

(2019) 09 JH CK 0044
In the Jharkhand High Court
Case No : Writ Petition (c) No.2049 Of 2017

Shabd Sharan Burnwal @ Modi And Ors	APPELLANT
Vs	
State Of Jharkhand And Ors	RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 30
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 JH CK 0044

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Anand Kr. Sinha, Gautam Kumar, Suraj Prakash

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder direction has been sought for upon the respondents not to acquire the land of the petitioners appertaining to Mouza Phutabandh, Plot No.181 within the district of Deoghar which was settled in the name of ancestors by the Pradhan by way of Patta which was affirmed by the competent court of civil jurisdiction, without initiating any proceeding for acquisition of land, therefore, the present writ petition.

2. The brief facts of the case of the petitioners as per the pleadings made in the writ petition is that the petitioner No.1 claims to be the owner of the land pertaining to Plot No.181 which was initially settled in the name of Uma Charan Modi by the then Pradhan by way of Patta and since then his family members are enjoying peaceful possession over the said land.

In the year 1979, a proceeding was initiated under the provision of Land Acquisition Act, 1894, in pursuance thereto, steps have been taken by the State authority for acquisition of the land which ultimately culminated into land

acquisition proceeding in which award has been passed.

3. It appears from Annexure-3 that one Dendayal Modi, the petitioner No.3 herein, has made an application under Section 30 of the Land Acquisition Act, 1894 for adjudication about enhancement of the quantum of amount of compensation which was disallowed, however, holding them entitled to interest @ 6 % per annum as equitable relief as they have been deprived of the payment for a long time and accordingly, the reference has been answered in favour of the petitioners, namely, Din Dayal Modi and others.

4. The petitioners have filed this writ petition on the ground that no amount of compensation has yet been paid.

5. Counter affidavit has been filed on behalf of the respondent-State duly been sworn by the Circle Officer, Deoghar inter alia therein initially stand has been taken that the nature of the land since is Parti Kadim and as per the inquiry conducted by the Halka Karamchari it has been found in the Government record that the nature of the land is recorded as Government land and as such, there is no question of any settlement through Patta as has been claimed by the petitioners and further there was no any initiation of land acquisition proceeding.

6. The petitioners have filed rejoinder to the said counter affidavit wherein the ground raised by the petitioners has been denied and disputed.

7. The State has filed subsequent affidavit in the shape of reply to rejoinder filed by the petitioner wherein it has been stated that in view of the order passed under Section 30 of the Act, 1894 pertaining to LAR Case No.101 of 1979 and LAR Case No.117 of 1979 by the subordinate Judge, Deoghar vide order dated 28.02.1986 and 22.02.1986, the award of compensation was paid and accordingly the same was received by the ancestors of the petitioners.

Further it has been stated that the petitioners are raising the issues after 30 years from the date of order passed under Section 30 of the Act, 1894 since the order passed therein is dated 22.02.1986 and as such after lapse of about 30 years, the present writ petition has been filed.

8. This Court, after having heard the learned counsel for the parties and on appreciation of their rival submissions, has found some undisputed facts in this case i.e., the land is being claimed by the petitioners as the absolute title holders which they are claiming by virtue of settlement by the then Pradhan by way of Patta and since then the ancestors of the petitioners were in peaceful possession of the same and after their death the petitioners are enjoying the peaceful possession and making payment of the rent also.

Sometime in the year 1979 a proceeding was initiated under the Land Acquisition Act, 1894 as would appear from an order annexed as Annexure-1 i.e., passed in LAR Case No.101 of 1979 which is on application filed under Section 30 of the Act, 1894 in which the parties have appeared and filed their written statements and the petitioners have been able to prove settlement Patta and rent receipts

whereas the State has examined draftsman and surveyor of the Land Acquisition Department.

The Court came to finding that the Mouza Phutabandh, Plot No.181 comprising of an area of 02 bigas were settled to Uma Charan Modi, father of one Panchanan Modi by the Pradhan of the village, the rent receipts have also been proved by which the Court came to the conclusive finding about the confirmation of the possession of the petitioners over the land in question and as such after considering the facts on record, the Panchanan Modi and Sitaram Modi who are sons of Uma Charan Modi have been held entitled to compensation and the award has also been prepared in favour of Uma Charan Modi.

The Court has disallowed the claim for enhancement of compensation, further, held the land losers entitled for interest @ 6 % per annum from the date of award till the date of payment.

9. Thus, it is evident from the order dated 28.02.1986 passed in LAR Case No.101 of 1979 that there was acquisition and accordingly, award was passed which was also subjected to a proceeding under Section 30 of the Act, 1894.

10. A similar proceeding has also been initiated in one another LAR Case No.117 of 1979 preferred by Din Dayal Modi, the petitioner No.3 herein, wherein also a similar order has been passed as would appear from Annexure-3 annexed to the writ petition.

11. The petitioners thereafter have made an application before the Deputy Commissioner, Deoghar for restraining the respondents in utilizing the land for the purpose of construction of Software Technology Park but when no decision has been taken, the present writ petition has been filed.

12. Mr. Anand Kr. Sinha, learned counsel for the petitioners has submitted that no amount of compensation has been paid, therefore, the present case will be covered under the provision of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

13. This Court has gone across the provision of Section 24(2) of the Act, 2013 wherein it has been provided regarding the applicability of the Act depending upon the situation as to whether the provision of Act, 1894 or Act, 2013 will apply.

Section 24(2) of the Act, 2013 stipulates three conditions for departure from the old Act of the year 1894 to that of the new Act, 2013 :-

if the award has been passed five years prior to the date of the enactment of the new Act, 2013 and the possession of the land has not been taken simultaneously the amount of compensation has not been paid if these eventualities will arise, the proceeding under the provision of old Act of the year 1894 will cease to operate and a fresh proceeding under the provision of Act, 2013 will have to be initiated for the purpose of determination of amount of compensation.

14. The fact in hand as would appear from the pleadings made by the parties both in the writ petition as well as in the counter affidavits, it is evident that the award has been passed and the dispute for apportionment of the award has been agitated by filing an application under Section 30 of the Act, 1894.

Section 30 of the Act, 1894 provides provision to resolve the dispute in case of any dispute in apportionment and the amount of compensation, meaning thereby, if a party claims to be co-sharer or having any right over the property which is the subject matter of acquisition and also claiming share in the amount of compensation, a proceeding is required to be initiated under the provision of Section 30 of the Act, 1894 for its apportionment and the competent Principal Judge having its jurisdiction will adjudicate upon the same after providing opportunity of hearing to the parties, meaning thereby, the petitioners herein since have made an application under Section 30 of the Act, 1894 which does suggest that the petitioners have not been paid the amount of compensation which led them to file an application for apportionment of the amount of compensation which as per the award has been decided in favour of the awardees.

15. Admittedly, the application filed under Section 30 of the Act, 1894 has been disallowed but the petitioners have not chosen to assail the aforesaid orders although the said orders have been passed way back in the year 1986 as would appear from Annexures-1 & 3 annexed to the writ petition.

16. The petitioners claims herein that they have not been paid the amount of compensation but the said aspect of the matter has been disputed by the State in the affidavit filed by way of reply to the rejoinder wherein at paragraph-9 it has specifically been stated that the amount of compensation has been paid in favour of the ancestors of the petitioners which has been received.

No rebuttal reply has been filed by the petitioners to the said specific stand taken by the respondent-State.

17. In the conscious view of the Court it is not the case where the provision of Section 24(2) of the Act, 2013 will be said to be applicable.

So far as the grievance of the petitioners is concerned, pertaining to non-payment of amount of compensation while the same has been disputed by the State by taking the stand that the amount of compensation has been paid in favour of the ancestors of the petitioners and this Court after going across the order passed in LAR Case No.101 of 1979 and LAR Case No.117 of 1979 as annexed as Annexure-1 & 3 to the writ petition is of the view that the petitioners since are claiming apportionment from the amount of awarded amount and the same having been disallowed which also does suggest that the amount of compensation had not been awarded, to be paid in favour of the petitioners otherwise, there would not have been application under Section 30 of the Act, 1894.

18. This Court after taking into consideration the fact in entirety and for the reasons recorded herein, is of the view that the claim of the petitioner for payment of the amount of compensation has been disputed by the State, therefore, in such a disputed factual aspect, there cannot be any adjudication with respect to the claim of the petitioners, more particularly, taking into consideration the orders passed in LAR Case No.101 of 1979 and LAR Case No.117 of 1979 wherein the claim for apportionment has been disallowed which have not been assailed by the petitioners, accordingly, this Court is of the view that the petitioners have not been able to make out a case for passing any positive direction in their favour.

19. In view thereof, the writ petition fails and stands dismissed.