
(2020) 09 RAJ CK 0062

In the Rajasthan High Court

Case No : Spacial Application Writ No. 1223, 1225, 1227, 1268, 1287, 1316, 1317, 1318, 1319, 1352, 1358, 1361, 1362, 1407 Of 2014

State of Rajasthan And Ors

APPELLANT

Vs

Vidhya Sagar And Ors

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(2), 16, 31, 31(1), 34
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(1)(a), 24(1)(b), 24(2)

Citation : (2020) 09 RAJ CK 0062

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Dron Kaushik, Rekha Borana, Saransh Vij, Manoj Bhandari, Aniket Tater, Khet Singh, G.J.Gupta, Shanker Singh, Sandeep Bhandawat

Final Decision : Allowed

Judgement

1. These intra court appeals are directed against orders dated 19.5.14 and 21.5.14 passed by the learned Single Judge of this Court, whereby the writ petitions preferred by the respondents herein assailing the legality of land acquisition proceedings initiated by a notification under Section 4(2) of Land Acquisition Act, 1894 (for short "the Act of 1894") which culminated in passing of the award dated 25.2.06 by the Land Acquisition Officer and eventually approved by the State Government on 25.6.07, have been allowed and the land acquisition proceedings are treated to have lapsed in terms of provisions of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013").

2. The legality of the land acquisition proceedings was questioned by the respondents-writ petitioners on various grounds based on the provisions of the Act of 1894.

3. During the pendency of the writ petitions, the Parliament enacted Act of 2013, a comprehensive legislation with regard to acquisition of the land for any public purpose and the Act of 1894 was repealed.

4. On the strength of the provisions of sub-section (2) of Section 24 of the Act of 2013, the respondents-writ petitioners preferred an application seeking declaration that the land acquisition proceedings have lapsed and no further action can be taken by the appellants herein pursuant to the notification issued under the Act of 1894.

5. The application was contested by the appellants stating that before passing of the award, the petitioners preferred the writ petitions before this Court and in some of the petitions, interim orders directing the appellants herein not to dispossess the land owners from the land in question, were passed. That apart, after passing of the award, since the compensation offered was not accepted by the land owners, the same was deposited in the court of Civil Judge (Senior Division), Sri Ganganagar. It was contended that since on account of lis pendence, the possession of the land was not taken and the compensation was not paid, the protection given under sub-section (2) of Section 24 of the Act of 2013 is not available to the land owners.

6. After due consideration of the rival submissions, the learned Single Judge allowed the writ petitions and declared that the land acquisition proceedings shall be treated to be lapsed with observations as under:

"In the instant matters, all the eventualities needed for application of sub-section(2) of Section 24 are existing. The award was passed in the year 2006 i.e. five years or more prior to commencement of the Act of 2013 and physical possession of the land has yet not been taken. The compensation awarded too was not offered or paid even upto 1.1.2014. This factual position clearly indicates that sub-section(2) of Section 24 of the Act of 1894 operates in the instant matters and by application of that the proceedings initiated under the Act of 1894 are to be treated lapsed."

7. The legality of the order passed by the learned Single Judge is challenged by the appellants herein on various grounds.

8. During the pendency of these appeals, the Hon'ble Supreme Court in Indore Development Authority Vs. Manohar Lal & Ors.:AIR 2020 SC 1496, while interpreting provisions of Section 24 of the Act of 2013, answered the various questions framed as under :

"1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceeding

shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of the land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non- deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non- payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013

came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by the court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to re-open proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition." (Emphasis added)

9. Learned AAG submitted that in the instant case the award was passed by the Land Acquisition Officer on 25.2.06, however, the possession of the land could not be taken on account of interim order passed by this Court. Further, the amount of compensation was tendered to the beneficiaries entitled thereto according to the award but they did not receive it and consequently, the same was deposited in court. Learned AAG submits that in view of authoritative pronouncement of the Supreme Court in Indore Development Authority's case (supra), the proceedings of land acquisition cannot be deemed to have been lapsed in terms of provisions of Section 24(2) of the Act of 2013 and therefore, the orders under appeal deserve to be set aside.

10. On the other hand, learned counsel appearing for the respondents while not disputing that the orders under appeal deserve to be set aside in light of decision of the Supreme Court in Indore Development Authority's case (supra) submitted that the writ petitions were decided by the learned Single Judge on the application preferred by the respondents praying for declaring the land acquisition proceedings as lapsed by virtue of provisions of Section 24(2) of the Act and therefore, the various grounds raised by the writ petitioners in the petitions filed were not considered and accordingly, it is prayed that the orders under appeal may be set aside but the matters deserve to be remitted to the learned Single Judge for consideration afresh.

11. A bare perusal of the orders impugned reveal that the learned Single Judge has allowed the writ petitions filed solely on the ground that by virtue of provisions of Section 24(2) of the Act of 2013, the land acquisition proceedings are deemed to have lapsed and for this reason, the various grounds set out by the writ petitioners in the writ petitions filed assailing the legality of the land acquisition proceedings have not been examined.

12. In this view of the matter, while setting aside the orders under appeals in light of decision of Apex Court in Indore Development Authority's case (supra), we consider it appropriate to remit the matters to the learned Single Judge for consideration of the petitions afresh on the grounds set out in the writ petitions.

13. Accordingly, the special appeals are allowed. The orders under appeals dated

19.5.14 and 21.5.14 passed by the learned Single Judge of this Court are set aside. The matters are remitted to the learned Single Judge for consideration afresh on the grounds set out in the writ petitions. The writ petitions shall stand restored to their original numbers; be listed for hearing before the learned Single Judge on 28.9.2020.

14. No order as to costs.