
(2015) 07 KL CK 0220
In the High Court Of Kerala
Case No : W.A. No. 1154 of 2015

Varghese

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 109, 24, 24(1), 25, 26, 26

Citation : (2015) 3 ILR Ker 947 : (2015) 3 KLJ 781 : (2015) 3 KLT 625

Hon'ble Judges : Ashok Bhushan, C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : S. Vinod Bhat and Legith T. Kottakkal, for the Appellant; C.S. Manilal, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashok Bhushan, C.J—Heard learned senior counsel appearing for the appellant and Adv. Sri. Manilal, Special Government Pleader for the respondent. This Writ Appeal has been filed against the judgment dated 23.03.2015 in W.P.(C) No. 10369/2014. The appellant filed the Writ Petition praying for the following reliefs:

- "i. To issue a writ of certiorari or other appropriate writ order quashing Ext. P1 award;
- ii. Issue a writ of mandamus or other appropriate writ order directing respondents 2 and 3 not to refer Ext. P2 application to the civil court;
- iii. Grant such other reliefs which are prayed for hereafter and which this Hon"ble Court deems fit to grant."

2. The brief facts necessary for deciding the Writ Appeal are:

"Proceedings under Land Acquisition Act, 1894 (hereinafter referred to as "the old Act") were initiated for acquisition of land by issuing a notification under

Section 4 dated 31.07.2011 and a notification under Section 6 issued on 10.07.2012. In the meantime, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") has been enacted which came into force with effect from 01.01.2014. An award dated 29.01.2014, Ext. P1 was issued by the respondents which was challenged by the petitioner in the Writ Petition. The learned counsel for the appellant contends that till 01.01.2014, no award under the old Act had been issued. Hence, in accordance with Section 24, the award has to be made as per the provisions of the 2013 Act enacted on determination of compensation. He submits that award, Ext. P1 makes it clear that the said award is not under the 2013 Act. In Ext. P1, there is no consideration of the factors as enumerated in Sections 26, 27, 28 and 30. To elaborate his submissions, he submits that according to Section 30 of the 2013 Act, award of solatium has to be one hundred percent of the compensation amount whereas in the award Ext. P1, solatium has been calculated at 30%."

3. The learned counsel for the appellant further submits that the award has to be issued by the State in accordance with the provisions of Section 25 of the Act. He further submits that after the enforcement of 2013 Act, there is no legal impediment in giving the award. His submission is that before the learned Single Judge, submission was made by the learned Government Pleader that rules have not been framed. Hence the award could not be made under the 2013 Act. The learned Single Judge disposed of the Writ Petition with the observation that receipt of compensation as per Ext. P1 shall be without prejudice to the right of the petitioner to claim redetermination of compensation under the 2013 Act.

4. Adv. Sri. Manilal, learned Senior Government Pleader, refuting the submission of the learned counsel for the appellant contends that the State was facing difficulty in preparing the award on account of non-framing of the rules under the 2013 Act. He submits that award has been prepared within the time as prescribed under law and, as per the order of the learned Single Judge, receipt of the amount is without prejudice to the right of the appellant to receive the compensation amount as per the Act 2013. He submits that on account of the multiplier factor have not been modified by the State Government as per Section 26(2), the award under the Act 2013 has not been prepared.

5. Learned counsel appearing for the appellant, in the rejoinder submits that, the mere non-framing of the rules is no impediment in making the award. In so far as the petitioner's property is concerned, he submits that it is situated in an urban area and as per the First Schedule read with Section 26(2) of the 2013 Act, compensation for land owners can be determined. He submits that there is no requirement of any notification or any multiplier factor as far as land situated in the urban area is concerned.

6. We have considered the submission of the learned counsel for the parties and perused the records. In the present case, notification under Sections 4 and 6 having been issued prior to enforcement of Act 2013, determination of amount of

compensation has to be made as per Section 24(1) of 2013 Act. Thus, the provisions for determination of amount of compensation are contained in Sections 26 to 30 of Chapter IV of 2013 Act. There cannot be any dispute to the submission of the learned counsel for the appellant that determination of the amount of compensation with regard to petitioner's land has to be made as per 2013 Act. Now, an award has been declared by the State Government dated 29.01.2014. A perusal of the content of the award clearly indicates that the said award is not on the basis of the provisions for determination of the amount of compensation as per Sections 26 to 30 of the 2013 Act. The learned Government Pleader is also not disputing the factual position that the award Ext. P1 is not in accordance with the 2013 Act. He submits that difficulty was being faced by the State in preparing the award as per the 2013 Act on account of the non-framing of the rules and non-notification of multiplier factor. Section 26(2), reference of which has been made by the parties, is extracted below:

"26(2). The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule."

7. The First Schedule refers to compensation for land owners and a perusal of item Nos. 3 to 7 of the First Schedule indicates that there is no requirement of any notification or any multiplier factor for determining the compensation. There is no dispute between the parties about the fact that the petitioner's land is situated in the urban area. Section 109 of the 2013 Act gives power to the State Government to make rules for carrying out the provisions of the Act. Sub-section (2) of Section 109 enumerate the matters on which rules can be framed.

8. The Act 2013 having been enforced, all provisions of the Act have to be given effect to. That the State has not framed rules cannot be the reason for not carrying out the provisions of the Act nor for taking away the right accrued to the owner under the 2013 Act under the pretext that rules have not been framed by the State. In any view of the matter, for the determination of the amount of compensation in the present case, there is no necessity for awaiting the framing of the rules by the State and the determination of the amount of compensation as per the 2013 Act could have been very well carried out by the respondents. Appellant had received the amount of compensation under protest. Compensation have not yet been determined as per the 2013 Act, we are of the view that this Writ Appeal can be disposed of directing the 3rd respondent to prepare final/supplementary award as per the provisions of 2013 Act within a period of six months from the date of receipt of a copy of this judgment. The appellant shall produce a copy of this judgment before the 3rd respondent. The judgment of the learned Single Judge is modified to the above extent.

This Writ Appeal is disposed of accordingly.