determined by him.

The petitioner thereafter, repeatedly approached the respondent no. 2 for payment of amount of compensation alongwith interest and as no bid was paid to the representations submitted by him, therefore, he served a demand of justice to the respondent/s. However, neither the said notice was replied, nor compensation was paid. Being aggrieved by this, the petitioner has filed the present writ petition before this Court.

3 Learned Sr. counsel appearing on behalf of the petitioner submits that as per the Act, 1956, the compensation is required to be paid soon after passing of the award by the Competent Authority and the possession of the land can be taken only after deposit / payment of the compensation. In the present case, neither after passing of the award, nor after passing of the award by the Arbitrator, the compensation has been deposited, nor has been paid to the petitioner. Thus, entire action of the respondent/s is in violation of the statutory provisions of the Act, 1956 as also the provisions of Article 300-A of the Constitution of India.

4 Respondent no. 3 has filed the reply and in the said reply, the respondent no.3 has taken preliminary objection that the respondent had filed an application under sub-section 5 of section 3-G before the Arbitrator Additional Commissioner (revenue) appointed by the Central Government in this behalf. The Arbitrator has dismissed the said application and thereafter, the respondent filed an application under section 34 of the Act, 1996 before the Competent Court of jurisdiction for setting aside the Arbitral Award passed by the Arbitrator on 13/08/2009. That learned District Judge, vide order dated 14/09/2016 has partly allowed the appeal in favour of the answering respondent. It is further stated that the petitioner ought to have filed an execution petition under Order 21 Rule 11 of C.P.C for execution for payment of remaining amount as per section 36 of the Act, 1996, therefore, the present writ petition is not maintainable.

5 So far as merit of the case is concerned, the respondent has stated that the answering respondent has already deposited the amount of compensation determined and passed under section 3-G of the Act, 1956 before the Competent Authority in lump-sum for the project Indore - Khalghat section four-lane Tehsil Dharmपुरi, District - Dhar, under sub-section 1 of section 3-H of the Act, 1956. They denied that there is any violation of statutory provision of the Act, 1956. The appeal which was preferred by the respondent under section 34 of the Act, 1996, was partly allowed by 12th Additional District Judge, Indore on 14/09/2016. The notice for demand of justice, which was served, could not be complied with, because the appeal was pending before the learned Judge.

6 Respondent no. 2 has also filed reply. The respondent has not denied the amount, which has been granted in favour of the petitioner towards compensation. It has also not been disputed that the petitioner has filed an application before respondent no. 2 for release of compensation as awarded (Annexure-P/1). The respondent no. 3 has agitated the dispute before the competent authority and has not deposited the amount awarded as per

Annexure-P/1 before the respondent no. 3. Despite repeated letters, the respondent no. 3 has not deposited with the respondent no. 2 and therefore, the respondent no. 2 is unable to disburse the amount to the petitioner. It is submitted that the answering respondent has not violated any statutory provisions of Act, 1956, nor it has violated any provisions of Article 300-A of the Constitution of India. The petitioner has filed his rejoinder and in the rejoinder, the petitioner has stated that none of the respondent has denied the fact that the land was acquired for four-lane Highway Project of respondent no. 3 and an award was passed, thereby awarded compensation of Rs. 73,82,130/-in favour of the petitioner. The said award was never challenged by the petitioner under the provisions of National Highway Act, 1956. Possession of the land could be taken only after payment of compensation, however, in the present case, the possession of the aforesaid land has not only taken, but road has also been constructed, without payment of compensation.

7 Respondent no. 3 instead of payment of compensation, went in arbitration against the award before the Additional Commissioner and Arbitrator, Indore. The application was rejected by the Additional Commissioner and Arbitrator, Indore on 13/08/2009 holding it untenable. Against the said order, respondent no. 3 had filed the some application under the Act, 1996 before the 15th A.D.J. Indore. Although respondent no. 3 has stated that the said application was partly allowed, but has not filed any copy of the order. Respondent no. 3 instead of payment of compensation along with interest as per the statutory provisions of the Act, 1956 has raised objection, the petitioner should have filed a execution. The petitioner has never went in arbitration nor the petitioner is enforcing any arbitration award. For the entitlement of the compensation as awarded by the land acquisition officer, the petitioner is not required to file any execution before the Civil Court, but it is statutory obligation and duty of the respondent to pay the amount of compensation and only, thereafter, possession of the land could have been taken, therefore, the objection raised by the respondent no. 3 that the writ petition is not maintainable, is wholly illegal and malafide on the part of the respondent no. 3. The avernment made by respondent no. 3 that the entire amount has been deposited by them with respondent no. 2 is also wrong and false because respondent no. 2 in their reply has stated that the respondent no. 3 has not deposited the entire amount, therefore, disbursement could not be made. In light of the aforesaid submissions, learned Sr. Counsel for the petitioner submits that the petition deserves to be allowed. This Court vide order dated 17/05/2018 has directed the respondent no. 3 to release the amount to the petitioner as per the award dated 30/09/2007 and they have also been directed to explain, why the interest has not been paid to the petitioner for this intervening period. After the order passed by this Court, the respondent no. 2 has filed reply on 01/10/2018 stating that respondent no. 3 has not deposited the amount with the respondent no. 2 and therefore, the respondent no. 2 is unable to disburse the amount of compensation to the petitioner.

8 Heard learned counsel for the parties and perused the record.

9 In the present case, the petitioner is the owner of the land bearing survey no. 85/3/2 situated at village -Bhikron, Tehsil - Dharampuri, District - Dhar. The land of the petitioner was acquired for the four-lane Highway project of Dharampuri by respondent. After execution of the said land, the award was passed on 30/09/2007, thereby awarding compensation of Rs. 73,82,130/- in favour of the petitioner. Being satisfied with the said award, the petitioner has not challenged the same. Even after possession of the land has been taken by respondent no. 3, no compensation has been paid, therefore, the petitioner submitted numbers representations and then filed the present writ petition. Sub-section 2 of section 3-H of the Act, 1956 provides that as soon as after the amount has been deposited under sub-section 1, the competent Authority shall, on behalf of the central government, pay the amount to the person or persons entitled thereto and possession of the land could be taken only after the payment of compensation. In the present case, the respondent no. 3 has already taken over possession of the said land and also constructed a road on it without the payment of amount of compensation, although more than 11 years have been passed after passing of the award, which is clearly in violation of the statutory provisions of the Act, 1956. The respondent no. 3, who is responsible for payment of compensation, has stated that after the award passed by the Competent Authority, the respondent no. 3 has filed an arbitration against the award before the Additional Commissioner and Arbitrator, Indore. The said application was rejected by the Additional Commissioner and Arbitrator, Indore on 13/08/2009 holding it untenable. Thereafter, respondent no. 3 had filed an application under the Act, 1996 before the 15th ADJ, Indore. The respondent no. 3 has stated that the said application / appeal was partly allowed, but the copy of the said order has not been filed. Thereafter, respondent no. 3 has deposited the amount of compensation before the SDO. Thus, it appears that as the amount of award has already been deposited by respondent no. 3 before the SDO, therefore, as per the order dated 17/05/2018, there is no impediment in releasing the said amount to the petitioner, therefore, this Court vide order dated 17/05/2018, has directed to release the amount of award in favour of the petitioner forthwith. However, inspite of the order passed by this Court, the amount award has not been released in favour of the petitioner, which is very sorry state of affairs on the part of the respondent. Due to the illegal action of the respondent/s, the petitioner has been deprived of his property without paying any compensation, therefore, the petitioner is entitled for the interest also.

10 So far as objection regarding availability of alternate remedy to the petitioner is concerned, it is submitted that the entitlement of the petitioner for compensation has been determined by the land acquisition officer, and therefore, he is not required to file any execution before the Civil Court, but it is statutory obligation of the respondent to pay the amount of compensation and only thereafter, possession could have been taken and therefore, the objection raised by the respondent/s that present petition is not maintainable, cannot be

sustained. Under the statutory provision, possession of the land could not have been taken without first making payment of compensation. In the present case, the amount of compensation as originally determined has not been paid till date, while on the other hand, possession has been taken contrary to the statutory provisions. It is really surprising that even after lapse of more than 11 years, no compensation has been paid to the petitioner. Thus, this act of the respondent is not only contrary to the provisions of National Highway Act, but under Article 300-A of the Constitution of India.

11 In view of the aforesaid, present writ petition is allowed and respondent nos. 2 and 3 are directed to pay the compensation amount along with interest as prescribed under section 31 of the Act, 1996, from the date of taking over the possession till the date of actual payment, within a period of three months from the date of receipt of certified copy of this Court.

C c as per rules.