

(2017) 08 CAL CK 0014
In the Calcutta High Court
Case No : 1558 of 2016

**State of West Bengal & Anr. Vs Desire Agro Resorts Development?
Private Limited & Ors.**

Date of Decision : 10-08-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 11 - Publication of preliminary notification and powers of officers thereupon. - Enquiry and award by Collector
Right to Fair C

Citation : (2017) 08 CAL CK 0014

Hon'ble Judges : Biswanath Somadder, Sankar Acharyya

Bench : DIVISION BENCH

Advocate : Kishore Datta, Subhabrata Dutta, Amrita Lal Chatterjee, ?Debashis Sarkar, L.K. Gupta, Dipankar Pal, Juin Dutta Chakraborty, Kakali Naskar, Sanchayita De, Tanuka Basu, P.S. Basu, Satyajit Talukdar

Final Decision : Dismissed

Judgement

1. This appeal, preferred by the State of West Bengal through its Principal Secretary, Land and Land Revenue Department and the District Magistrate Collector, 24-Parganas (South), arises out of a judgement and order dated 1st March, 2016, passed by the learned Single Judge in WP 13434 (W) of 2009 (M/s. Desire Agro Resorts Development Private Limited & Anr. vs. State of West Bengal & Ors.). Since it is a rather short judgement, we intend to reproduce the same in its entirety, hereinbelow:- "Affidavit-in-reply fled [sic; read, filed] be kept on record. On 17th February, 2016, Mr. Moitra, learned senior advocate appearing on behalf of the petitioners had made submissions which were recorded in order of that date as is reproduced below:-

"By relying on notification dated 1st December, 2005 being Annexure-P/1 to the writ petition, he submits his clients are the owners of the schedule land mentioned in that notification. He then refers to the affidavit-in-opposition filed on behalf of the respondent nos. 1-6 except 4 in particular sub-paragraph (h) of paragraph 3 therein to point out that the case of the State was awards were

declared on 11th October, 2007. He then relies on sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to submit the same commenced with effect from 1st January, 2014 and compensation had not been paid on awards admittedly made five years prior to commencement of the said Act. He submits the land acquisition proceedings therefore lapsed."

Mr. Mahata, learned advocate appearing on behalf of the State today submits upon instructions that the awards were made in the year 2007 and no compensation pursuant thereto had been paid to the petitioners. Furthermore, he could not dispute that since the awards were made more than 5 years prior to the commencement of the Act of 2013, by operation of the provisions of sub-section (2) of Section 24 of the said Act the acquisition proceedings had lapsed.

The petitioners had prayed for, inter alia, payment of compensation without which the respondents, according to them, were not entitled to take forcible possession of the lands and for restraint orders restraining the State from so doing without settling the payment of compensation. Since the acquisition proceedings have lapsed by operation of law, the petitioners are entitled to the orders of restraint prayed for in their writ petition. The respondents are restrained from taking any step or making any further attempt to carry on any work on the lands which they had sought to acquire for the purpose of development and establishment of District head office pursuant to the acquisition proceedings referred to in the writ petition that are hereby declared to have lapsed.

The writ petition is disposed of."

2. A pure question of law that arises in the facts and circumstances of the instant case is whether the proviso to 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 of 2013") excludes the writ petitioners' right to be paid compensation under the Act of 2013, simply because a majority of land-holdings have been compensated in accordance with the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act of 1894"). The reason why this question arises is, according to the learned Advocate General, the proviso to section 24(2) - by its implication - makes it clear that in the event, award has been made and compensation in respect of a majority of land-holdings has been deposited in the accounts of the beneficiaries, then a beneficiary specified in the notification for acquisition under section 4 of Act of 1894 - belonging to a minority group of land-holdings ? will not be entitled to compensation in accordance with the provisions of the Act of 2013.

3. The question, therefore, begs an answer. However, before we proceed to answer this question, we are required to look into certain material facts which may be culled out from the impugned judgement and order dated 1st March, 2016.

4. In the facts of the instant case, the writ petitioners' land-holdings were acquired along with several others and awards were made and published in the year, 2007 under the provisions of the Act of 1894. However, no compensation was paid to the writ petitioners under the Act of 1894, although it is admitted that physical possession of the land was also taken.

5. According to the learned senior counsel representing the respondents/writ petitioners, the fact situation of the instant case is a clear instance where the provisions of sub-section (2) of section 24 will apply and the proviso attached thereto has no manner of application at all. According to him, the proviso to subsection (2) of section 24 has been consciously introduced in the statute book only in order to ensure that when majority of beneficiaries of land-holdings in whose favour award has been made under the Act of 1894, have not had their compensation deposited in their accounts, all beneficiaries specified in the notification for acquisition under section 4 of the Act of 1894 are entitled to compensation in accordance with the provisions of the Act of 2013. According to him, there was no other reason as to why the said proviso was required to be introduced in the statute book.

6. In order to examine the issue, we are required to visit section 24 of the Act of 2013. For the sake of convenience, the same is reproduced hereinbelow:- "24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.??(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

7. A plain reading of the above provision of law reveals that there are two subsections under section 24 of the Act of 2013. Both the sub-sections begin with non-obstante clauses. So far as sub-section (1) is concerned, there are two clauses which deal with two kinds of situation -one, where no award under section 11 of the Act of 1894 has been made when proceedings have been initiated under the said Act of 1894 and the other is, where an award under section 11 has been made in a proceeding initiated under the said Act of 1894. It is clearly evident that clause (a) applies where no award under section 11 of the Act of 1894 has been made and clause (b) applies where an award under section 11 of the Act of 1894 has been made. In case of clause (a), determination of compensation will be governed under the Act of 2013, whereas in case of clause (b), such determination will be governed under the Act of 1894.

8. Now comes sub-section (2), which also begins with a non-obstante clause. Here also we notice that this statutory provision is in respect of a case where land acquisition proceedings were initiated under the Act of 1894. It postulates two situations. The first situation is where an award under section 11 of the Act of 1894 has been made five years or more prior to the commencement of the Act of 2013, but physical possession of the land has not been taken. The other situation applies in case where compensation has not been paid where an award under section 11 of the Act of 1894 has been made five years or more prior to the commencement of the Act of 2013. In either of the two situations, the proceedings initiated under the Act of 1894 shall be deemed to have lapsed. The statute makes this clear with a disjunctive "or" between the phrases, "the physical possession of the land has not been taken" and "the compensation has not been paid". The appropriate Government - in both situations/circumstances - however, has been given liberty to initiate proceedings of such land acquisition afresh in accordance with the provisions of the Act of 2013.

Now comes the question of importance of the proviso attached to subsection (2). One may ask as to why this proviso has been introduced in the statute book at all? Is it because of the reason which is sought to be advanced by the learned Advocate General or is it for some other reason?

9. In order to understand the true intention of the legislature, we need to understand the significance of this proviso. A plain reading of this proviso reveals that the legislature - in its wisdom - has consciously introduced a benefit which would be available to all beneficiaries specified in the notification for acquisition under section 4 of the Act of 1894 only in a certain fact situation. What then is the fact situation? The fact situation is, where an award has been made under section 11 of the Act of 1894 and compensation in respect of majority of landholdings has not been deposited in the account of the beneficiaries. What is the benefit? The benefit is, compensation in accordance with the provisions of the Act of 2013.

10. So what happens if there is a minority of land-holdings where award has been made in favour of beneficiaries specified in the notification for acquisition

under section 4 of the Act of 1894, but compensation in respect thereof has not been deposited in the account of such minority group of beneficiaries even after a lapse of five years prior to commencement of the Act of 2013. If we go by the submissions made by the learned Advocate General, it would mean that in such a fact situation, the minority group of land-holdings, cannot claim the benefit as provided under sub-section (2) of section 24 of the Act of 2013, since the proviso - by its implication - excludes minority of land-holdings and only provides benefit under the Act of 2013 in respect of majority of land-holdings.

11. For interpreting a statute, a plain meaning is required to be given to a provision of law without trying to introduce any word or a phrase that has been consciously left out by the legislature in its wisdom. Had it been the intention of the legislature to exclude those beneficiaries who form the minority group of land-holdings ? in cases where award has been made under the Act of 1894 but compensation has not been deposited in the accounts of such minority group of beneficiaries even after a lapse of five years prior to commencement of the Act of 2013 - the same would have been clearly spelt out under sub-section (2) of section 24 of the Act of 2013. However, no such intention of the legislature appears on the face of the provision of law being discussed. The only plausible reason for the proviso to have entered the statute book can be explained by an apt illustration.

12. An award has been made under the Act of 1894 for compensation to be paid in favour of one hundred land-holdings. Compensation is paid in respect of only five of such land-holdings under the Act of 1894. Ninety-five of the remaining land-holdings - where award has been made under the Act of 1894 - do not receive compensation. In such a fact situation, the proviso appended to sub-section (2) of section 24 the Act of 2013 will squarely attract and all beneficiaries specified in the notification for acquisition under section 4 of the Act of 1894 will be entitled to compensation in accordance with the provisions of the Act of 2013. The proviso will then operate and it will not be open to the appropriate government to contend that since some of the land-holdings have been compensated under the Act of 1894, the majority must receive compensation under the same Act, i.e., the Act of 1894.

13. The submission of the learned Advocate General with regard to a beneficiary specified in the notification for acquisition under section 4 of the Act of 1894 falling within a minority group of land-holdings who has not received compensation under the said Act of 1894, not being entitled to compensation under the Act of 1894, for reason of applicability of the proviso -by its implication - therefore, does not hold any water at all. It must be borne in our mind that a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment - except as to the cases dealt with by it, specifically. If the language of the enacting part of the statute does not contain the provisions which are said to occur in it, one cannot derive these provisions by implication

from a proviso. Therefore, when on a fair construction a provision of law is clear, a proviso appended thereto cannot expand or limit it, by implication.

14. Now coming back to the instant case. It is noticed that the learned Single Judge has restrained the respondent authorities from taking any step or making any further attempt to carry on any work on the lands of the writ petitioners which they had sought to acquire for the purpose of development and establishment of district head office pursuant to the acquisition proceedings referred to in the writ petition that were declared to have lapsed by the learned Judge.

15. We do not find any reason to interfere with the said order since we hold that in the facts of the instant case, the acquisition proceedings have been lapsed by operation of law.

16. The appeal and the application for stay stand dismissed accordingly.

17. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties. (Biswanath Somadder, J.)

I agree.

(Sankar Acharyya, J.)

Later:

After the judgement is pronounced in open Court, the learned Advocate General prays for stay of operation of the order, which is considered and refused.