

(2003) 04 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 2409 of 1981

Union of India (UOI) and Others

APPELLANT

Vs

Ujagar Singh and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Evidence Act, 1872 — Section 115
Land Acquisition Act, 1894 — Section 17, 18

Citation : AIR 2003 P&H 297 : (2004) 137 PLR 239

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Gurpreet Singh, for the Appellant; S.K. Singla and A.K. Ahluvalia, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—This is defendants second appeal against the judgment and decree passed by the first Appellate Court arising out of a suit for possession of land measuring 7 bighas 14 biswas filed by the plaintiff-respondent. The learned trial Court has dismissed the suit. However, in appeal the decree for possession of the land was passed in favour of the plaintiff-respondent.

2. The plaintiff has alleged that he is owner of the land measuring 7 bighas 14 biswas comprising in khasra No. 4723/ 2444, 4721/2627 and 4722/2443. Vide notification dated 26-8-1966, the Government of India published a notification u/s 4 of the Land Acquisition Act (hereinafter to be referred to as the Act) intending to acquire 120.5375 acres of land for a public purpose namely for the purpose of Government of India. Declaration was also made that the action would be taken u/s 17 of the Act on the ground of urgency and the provisions of Section 5-A of the Act shall not apply. On 30-8-1966 the declaration u/s 6 of the Act was published. On 2-11-1966 possession of the land was taken. The award was announced on 7-8-1967. The plaintiff filed suit for possession on 3-10-1969 whereas a compensation of 19841.56 paise was paid to the plaintiff on

25-6-1970 in pursuance of the supplementary award statement.

3. The plaintiff-respondent has filed the suit for possession on the ground that in the above notification and Award instead of actual khasra numbers in existence as per jamabandi, some provisionally adopted khasra numbers by the Consolidation Authorities, have been given. The consolidation notification in the village has been suspended with the result that khasra numbers for which the notification was issued no longer exist. The plaintiff claimed that consequent to the notification u/s 6 of the Act the Central Government took possession of the land illegally taking into account the provisional numbers. Challenge of the plaintiff to the notification of the award was that the plaintiff has not been served with any notice to file his objections u/s 9 of the Act. It was submitted that an application was made on 7-11-1967 u/s 18 of the Land Acquisition Act. It was further alleged that the award as well as the statement of award do not contain any reference to the claim of the plaintiff. It was further alleged that under the consolidation scheme which had been dropped, the plaintiff was to get some other land in lieu of the land mentioned above but possession thereof was never transferred. Therefore, the plaintiff continues to be owner of the land mentioned above and the same could never be acquired and possession could not be taken without valid notification. For ready reference para No. 5 of the plaint reads as under :

"5. That the notification aforementioned under Sections 4 and 6 as well as the award dated 7-8-1967 are illegal and void for the under-mentioned reasons :

(a) That plaintiff has not been served with any notice to file his objections u/s 9 but coming to know of the acquisition the plaintiff made an application on 7-11-1967 u/s 19 of the Land Acquisition Collector, This application was made by the applicant without prejudice to his rights. That in spite of this application no reference was made to the Civil Court.

(b) The award as well as the statement of award does not contain any reference to the name of the plaintiff. Thus, the award and the award statement do not in any way give right to the plaintiff and also do not bind him.

(c) Under the consolidation scheme which has been dropped, the plaintiff was to get some other land in lieu of the land mentioned above as the notification of consolidation had been dropped and possession thereof was never transferred inter-se the land owners. The plaintiff continues to be the owner of the land mentioned above and the same could never be acquired or taken possession of without a valid notification under Sections 4 and 6 and then a notice to the plaintiff and consequent award. In the instant case all the four aforementioned items were lacking. The taking of possession is thus illegal and void.

4. It may be mentioned that some of the proprietors of the village challenged the scheme of consolidation by way of writ petition No. 2247 of 1966 filed on 16-10-1966. Said writ petition was allowed on 14-3-1967 and it was held that the consolidation scheme of the village as provided for the reservation of the

land for the income of the Gram Panchayat was declared void and therefore, annulled. State was directed to modify the scheme in question so as to bring in accordance with Article 31-A of the Constitution and then to proceed in accordance with the law. The said judgment is Ex. PX on the record.

5. It is admitted by the parties that consequent to the said order, the consolidation scheme was dropped and consolidation was not carried forward. It has also come on record that the plaintiff had made an application Ex. D.4 on 26-10-1966 claiming compensation. The plaintiff made application Ex. D.6 on 14-1-1969 for seeking a reference aggrieved against the unsatisfactory award. Paras Nos. 2, 3 and 4 of the said application Ex. D.6 read as under :

2. In the above notification instead of the actual khasra numbers in existence as per jamabandi, wrongly khasra numbers provisionally adopted by the consolidation authorities to carry out their scheme of repartition have been given. The consolidation work has not so far been materialised in as much as no possession has been transferred.

Under the orders of the High Court at Chandigarh, the proceedings so far carried out have been held invalid and the transfer of possession has been stopped till the new scheme is prepared and sanctioned which means that it has been postponed for at least about 3 to 4 years.

3. From the marking on the spot of the land to be acquired khasra numbers 4728, 4721 and 4722 of khewat No. 200/118, 212/258, 354/1 stand acquired. These khasra numbers are my property under orders of Shri Adish Kumar Sub-Judge 1st Class, Ludhiana dated 27-1-1959 eventually confirmed by the High Court at Chandigarh. For the compensation of which I am fully entitled.

4. That the applicant had not been served with any notice but coming to know of the acquisition, an application on 2-11-1967 was made by the applicant. That in spite of this application a reference u/s 18 of the Land Acquisition Act, 1894, has been made. This application and the present application is made without prejudice to other remedies available to the applicant. That other cases have already been referred to the District Judge by the Collector, but this case of the applicant has not been referred so far."

6. The application for seeking reference was declined by the Land Acquisition Collector as beyond the period of limitation vide order 19-8-1969 Ex. D. 7. The defendant has also produced award dated 7-8-1967 in respect of land measuring 120.5875 acres of land, Ex. D. 9 as well as khatauni Paimash Ex. D.10 to Ex. D. 15 wherein new khasra numbers in lieu of land comprising in khasra No. 4721, 4722 is described. The site plan Ex. D. W2/A has been produced in respect of handing over possession of 120.5875 acres.

7. The learned trial Court found that the plaintiff has accepted the amount of compensation on 25-6-1970 without protest and has also moved an application for compensation and for reference, thus, the only remedy to him is to challenge

the order rejecting his reference. He was estopped from filing the suit to challenge the acquisition proceedings and the award. However, the Appellate Court relied upon *Uggur Sen Kashyap Vs. Union of India and Others*, and 1976 P LJ 2 and *Rattan Singh and Another Vs. The State of Punjab and Others*, to hold that the notifications under Sections 4 and 6 of the Act are not valid notifications. The ratio of the said judgments is that the substance of the notification is to be published in the locality and that the award of the land being in violation, of the notification u/s 6 of the Act is ultra vires of the Constitution. The plea of estoppel was negatived on the ground that once an application for reference has been made the same cannot be rejected on the ground that land owner has accepted the amount of compensation thereof. There is no finding recorded by the learned First Appellate Court that khasra numbers of the plaintiff are not part of the land acquired.

8. In the present appeal, the appellant has argued that the judgment and the decree passed by the first Appellate Court is wholly illegal and not sustainable in law. It was submitted that the sole basis of challenge was that the notification and the award give the khasra numbers provisionally adopted by the consolidation authorities. Therefore, the acquisition of land is not legal. It is the admitted case that the notification under Sections 4 and 6 of the Act contain post consolidation khasra numbers, which claim was set aside in a writ petition filed in October, 1996 i.e. after the publication of notification u/s 6 of the Act.

9. In view of above, the following substantial questions of law arise :

1. Whether the plaintiff-respondent can challenge the acquisition proceedings after the land vested in the Central Government free from all incumbrances on announcing of the award?

2. Whether the plaintiff can dispute non-publication of notification under Sections 4 and 6 of the Act having submitted to the acquisition proceedings and thus estopped to challenge the same?

Question No. 1.

10. The resume of the facts as mentioned above would show that the suit was filed in October, 1969 after the award was announced on 7-8-1967, whereas the possession was taken earlier. It has been held by a Full Bench of this Court in *Narinjan Singh and Another Vs. State of Punjab and Another*, that the acquisition proceedings cannot be challenged after land vested in the State Government on announcing of the award u/s 11 of the Act. Subsequently, the Hon"ble Supreme Court in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others*, has held that no challenge can be made to acquisition proceedings after announcing of the award. Recently a Division Bench of this Court in *Convertaid Engineers Pvt. Ltd. v. State of Haryana* 2003 (1) P LR 634 : (2003 AIHC 969) has reiterated that the acquisition proceedings cannot be challenged after the land vested in the State Government, free from encumbrances. Therefore, I am of the opinion, that challenge to the

acquisition proceedings after announcing of the award and vesting of the land in the State is not tenable.

11. The learned counsel for the plaintiff submitted that the compensation was paid on 25-6-1970 i.e. after the filing of the suit by way of supplementary award and thus the stand of the defendant that the land was the subject matter of acquisition and part of the award dated 7-8-1967 is not tenable. However, the argument is misconceived. The award Ex. D.9 is in respect of the land measuring 120.5375 acres. It was the said land which was sought to be acquired vide notification dated 26-8-1966 as well as the notification u/s 6 of the Act dated 30-8-1966. Thus, there is only one award in respect of the entire land acquired. Merely, because the payment has been made during the pendency of the suit after the land vested in the State Government will not enable the plaintiff to impugn the acquisition. Thus, the suit filed by the plaintiff after vesting of the land with the State Government on the announcement of the award is not maintainable. Therefore, I am of the opinion that the suit filed by the plaintiff to challenge the acquisition proceedings after announcing of the award is not maintainable.

Question No. 2.

12. A perusal of the pleadings would show that the plaintiff has made grievance only of giving khasra numbers provisionally adopted by the Consolidation Authorities. There is no statement made by the plaintiff to the effect that his land was not the subject-matter of the acquisition. It is so apparent from the pleadings of the plaintiff as well as in an application made for seeking reference u/s 18 of the Act in the year 1969. It is apparent that the plaintiff wants to take advantage of setting aside of the consolidation scheme by the High Court in a writ petition after the publication of notification under Sections 4 and 6 of the Act. Since the consolidation scheme was set aside, the payment was made to the plaintiff in accordance with the preconsolidation numbers. Even the khatauni Paimaish shows that khasra numbers 6422 and 6423 were the subject-matter of consolidation under Sections 4 and 6 of the Act. The act and conduct of the plaintiff shows that he always treated the land having been acquired and has even taken steps to seek reference u/s 18 of the Act. Therefore, it would not be open to him to impugn the notification when the ammunition depot has been raised. Large area over 120 acres was acquired whereas the plaintiff is making grievance in respect of land of comparatively much smaller area measuring 7 Bighas 14 Biswas.

13. The plaintiff has claimed compensation vide application dated 26-10-1996 Ex. DW 4/A as well as moved application Ex. D.6 for reference u/s 18 of the Act. It has been held by a Division Bench of Madras High Court in a judgment Mohammad Habibullah Sahib and Others Vs. Special Deputy Collector for Land Acquisition Madras and Others, that the petitioner who has made application for reference cannot be permitted to challenge acquisition of land itself. Still further reference application of the plaintiff was rejected being barred by limitation. The

plaintiff has not impugned such order nor challenged such order before any competent Court of law.

14. The argument of the plaintiff that the notice u/s 9 of the Act was not served upon the plaintiff and thus the respondents have failed to comply with the statutory provisions. The Hon"ble Supreme Court in Nasik Municipal Corporation Vs. Harbanslal Laikwant Rajpal and Others, etc., has held that absence of notice u/s 9 of the Act does not render the award invalid. Thus, it is not open to the plaintiff to dispute the acquisition proceedings and is estopped to challenge the same.

15. The plaintiff is estopped by his own act and conduct to challenge the acquisition proceedings having availed the remedy of reference. It appears that the plaintiff has filed the suit only after the reference of other land-owners were decided by reference Court on 28-3-1969, wherein the amount of compensation was enhanced.

16. In view of above, the appeal is allowed. The judgment and the decree passed by the learned Additional District Judge is set aside and that of the learned trial Court is restored.