

(2014) 11 AP CK 0038
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1331 of 2009

The South Central Railway	Vs	APPELLANT
The Special Deputy Collector		RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : AIR 2015 AP 54 : (2015) 3 ALD 693 : (2015) 1 ALT 395 : (2015) ALT(Rev) 95

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J; M.S. Ramachandra Rao, J

Bench : Division Bench

Advocate : Gourishankar Shanghi for N. Sasikala, Advocate for the Appellant;
M. Sudheer Kumar and Suresh Kumar Potturi, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This appeal has been preferred by the South Central Railway, its officials and also the Union of India against the judgment and order of the learned Single Judge dated 28.07.2009 by which His Lordship was pleased to pass an interim order in W.P. No. 20252 of 2002.

2. The 2nd and 3rd respondents in this appeal are the writ petitioners who brought the action before the learned Single Judge for the following relief:

to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in dispossessing the petitioners from their patta land bearing S. No. 81, admeasuring Ac. 1.05 guntas situated at Hafeezpet Village, Ranga Reddy District, without notice without initiating land acquisition proceedings u/sec. 4(1) of the Act and without payment of compensation is arbitrary, illegal and without jurisdiction and consequentially to direct the respondents to deliver back the land admeasuring Ac. 1.05 guntas situated in Sy. No. 81, Hafeezpet Village, Ranga Reddy District to the petitioners forthwith and to pay damages for the infringement of constitutional rights of the petitioners in depriving their property without notice.

3. The learned Single Judge, after considering the respective contentions of the parties in the writ proceedings, formulated the following questions to decide the matter.

1. Whether the Railways have acquired title by adverse possession?
2. Whether the Railways are liable to approach the Land Acquisition authorities and seek acquisition of land and pay compensation to the petitioners?
3. Whether there is any dispute as to title between third parties and petitioners vis-a-vis Railways?
4. Whether the petitioners are entitled for recovery of possession?

4. Learned Single Judge thereafter came to the fact finding that there was no valid land acquisition proceedings and on the basis of a simple letter the possession of the land was taken, and then decided to allow the appellants herein to initiate proceedings under the Land Acquisition Act, 1894 in respect of the subject land in order to regularize the possession taken within a period of three months from the date of receipt of the order. Against this order, the railway authorities as above have preferred the present appeal.

5. The ground to assail the impugned order is that the decision on the question of title of respondent Nos. 2 and 3 is incorrect and the aforesaid direction for land acquisition should not have been given.

6. Learned counsel for the appellants placing on the grounds of appeal submits that within three months it is not possible to acquire the subject land. Moreover, question of acquisition of the land does not and cannot arise.

7. Learned counsel for the respondents-writ petitioners supports the judgment of the learned Single Judge.

8. Therefore, the question, which has fallen for consideration in this appeal, is as to whether the railway authorities are entitled to remain in possession of the land in question, as admittedly no acquisition proceedings have been initiated.

9. While considering the submission and contention of the learned counsel for the appellants, we examine on what basis the railway authorities have come into possession of the land in question. Admittedly, there has been no acquisition of title of the property either by acquisition proceedings or by way of transfer. It appears that by a document dated 15.11.1973 signed by Smt. Kadiri Bee, D/o. Hussainsab possession of the subject land was taken by the railway authorities. The text of the said document is as follows:

CONSENT STATEMENT

Having come to understand that the South Central Railway has proposed acquisition of my land of Ac. 0.39 guntas, Sy. No. 81 of Village Hafizpet, I am handing over the above land to the railway today 15th November, 1973. I have no objection. How in the railway entering upon my above land and do any work

as required by them. Interest has to be paid from the date of handing over the land till the award is passed. The actual area for payment and rental compensation will be in each S. No. subject to award passed by revenue authorities.

Sd/- Taken over Assistant Engineer, (Construction) Secunderabad-C.

Sd/- Handed over by (owner) Khadiri Bee, D/o. Hussain Sab

Assistant Engineer (Construction) South Central Railway, Secunderabad.

10. Except the above document there is no other document to retain possession of the property in question by the appellant Railway. It appears from the above document that the predecessor-in-interest of the writ petitioners was in understanding that the land acquisition proceedings would be initiated and appropriate compensation would be awarded. But, the same has not taken place. From then onwards the constructive possession of the land in question is with the railways. It is not in dispute that the writ petitioners successor-in-interest of the aforesaid person handed over the possession of the land. It is undisputed position that no attempt has been made to vacate the railway authorities from the land. Therefore, we are of the view that in spite of the direction being given by the learned Single Judge, the railway authorities have not carried out the same.

11. According to us, from 1973 the railway has been so to say in possession of the subject land without paying single paisa. Nothing has been shown before us as to whether any payment has been made for use of the land. Under these circumstances, we hold that the appellants have no right to retain in possession of the land in question. We are told by the learned counsel for the appellants that the land is still lying vacant and is not being used. It is also submitted that the railway authorities are not interested to acquire the said land. In any view of the matter, acquisition of any land is possible in accordance with law even at a later stage. At the moment, the appellants cannot resist the writ petitioners from getting possession of the land.

12. Learned counsel for the appellants has cited a decision of the Hon''ble Supreme Court in the case of Suganmal vs. State of M.P. and others to claim return of the land. We have seen the said judgment. It is a case of refund of tax paid. The Hon''ble Supreme Court observed that in the absence of provision for refund of tax paid, order to refund the tax could not be passed. In this case, the railway authority is not in possession with the lawful claim. Hence, we are of the view that at least from the date of filing of the writ petition the railway has become so to say trespasser and is in wrongful occupation of the land in question. Therefore, the decision of the Hon''ble Supreme Court has no application to this case.

13. We therefore direct the railway authorities that formally by writing a letter to the writ petitioners, handover possession of the land in question. If such letter is

not written within a period of 15 days from the date of receipt of a copy of this order, it will be open for the writ petitioners to enter into the land and take possession, of course, after making necessary survey to find out the correct extent of the land in question. The railway authority in that case shall not prevent the writ petitioners from taking such action.

14. The writ appeal is accordingly disposed of.

15. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.