
(2016) 05 RAJ CK 0118
In the Rajasthan High Court
Case No : Civil Special Appeal(W) No. 172 of 2016

Smt. Aapu

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

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

Citation : (2016) 2 WLCRajUC 504

Hon'ble Judges : Mr. Ajay Rastogi and Mr. Dinesh Chandra Somani, JJ.

Bench : Division Bench

Advocate : Mr. R.K. Mathur, Senior Counsel assisted by Mr. Aditya Mathur and Mr. Anil Mehta, Advocates, for the Appellants; Mr. Parag Rastogi, Mr. Amit Kuri, Mr. Surya Pratap Singh on behalf of Mr. Rajendra Prasad (AAG), for the Respondents

Final Decision : Allowed

Judgement

1. Instant batch of special appeals has been preferred against the self same judgment of the learned Single Judge, dated 22.01.2016. The present batch of writ petitions was filed assailing the land acquisition proceedings initiated by the respondents in respect to their subject land in question under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act 1894"), and it was prayed that the land acquisition proceedings initiated against them stand lapsed in view of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act 2013"). Undisputedly, after the notices came to be served, no written response to the writ petition was filed by either of them to controvert the pleadings, justifying the action of the respondents on being prayed that the land acquisition proceedings stood lapsed in view of Section 24(2) of the Act of 2013.

2. It reveals from the record that it was brought to the notice of the learned

Single Judge that the writ-petitioners earlier approached this Court by filing writ petitions, details whereof have been referred in para-3 of the impugned order. It is relevant to mention that Chhotu Khan (appellant in connected SAW No. 228/2016) was not the writ-petitioner in the earlier batch of writ petitions and while disposing of the earlier batch of writ petitions by common order dated 25.08.2009, apart from direction to the State authorities to consider the respective claims of the writ-petitioners in light of the circulars of the Government, dated 26.05.2002, 16.02.2002, 16.10.2007 and 02.11.2007, the UIT was directed to pass a speaking order and at the same time, liberty was granted to the writ-petitioners to challenge the validity of acquisition proceedings also, if so advised.

3. It is brought to the notice of the Court that the representation made by each of the writ petitioner in the earlier batch of writ petitions came to be rejected by the UIT, Ajmer vide its order dated 03.01.2012 in the case of Smt. Aapu W/o Taj Mohammad & Others, copy of which has been placed on record, assigning reasons and according to the appellants, on rejection of their representation by the UIT, Ajmer, it was open to the writ-petitioners to question the validity of the acquisition proceedings in the independent proceedings, permissible to them by law and after the rejection of their representation, the present batch of writ petitions came to be preferred assailing the acquisition proceedings with the aid of Section 24(2) of the Act of 2013.

4. Counsel for the appellants submits that no written response/counter was filed by either of the respondents and taking into consideration the fact that earlier batch of writ petitions was disposed of by this Court vide common order dated 25.08.2009 and this alleged material fact was not disclosed and that apart it was not alleged that they are still in possession of the subject land in question, as alleged by them, and holding that they have concealed the material facts while filing the present batch of writ petitions, the learned Single Judge was not inclined to exercise its equitable jurisdiction under Article 226 of the Constitution of India and accordingly dismissed the writ petitions vide order impugned.

5. After the present batch of special appeals were preferred, we took cognizance of the submissions made in our order dated 18.02.2016 and directed the respondents to file their reply/written statement to the writ petitions and to place such necessary material and documentary evidence on record to justify that possession of the subject land in question has been taken by the appropriate authority.

6. Counsel for the appellants submits that there was no suppression of the material facts which the learned Single Judge has noticed while uprooting their claim in assailing the acquisition proceedings under the order impugned and at least the matter was required to be examined on merits and that could not have been possible in the absence of written statement being filed by the respondents before the learned Single Judge. In these circumstances, denial of their legitimate right of consideration on merits has certainly jeopardised their claim

and thus the learned Single Judge has committed an error in not exercising equitable jurisdiction of this Court available under Article 226 of the Constitution of India.

7. Counsel for the respondents have jointly supported the order of the learned Single Judge and submitted that the writ-petitioners were under an obligation to disclose the material fact of filing earlier batch of writ petitions, which the learned Single Judge has noticed in para-3 of its order impugned and at the same time, once the subject land was surrendered by the writ-petitioners, there was no occasion for them to take possession of the subject land in question and as such each of the writ-petitioner was not entitled either to question the acquisition proceedings or to take the benefit of Section 24(2) of the Act of 2013. All the respondents jointly submit that it was certainly a case of suppression of material information, which the learned Single Judge has noticed in the order impugned and certainly there was no ground to claim equitable jurisdiction of this Court under Article 226 of the Constitution of India and thus, according to them, no error was committed by the learned Single Judge, which may call for any interference by this Court.

8. We have heard the learned counsel for the parties and also perused the material available on the record with their assistance and we find that the earlier batch of writ petitions came to be disposed of by the learned Single Judge vide common order dated 25.08.2009, and we consider it appropriate to quote para 4 of the impugned order of the learned Single Judge for better appreciation of the matter, as under:-

"4. It is also required to be noted that the said petitions filed by the petitioners earlier except the petition No. 9175/2009 were disposed of by the Court vide the common order dated 25th August, 2009. The relevant part thereof reads as under :-

"

In these writ petitions, the petitioners have not only challenged the validity of the acquisition proceeding, but have also challenged the omission on the part of the UIT in not granting them the benefit of circulars issued by the Government from 26.05.2000 to 02.11.2007. During the course of arguments, the learned counsel for the petitioners did not press the challenge made to the validity of the acquisition proceeding, instead he confined himself to the omission committed by the UIT.

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For the reasons stated above, the petitioner are directed to submit their applications before the UIT. The UIT is directed to consider the petitioners' cases in the light of the circulars issued by the Government, namely circulars dated 26.05.2002, 16.02.2002, 16.10.2007 & 02.11.2007. The UIT is expected to pass a speaking order while deciding the case. The UIT should decide their case within

a period of six months from the date of receipt of their applications. In case any adverse order would be passed against the petitioners, the petitioners shall be at liberty to challenge the same. Simultaneously, the petitioners shall be at liberty to challenge the validity of acquisition proceeding also".

9. While disposing of the earlier batch of writ petitions vide order dated 25.08.2009, the learned Single Judge granted liberty to the writ-petitioners (appellants before us), to make their representation to the UIT, Ajmer and the authority was directed to dispose of their representation by passing a speaking order with liberty to assail the acquisition proceedings, if so advised. It has come on record that the representation submitted by the writ-petitioners came to be rejected by the UIT, Ajmer assigning reasons vide order dated 03.01.2012. At the same time, liberty was also granted to the writ-petitioners to question/assail the validity of the acquisition proceedings, if so advised.

10. Apart from it, we find justification in the submission made by the appellants' Counsel that there was no reply/written statement filed by either of the respondents before the learned Single Judge to examine as to whether the fact of earlier proceedings initiated at the instance of the appellants, if not mentioned, what will be its effect and to examine whether it was concealment of material information or was nondisclosure of facts. Apart from it, when a liberty was also granted to the writ-petitioners to question the validity of the acquisition proceedings in the independent proceedings, available under the law and that being the position while filing the present batch of writ petitions, we are unable to subscribe the view of the learned Single Judge holding it to be a suppression of material facts by the writ-petitioners uprooting their legitimate right of consideration on merits.

11. It is true that the learned Single Judge has expressed her views prima-facie on merits also in regard to possession on the subject land, but we find substance in what being contended by the Counsel for the appellants that in absence of there being any material on record, which could be possible only after reply/written statement being filed by either of the respondents, the view expressed by the learned Single Judge is based on inference and not supported by documentary evidence on record and it requires a fresh look and that is possible only after reply to the writ petition being filed by the respondents.

12. After we have heard the learned counsel for the parties, in our considered view, the finding which has been recorded by the learned Single Judge under its order impugned in uprooting the writ-petitioners at the preliminary stage holding that there was a suppression of material facts, does not hold good and deserves to be interfered with by this Court.

13. We further make it clear that what is being observed by us in the order, is based on the material available on record and it will be open for the parties to raise preliminary objection & also on merits of the subject issue involved in the writ petitions and that may be examined independently, on the basis of the

pleadings on record.

14. Consequently, all the special appeals succeed and are hereby allowed. The impugned order of the learned Single Judge dated 22.01.2016 is quashed and set aside and the writ petitions are restored and remitted back to the learned Single Judge to consider the matter afresh. The respondents are at liberty to file reply to the writ petition, if so advised.

15. A copy of the order be placed in the connected files.