

(2015) 01 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3933 of 2014

Udey Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 11A, 17(3A), 4, 5A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2015) 01 P&H CK 0043

Hon'ble Judges : Raj Rahul Garg, J.; Ashutosh Mohunta, J.

Bench : Division Bench

Advocate : P.C. Yadav, for the Appellant; Ajay Gupta, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—Present petition has been filed by the petitioners impugning notification issued under Section 4 dated 12.05.1995 (Annexure P-2) and declaration under Section 6 dated 10.05.1996 (Annexure P-5) issued under the Land Acquisition Act, 1894 (hereinafter in short referred to as the 'Old Act') by invoking the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 (hereinafter in short referred to as the 'Act of 2013') having come into force w.e.f. 01.01.2014.

2. It is case of the petitioners that they are owners in possession of land measuring 3 Bigha 8 Biswa comprised in Khasra No.1240 situated in the revenue estate of Village Bhadurgarh, District Jhajjar prior to issuance of notification under Section 4 of the Land Acquisition Act, 1894 and have raised construction over the said land.

3. State of Haryana issued notification under Section 4 of the Old Act followed by

declaration under Section 6 acquiring the land of the petitioners and others for the public purpose, namely, for the utilisation and development of land for residential and commercial purpose for Sector 9 and 9-A, Bhadurgarh, District Jhajjar.

4. The whole sum and substance of the argument raised by learned Counsel for the petitioners is that the present acquisition proceedings relate back to the year 1995 and till date the petitioners being in physical possession of the land in question for more than 5 years after pronouncement of the award dated 24.04.1998 in the present case, in view of unambiguous provisions of Section 24(2) of the New Act of 2013 having come into force w.e.f. 01.01.2014, the entire acquisition proceedings stands lapsed.

5. Per contra, it has been argued by the learned State Counsel that the present writ petition deserves to be dismissed on the short ground that award in the present case was pronounced on 24.04.1998 but the same has not been challenged in the present writ petition by the petitioners and, therefore, no benefit envisaged under Section 24(2) of the New Act of 2013 can be granted to them, pronouncement of award being the essence of the said provision. It has further been argued while referring to Paragraph No.8 of the preliminary submissions made in their written statement, that about 95% of compensation stands disbursed to the landowners in pursuance to the award having been pronounced in the present case and, therefore, in view of Section 24(2) of the New Act of 2013, the present writ petition be dismissed. It has also been argued by learned State Counsel that subsequent to the said acquisition, physical possession of the land was taken over by the State Government and pursuant thereto entire planning of the acquired area has been finalised by Haryana Urban Development Authority whereupon plots were floated in the said Sectors by inviting applications from the general public through draw of lots held by HUDA on 25.05.1999 and thus in this way third-party rights have been created over the land in question. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court of India in the case of Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, . It has further been argued that the present writ petition having been filed after a delay of more than 16 years from the date of passing of the award, deserves to be dismissed on the ground of delay and laches in view of the Constitutional Bench Judgment delivered by the Hon'ble Supreme Court of India in State of Madhya Pradesh Vs. Bhailal Bhai and Others, .

6. We have heard learned counsel for the parties and have gone through the records of the case with their assistance.

7. Admittedly, 458.65 acres of land was notified to be acquired by the State Government for development and utilisation of the land as residential and commercial area for sector 9 and 9A, Bhadurgarh by Haryana Urban Development Authority. To the said notification, petitioners/landowners filed their objections under Section 5A of the Old Act dated 12.06.1995. The said objections

having not found favour with the State Government and with the intent to achieve the public purpose as aforesaid for which the land was sought to be acquired, the State Government issued declaration under Section 6 dated 10.05.1996 acquiring the entire land as notified under Section 4. Thereafter award in the present case was pronounced on 24.04.1998.

8. A perusal of the record would show that total amount of Rs. 21,85,15,090/- was awarded as compensation to the 1887 landowners vide the aforesaid award, out of which Rs. 20,74,45,035/- was disbursed to 1633 landowners while remaining 254 did not receive the same.

9. On 01.01.2014, the New Act of 2013 came into force. Section 24 of the said Act, reads thus:-

24(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 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 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, 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 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.

10. A bare reading of the Sub-Section (2) of Section 24, would reveal that where an award has been made 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. In the present case not only the physical possession of the land in question has been taken by the State Government and handed over to Haryana Urban Development Authority but even 95% of total compensation has been disbursed to the landowners. Learned State Counsel has taken us to

paragraph No.10 of the preliminary objections taken in their written statement, which reveals that to achieve the aforesaid public purpose, the entire planning of the area has been finalised, pursuant to which 4151 plots have been carved out. 3135 plots have been put to draw of lots on 25.05.1999 and allotted to general public by HUDA. Out of 3135 allottees, 344 allottees have raise construction of houses over the said plots and thus have occupied them. Even, as per the layout plan of the area, acquired land of the petitioners is earmarked for 5 residential plots bearing Nos.2348, 2349, 2350, 2351 and 2352 and for 10 meter wide road in sector 9, 9-A, Bhadurgarh. All civic amenities such as sewerage, electrification, water supply has been provided over the acquired land including the land of the petitioners which is being put to use by the residents/allottees of the said area. In the case of Banda Development Authority, Banda (supra), the Hon"ble Supreme Court while delineating on a similar situation and circumstance, held in paragraph Nos.14 to 17 as under:-

?14. The above extracted portions of the plaint unmistakably show that respondent No.1 had no complaint against the acquisition of land or taking of possession by the State Government and delivery thereof to the BDA and the only prayer made by him was that the defendants be directed to undertake fresh acquisition proceedings after sub-dividing plot No. 795 so that he may get his share of compensation. He filed writ petition questioning the acquisition proceedings after almost 9 years of publication of the declaration issued under Section 6(1) and about six years of the pronouncement of award by the Special Land Acquisition Officer. During this interregnum, the BDA took possession of the acquired land after depositing 80% of the compensation in terms of Section 17(3A), prepared the layout, developed the acquired land, carved out plots, constructed flats for economically weaker sections of the society, invited applications and allotted plots and flats to the eligible persons belonging to economically weaker sections as also LIG, MIG and HIG categories. Unfortunately, the High Court ignored all this and allowed the writ petition on the specious ground that the acquired land did not vest in the State Government because physical possession of the land belonging to respondent No.1 was not taken till 31.7.2002 and the award was not passed within two years as per the mandate of Section 11A.

15. In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of the BDA and the State Government, the High Court was duty bound to take cognizance of the long time gap of 9 years between the issue of declaration under Section 6(1) and filing of the writ petition and declined relief to respondent No.1 on the ground that he was guilty of laches because the acquired land had been utilized for implementing the residential scheme and third party rights had been created. The unexplained delay of about six years between the passing of award and filing of writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

16. It is true that no limitation has been prescribed for filing a petition under

Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, , the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held:

? ... It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it ...

... It is not easy nor is it desirable to lay down any Rule for universal application. It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

... Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.?

17. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.?

11. That since the entire land acquired for the public purpose as afore-stated vide the impugned notifications has been put to use and developed by respondent No.4 after taking physical possession of the same from the landowners as well as the petitioners way back in the year 1999, pursuant to which third-party rights have been created over the same by carving out plots and allotting the same, therefore we have no hesitation in holding that the case of the petitioners does not fall within the scope and ambit of Section 24 of the New Act of 2013.

12. Award being the essence of Section 24 of the New Act of 2013, we find from the record that the petitioners have not challenged the same in the present writ petition and therefore in the absence of any challenge to the award passed in the present case on 24.04.1998, in our opinion, the provisions of Section 24 of the New Act of 2013 are not attracted and hence no relief as claimed can be granted to the petitioners in the present case.

13. Further even, no explanation has been tendered by learned counsel for the petitioners, as to the writ petition having been filed at such belated stage after a gap of 16 years from pronouncement of the award in the present case except stating that the case of the petitioners is covered by the provisions of Sub-Section (2) of Section 24 of the New Act of 2013 having come into force w.e.f. 01.01.2014, as physical possession of the land in question has not been taken from them for a period of more than 5 years after the award. In our firm opinion, the said submission of learned counsel for the petitioners is baseless and devoid of any merit in view of our foregoing discussion and in view of the law laid down by the Hon''ble Supreme Court of India in the case of Banda Development Authority, Banda (supra).

14. In view of the above, we uphold the present acquisition proceedings carried out by the respondents in the present case for public purpose, namely, for development and utilisation of land for residential and commercial area for Sector 9 and 9A, Bhadurgarh and accordingly dismiss the present writ petition. However under the facts and circumstances of the present case, there would be no order as to costs.

Writ petition dismissed.