
(2003) 01 GAU CK 0049
In the Gauhati High Court
Case No : Writ Appeal No. 395 of 2002

State of Mizoram and Others	Vs	APPELLANT
C. Deniel and Others		RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 48

Citation : (2003) 2 GLR 147 : (2003) 2 GLT 136

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : A. Dasgupta, G.A, for the Appellant; P.N. Choudhury, for the Respondent

Judgement

P.P. Naolekar, C.J.—With the consent of the learned counsel for respected parties, the matter is finally heard.

2. The respondent-petitioners, who are ten in number, have approached this Court by filing a petition under Article 226/227 of the Constitution seeking a direction to the Government to make enquiry and assess the compensation to which they are entitled, on the ground that the Government following the proposal for acquisition of their land made a Notification and took possession of the same. Later on, the Government abandoned the proposal for acquisition of the land of the petitioners and the land of petitioners under acquisition were released and returned back. The petitioner-respondents were in possession of land prior to the acquisition.

3. In nutshell, the petitioners' case is that prior to the proceedings were taken up for acquisition of the land they were in possession of the land and after the proceedings were taken up they were dispossessed and were handed back the possession when it was decided by the Government to release the land from acquisition. The learned Single Judge has held that from the documents on record, i.e., the notification and the existence of land pass it can be safely assumed that for the period between 20.09.1994 till 24.10.2002 the petitioners

were dispossessed from their land and they were out of possession which deprived them the enjoyment of the fruits of the land.

4. While allowing the petition, it was directed that the respondent No. 8, i.e., the Deputy Commissioner, Champhai District, Champhai and his subordinate officers connected with the land acquisition will make an enquiry into the matter within 3 months and settle the claims of compensation within a period of 6 months. Failing which, the petitioner will have fresh right to approach the Court and make claim of interest in addition to adequate compensation. The learned Single Judge has given the directions to make an enquiry and settle all the claims of compensation. When the Court has already arrived at the conclusion that the petitioners were dispossessed from the land in pursuance of the acquisition proceedings for the period 20.09.1994 till 24.10.2002, we do not understand as to what has been left to be enquired into, except quantum of compensation to be paid. The petitioners' case is exactly that they have been dispossessed and therefore they are entitled for compensation. If the learned Single Judge has already arrived at the finding that they were dispossessed for the aforesaid period, the only question could have been considered by the respondent No. 8 and his subordinate officials is as to what compensation they are entitled for dispossession.

5. It is submitted by the counsel for the State that the directions given by the learned Single Judge will authorise the Land Acquisition Officer and his subordinate to adjudicate upon the matter in regard to land which was not the subject-matter of acquisition and was released from acquisition in exercise of powers under the Land Acquisition Act, 1894. We find force in the submission made by the learned counsel for the appellant. Once it is found that the land is not the subject-matter of acquisition, the authorities under the Land Acquisition Act, 1894 has no jurisdiction and authority to adjudicate upon any matter in respect of that land, which has not been acquired under the provisions of the Act of 1894. Land, which is not the acquired land, the questions in regard thereto can only be adjudicated by the authority who is vested with the civil jurisdiction and that too on the petitioners approaching such authority in a manner provided under the relevant statute.

6. The question whether the petitioners have been dispossessed for a particular period of the land in dispute and as to what amount of compensation they are entitled to can be adjudicated by the Civil Court in an appropriate proceedings. It is Section 48 of the Land Acquisition Act, 1894 which permits payment of compensation when government withdraws from acquisition before taking possession. It reads :

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. - (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

The Collector can determine compensation due for damages suffered by the owner of the land in consequence of notice for acquisition or of any proceeding thereunder. The authority or power of Collector to give compensation is only for damage suffered as consequence of notice or any proceedings thereunder. "Any proceedings thereunder" shall not cover proceedings of taking possession of the land by the Government in pursuance of notice of acquisition. Section 48 of Land Acquisition Act, 1894 presupposes that possession of the land was not taken by the Awadh Bihari and Other Vs. State of Bihar and others, it is held by the Supreme Court that where the possession was taken u/s 17(1) of the Act it is not open to the government to withdraw from acquisition and acquisition proceedings would not lapse, even if award was not made within the period prescribed. In Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, it is held that where the government has taken possession of the land soon after the award, it is not at liberty to withdraw from the acquisition of the land. Section 48 of the Act has no application where possession is taken by the Government of the land under acquisition. Petitioners' claim for damages for their dispossession from the land cannot be adjudicated by the Collector/Deputy Commissioner or by his subordinate authorities. Claim of the petitioners for compensation is based on the fact that possession of land was taken from them and, thereafter the possession was restored to them on withdrawal of acquisition. Determination of compensation for dispossession does not fall within the jurisdiction of the Deputy Commissioner. For that, the petitioners have to approach a court having civil jurisdiction and not the Land Acquisition Officer or his subordinate who gets jurisdiction only under the Land Acquisition Act that too in regard to land which have been acquired. In this view of the matter the appeal is allowed and the judgment and order passed by the learned Single Judge dated 9.5.2001 is set aside.

8. It is made clear that the petitioner-respondents may approach the Civil Court, if they think fit and proper, for appropriate remedy. In the circumstances of these case, there shall be no order as to costs.