

(2017) 03 RAJ CK 0183
In the Rajasthan High Court
Case No : 4108 of 2015

Subhash Kumar Gupta

APPELLANT

Vs

Sub-Divisional Officer

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Land Acquisition Act, 1894, Section 11 -
Enquiry and award by Collector
Right to Fair Compensation and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013, <a href=1

Citation : (2017) 03 RAJ CK 0183

Hon'ble Judges : M.N. Bhandari

Bench : SINGLE BENCH

Advocate : NK Maloo, Narendra Sharma

Judgement

1. By this writ petition, a prayer is made to declare land acquisition award dated 1st February, 1966 as lapsed in reference to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013").

2. Learned counsel for petitioner submits that in pursuance of the proceedings for acquisition of the land, award was passed on 1st February, 1966. The possession of the land still exists with the petitioner and even compensation has not been paid thus acquisition stand lapsed in view of Section 24(2) of the Act of 2013. Accordingly, a prayer is made to declare acquisition of land measuring 1 bigha and 3 biswa of Khasra No.757 situated in Neem Ka Thana, District Sikar as lapsed.

3. I have considered the submission made by learned counsel for petitioner and perused the record.

4. The perusal of award dated 1st February, 1966 at Annexure-4 and judgment dated 29th January, 1970 at Annexure-5 make reference of acquisition under the Rajasthan Land Acquisition Act, 1953 (for short "the Act of 1953") and not under

the Land Acquisition Act, 1894 (in short "the Act of 1894"). In view of that, Section 24 of the Act would not apply to the present case.

5. Section 24 of the Act of 2013 is quoted hereunder for ready reference: "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such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.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."

Section 24 of the Act of 2013 applies in a case where land acquisition proceedings were initiated under the Act of 1894. Subsection (2) provides about lapse of proceedings under the Act of 1894 when award under Section 11 has been made prior to five years of the commencement of the Act but physical possession of land has not been taken or compensation has not been paid. In the instant case, acquisition proceedings were not initiated under the Act of 1894 but under the Act of 1953. The award passed by the Land Acquisition Officer cannot be considered to be under the Act of 1894.

6. Learned counsel for petitioner has failed to show that even if acquisition was initiated under the Act of 1953, as referred in the award and the judgment at Annexure-5, then also to be considered under the Act of 1894. No provision for it has been shown to establish acquisition to be under the Act of 1894.

7. It is also a fact that acquisition in question was earlier challenged by petitioner's father by maintaining a writ petition bearing No.507/1966. It was dismissed by this court vide judgment dated 29th January, 1970. It was in

reference to the Rajasthan Acquisition Act, 1953. Therein, all the relevant issues were considered and decided. The judgment aforesaid is relevant to show that land was not acquired pursuant to the Act of 1894 but under the Act of 1953 thus Section 24(2) of the Act of 1894 cannot have any relevance. After acquisition of land and on dismissal of the earlier writ petition, land vest in the State.

8. Learned counsel for petitioner could not show application of the Act of 1894 on acquisition of land under the Act of 1953. The issue aforesaid has been discussed by the Apex Court in the case of Pratap & Anr. Vs. State of Rajasthan & Ors., reported in (1996) 3 SCC 1. It was though acquisition under the Rajasthan Urban Improvement Act, 1959 which stood repealed in the year 1987. It was found that Act of 1894 became applicable in the State of Rajasthan w.e.f. 24.09.1984. The acquisition in hand is prior to the aforesaid thus Act of 1894 cannot be applied in the instant case though it was not under the Act of 1959 but under the Act of 1953. Paras 3 and 11 of the said judgment are quoted hereunder for ready reference: "3. The Land Acquisition Act, 1894, was extended to the State of Rajasthan on 24-9-1984. Some of the persons whose lands were acquired filed suits challenging the acquisition proceedings under Section 52 of the said Act. According to the appellants the said suits were dismissed on 2-9-1986. Awards were passed on different dates. In the present appeals the awards were passed on 30-9-1988, 30-11-1988 and 28-6- 1989."

"11. From the facts narrated hereinabove it is clear that the Central Act was extended to the State of Rajasthan only after the land in question had vested in the State Government with the publication of the notification under Section 52(1) on 10th October, 1984. Once the vesting of the land in the State Government, free from all encumbrances, was completed, the subsequent extension of the Land Acquisition Act, 1894 to the State of Rajasthan and the amendments made by the Amending Acts to the Rajasthan Urban Improvement Trust Act becomes wholly irrelevant and of no consequence. Neither the amendments nor the extension of the Central Act can have the effect, in law or otherwise, of divesting the State of ownership of the land which had already been vested in it."

9. The land in question has already vested in the respondents with acquisition and after judgment of this court in the earlier writ petition preferred by petitioner's father.

10. For all the reasons given above, the award cannot be declared to have lapsed in reference to Section 24(2) of the Act of 1894. Hence, writ petition is dismissed.