
(2008) 04 RAJ CK 0096
In the Rajasthan High Court

State of Raj. and Ors

APPELLANT

Vs

Gopal Ram and Surja Ram

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2008) 04 RAJ CK 0096

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Judgement

N.P. Gupta, J.—These two appeals arise out of the common order of the learned Single Judge dated 21.11.2007, and involve more or less common facts, and therefore, they are being decided by this common order.

2. The appeals have a chequered history, and is a sequential litigation, now coming before us by way of these appeals, the matter is coming for the first time before Division Bench by way of these appeals.

3. Devoid of unnecessary details, it transpires from the pleadings and documents, that the controversy was triggered by filing a writ petition by an organisation, named Dalit Munch Bikaner, being S.B.C.W.P. No. 2233/85, which was decided on 16.9.91. By that writ petition, the petitioners therein sought relief against the respondents, claiming that the respondents are not entitled to dispossess the tenants and occupants of the lands lying in village Udasar, without taking proceedings under the Rajasthan Land Acquisition Act, and also claiming for restraining the respondents from interfering with the possession of the tenants and occupants in any manner whatsoever, and for restraining the respondents Estate Officer, Military Station, Bikaner from proceeding against any of the tenants and occupants of the lands lying in village Udasar. That writ was filed on 15.10.85. Then interim stay was also granted. However, a stand was taken that possession of the land has already been taken, way back in the year 1983. The land was taken by the military authorities, however, the contention was, that the lands were taken without taking any proceeding under law. The

learned Single Judge found, that notification u/s 4 was already sent for publication. However, it was then observed, that one fails to understand as to how and at what stage the proceedings were suddenly abandoned, without determining any compensation. Inter-alia with this, it was found, that it is now military land, which stands acquired, 3 and the same is also being used for cantonment areas, and therefore, whether the proceedings under the Rajasthan Land Acquisition Act were followed or not, the acquisition is now complete, and a fate accompali, and therefore, no useful purpose would be served by directing the respondent to follow the proceedings under the Land Acquisition Act. With this, it was observed "the question remains only with petitioner organization". With formulating this question, it was directed to the respondents No. 2 to 4 to decide the question of compensation, which may be payable to each of the persons, whose lands had been taken for the purpose of cantonment area, particularly the persons whose names have been mentioned in Annex. 2, annexed with that writ petition, and looking to the quality of land, and other considerations, the compensation which may be payable to each of them, may be determined, and may be paid.

4. It is after this judgment, that a handful of persons chose to get awakened, even though, they did not lodge any claim earlier, may be for the reasons that they were not feeling any entitlement to any compensation, or may be for whatever other reasons. In that process, one writ No. 4232/98 was disposed of by this Court on 1.12.98, directing the SDO, Bikaner to pass award, and to pay compensation, as in that case it was not disputed fact, that the Addl. Collector had already found, that the petitioner therein was entitled to compensation, but was not paid compensation.

5. It is in this sequence; that three more writ petitions came up; being Writ No. 1510, 1511 and 1517 all of 1999, which laid claim for compensation, on the footing of the claim being identical with that in writ No. 4232/98. However, vide judgment dated 7.5.99, these three writ petitions were decided, finding, that the cases of the petitioners are not identical, inasmuch as, in the present cases, so far, it is not decided, that all the petitioners are entitled to compensation of their land, therefore, the learned SDO, Bikaner was directed to decide, as to whether the petitioners or any of the petitioners, is entitled for compensation or not, and if it is found, that the petitioners or any of the petitioners is entitled to compensation, the SDO will pay compensation, as early as possible within 6 months from that date. It appears that consequent upon this direction, the matter was taken up by the learned SDO, and it was found, that the petitioners were not entitled to any compensation. Thereupon, yet another set of writ petitions was filed, being S.B.C.W.P. No. 324, 325 and 326 all of 2001, which again came to be allowed by this Court, vide judgment dated 19.2.2003, and a portion of that judgment dated 19.2.2003 is quoted in the impugned judgment of the learned Single Judge, wherein it has been observed, that the question remains is, that the possession at the relevant time was of the petitioners, is not in dispute, and their claim for entitlement to the compensation is required to be

decided in pursuance of the order passed by this Court in writ petitions No. 1510/99, 1511/99 and 1517/99 and the claim of the petitioners could not have been rejected on the ground of not submitting the claim within the period of limitation. It was observed, that SDO was bound to comply with the order dated 7.5.99, and was also bound to determine the entitlement of the petitioners for compensation, and cannot discriminate the petitioners from the persons, who are similarly situated to the petitioners, particularly when the writ petitions of the petitioners were allowed by the order dated 7.5.99, only on the ground, that they are persons similarly situated to the other persons. Thereafter, the matter was again taken up by the learned SDO, and it was found, vide judgment dated 3.7.2003 (Annex. 21) that in Jamabandi of 2016 there is entry of one year, which entry is there in the year 2020 to 2023 as well. However, it was found that since the writ petitioner is not recorded tenant, he cannot be said to be a "person interested", as he was not a recorded khatedar of the land, the khatedari rights had come to an end under Colonisation Rules, which had not been challenged. Thus, it was found that the petitioner is not entitled to any claim. Regarding the case of Bhanwar Lal, which was claimed to be similar, it was recorded, that he was recorded tenant.

6. Challenging this order again, writ petitions were filed being 1618 and 1638 both of 2004, which have been allowed by the impugned order, by quashing the order of the learned SDO dated 3.7.2003, and directing, that compensation shall be paid to these petitioners within a period of two months from today, after determination of the said compensation amount, by learned SDO before the said period of two months. The petitioners were directed to appear before the SDO on 10.12.2007 in the first instance, and that, if such actual amount of compensation is not determined and paid by the said learned SDO within two months from today, i.e. on or before 31.1.2008, a cost of Rs. 200/- for each day of the delay after said date would be payable by the learned SDO personally, and he may also be held liable for action under the contempt law.

7. Assailing the impugned order, it is contended by learned Counsel for the appellant, firstly, that the writ petitioners had laid their claim at much belated hour, rather have come forward only taking inspiration from the judgment of this Court dated 16.9.91, and even thereafter had filed writ petitions after more than 8 years, even the claim was not filed before the SDO till as late as in the year 1996. Secondly it was contended, that as appears from Annex. 21, being the order of the learned SDO, that the case of the writ petitioners themselves was, that they were allotted land for one year in the year 1960, and therefore as in the year 1983 they cannot be said to be having any interest in the land, as such, the learned SDO has rightly rejected their claim. It was submitted, that learned Single Judge has passed the impugned order by being over-obsessed, by the fact, that there had been earlier writ petitions, and orders, and still the writ petitioners did not get compensation, and therefore, had gone to consider few documents produced on the side of the petitioner, in a single track manner, and found the writ petitioners to be entitled to compensation, which order cannot be

sustained. It was also contended, that the sequence of things does show, that if such claims are countenanced, it would open unending flood gates for all and sundry, and one may choose to get out of slumber, at any point of time, by even manipulating the claim, by employing such of the devices as he may be able to avail. It was lastly contended, that in any case the direction of payment of cost of Rs. 200/- per day, and that also by the learned SDO personally is wholly unsustainable, and is liable to be set aside.

8. On the other hand, learned Counsel for the respondents-writ petitioners supported the impugned judgment, and submitted, that of course the claim was bit belated, but then, it is clear from the documents produced on record, that the petitioners were in cultivatory possession since before commencement of Rajasthan Tenancy Act, there are entries in their names in the Jamabandis from 2016 onwards, of course the entries do not continue till the date of acquisition, being 1983, as the petitioners believe, that since in the intervening period the land did come into Colonisation, therefore, revenue entries did not come to be made. May be for that purpose, no material has been placed on record. But then the petitioners were recorded as persons in cultivatory possession. It was also contended, that all said and done, it is clearly established, that as on the date of acquisition, the lands were in possession of the petitioners, and therefore, in any case, they were entitled to be awarded compensation considering them to be the "persons interested" on the basis of their continued cultivatory possession, at least since before commencement of Rajasthan Tenancy Act, till acquisition.

9. We have considered the submissions, and have gone through the material available on record.

10. At the outset, it may be observed, that learned Counsel for the appellant is right in contending, that the claim of the petitioners is grossly belated, inasmuch as, the acquisition is of the year 1983, and the petitioners laid their claim before the learned SDO for the first time in the year 1996, and on that count, we would have been inclined to throw away the claim, on the face of it. But then, the precise predicament in our way is, that in the writ petitions two round of judgments had been rendered, one being dated 7.5.99, and other being dated 19.2.2003, and rightly or wrongly, or for whatever considerations, those judgments have not been challenged on behalf of the appellants; and in those judgments, it had been directed to learned SDO to examine the entitlement of the writ petitioners to get compensation, and not to reject the claim on the ground of delay, therefore, in our view it would not be appropriate for us, hearing these appeals, to now throw away the claims on the ground of delay. However we make it clear, that we should not be understood to be opening flood gates for laying claims by other persons claiming interest in the lands, which had been acquired in 1983, simply because of sequence of judgments rendered in cases of the present writ petitioners, including this judgment. It is further clarified that it will always open to the respondents to contest the other claims if they come, on the ground of their being belated, and the judgments rendered, comprising of

the above sequence of judgments, including this judgment will not be of any help to such claimants.

11. Coming to the merits of the claim of the present writ petitioners, what we find from the documents is, that the petitioners' name were recorded in the Jamabandis, at least from 2016 onwards, and it does appear, that since the land went into Colonisation, the revenue entries were not maintained by revenue authorities. With this, so far as the submission said to have been made on behalf of the writ petitioners, as recorded in Annex-21, about their having been allotted the land for one year, and then the appellant producing the order of the SDO dated 7.4.60, allotting the land for one year, is concerned, we are not impressed with the point, inasmuch as, under the Rajasthan Land Revenue Act, or the Rules framed thereunder, or under any other provisions, as were prevailing in 1960, there was no provision, for making allotment of land for one year, nor any such provision has been shown to us to be existing at that time. Then, even if for the sake of argument it was to be presumed, that the land was allotted for one year, even in that event, the entry cannot be said to be unlawful, and thereafter it is not shown on the side of the appellants, as to when, and how, and by adopting what procedure, the possession of the petitioners was resumed.

12. In that view of the matter, it cannot be said that the writ petitioners are not the "persons interested" in the land, so as to be denied the entitlement to any compensation whatever.

13. Thus, we are not inclined to interfere with the order of the learned Single Judge, in so far as it holds, that the writ petitioners are entitled to compensation. However, the direction given by learned Single Judge, imposing cost of Rs. 200/- for each day of delay, appears to be very very harsh, and requires to be set aside. At the same time, since the matter is already hanging fire at least since 1999 till the date, it is required to be decided most expeditiously, to bring the controversy to an end, finally.

14. Accordingly, the appeal is partly allowed, and the direction given by learned Single Judge, imposing cost of Rs. 200/- for each day of delay, and the learned SDO being liable for contempt, is set aside. The rest of the direction given by the learned Single Judge, to the SDO, to decide the matter within two months, and to make payment within the time frame, is maintained, which period of two months shall commence from the date, the certified copy of this order is produced before the learned SDO. In the event of default of payment of compensation, the amount will carry additional interest @ 12% p.a. It is also clarified, that in the event of the writ petitioners being not satisfied with the quantum of compensation determined, they will be free to move appropriate application for reference, in accordance with the provisions of Section 18 of the Land Acquisition Act 1894. The parties are left to bear their own costs so far.