
(2014) 09 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Misc. Stay Application No. 8450/2014 in Civil Writ Petition No. 9126/2014, Civil Misc. Stay Application No. 8451/2014 in Civil Writ Petition No. 9127/2014, Civil Misc. Stay Application No. 8452/2014 in Civil Writ Petition No

Virendra Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 45
Land Acquisition Act, 1894 — Section 11, 3(f)(iii), 32, 33, 4
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2014) 09 RAJ CK 0067

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Anil Mehta, learned counsel, Advocate for the Appellant; Rajendra Prasad, AAG, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The petitioners in all the petitions have challenged the land acquisition proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") by seeking prayers for quashing and setting aside the notifications u/s 4, 6 and 9a of the said Act and the award dated 11.9.08 (31.7.08 in some cases) passed under the said Act. The petitioners have also prayed that the acquisition proceedings initiated by the said notifications and the award be declared as lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013"). The petitioners have sought following interim relief in the present stay applications pending the writ petitions:-

"It is, therefore, respectfully prayed that in the interest of justice, Your Lordships

may graciously be pleased to accept and allow this stay application and the impugned notifications under Section-4, 6 and 9(1) of the Land Acquisition Act and the impugned award dated 11.9.2008 (31.7.08) passed by the Land Acquisition Officer may kindly be stayed and further the petitioners may not be dispossessed from their lands, during the pendency of the writ petition."

2. At the outset it is required to be mentioned that these petitions have chequered history and this is the third round of petitions filed by the petitioners. From the record it appears that the present set of petitions, 34 in numbers, was filed pending the other set of petitions being SBCWP No. 8200/12, 8149/12, 8198/12 and 8199/12 seeking same prayers as prayed in these petitions. In the earlier set of petitions, the concerned officers of the JDA had raised preliminary objections as regards the maintainability of the said petitions and also the objections that in some of the petitions, names of dead persons were shown as the petitioners, and that in other petitions, names of many petitioners were repeated in the cause-titles of the petitions. There being call of strike given by the Bar Association, the lawyers were not present and the petitioner Virendra Singh of SBCWP No. 9126/14, on behalf of the other petitioners in other petitions had sought time to do the needful in response to the said objections. The court having granted time, the present petitions were filed by the petitioners, who were also the petitioners in the earlier petitions. The court without going into the technicality of the matter, had subsequently permitted the petitioners to withdraw the earlier set of petitions vide the order dated 22.9.14.

3. Since the present set of petitions, 34 in numbers, were filed during the period of strike, it appears that there was no Vakalatnama of any advocate filed on behalf of the petitioners, nor the petitioners were identified before the Oath Commissioner, before whom the petitions were affirmed. As a result thereof, all the petitions have been filed without proper affirmation and without proper identification of the petitioners either by the advocates or by the Oath Commissioners. Yesterday Mr. Anil Mehta, learned counsel was permitted to make submissions on behalf of the petitioners in all the petitions on the assumption that he had filed Vakalatnama on behalf of all the petitioners in all the petitions, however today on being asked by the court, he has stated that he has filed his Vakalatnama only in 15 petitions out of 34 petitions. This technicality assumes importance as the petitions were filed without proper identification of the petitioners. Earlier set of petitions filed by the petitioners including the present petitioners was sought to be withdrawn as the dead persons were shown as the petitioners and the names of some of the petitioners were also repeated in the cause-titles of the petitions. Having said so, the court proceeds to advert to the submissions made by the learned counsel Mr. Mehta for the petitioners and Mr. Rajendra Prasad, AAG for the respondent No. 2.

4. The chronology of dates and events, which emerges from the record of the case and not disputed is as under:-

5. In the light of the aforesaid undisputed facts, the learned counsel Mr. Mehta

for the petitioners has submitted that the acquisition proceedings in respect of the lands of the petitioners have been challenged by the petitioners on various grounds, and till the petitions are decided, the possession of the petitioners of their lands be protected. According to him, the lands covered under the notifications u/s 4 of the said Act were sought to be acquired by the State Government at the behest of Jaipur Development Authority for the purpose of constructing the Ring Road and Developed Corridor, without following the mandatory provisions contained in the Jaipur Development Authority Act, 1982 (hereinafter referred to as "the JDA Act"). Pressing into service the provisions contained in Chapter-VIII pertaining to the acquisition and disposal of land, of the JDA Act, he has submitted that there was no representation from the JDA nor any scheme or development programme proposed to the State Government as contemplated u/s 45 of the JDA Act. He also submitted that the notification u/s 4 of the said Act was also not published in the manner required under the said Act, nor the proper opportunity of hearing as contemplated in the Enquiry u/s 5A of the said Act was given to the petitioners by the respondents. He further submitted that the declaration u/s 6 of the said Act was also in violation of the provisions contained in the said Act. According to him the lands were sought to be acquired under the pretext of constructing the Ring Road and the Developed Corridor, however the Developed Corridor was sought to be made for the profiteering purpose, which could not be said to be public purpose as defined u/s 3(f)(iii) of the said Act, and therefore, the entire basis for acquisition was illegal and bad. He further submitted that the Land Acquisition Officer had called upon the petitioners to submit their claims and exercise their options for receiving cash compensation or 25% developed land in lieu of cash compensation, however such compensation of allotment of developed land in lieu of cash compensation has been held to be illegal by the Apex Court. Pressing into service, the provisions contained in Section 24(2) of the Act of 2013 Mr. Mehta submitted that the entire proceedings initiated under the said Act had lapsed because the respondents had not taken the physical possession of the petitioners' lands and the petitioners were also not paid the compensation under the said Act, within 5 years of the award made u/s 11 of the said Act. Mr. Mehta has relied heavily on the decisions of the Apex Court in case of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, and in case of Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, to buttress his submissions that the period of stay against dispossession granted by the court cannot be excluded from the period of 5 years laid down u/s 24(2) of the Act of 2013.

6. Per contra, Mr. Rajendra Prasad, AAG for the respondent No. 2 has vehemently submitted placing reliance on the reply filed by the respondent NO. 2 that the petitions filed by the petitioners were not maintainable as the same were filed pending the earlier petitions seeking the same relief. He also submitted that the petitions also suffered from suppression of material facts and mis-statements inasmuch as some of the petitioners had already voluntarily surrendered the

possession of their lands after receiving compensation in terms of allotment of 25% developed land in lieu of cash compensation and they had further sold out the said allotted lands in favour, of third parties by executing various sale-deeds, though they had stated in their petitions that the possession of their lands was with them. He has drawn the attention of court in case of the petitioner No. 5 Kanhaiya Lal and petitioner No. 5 Shanti Devi in SBCWP No. 9158/14, and relied upon the sale-deeds executed by them, which are annexed alongwith the reply filed by the respondent No. 2 in the said writ petition. He further submitted that the mandatory procedure required to be followed under the said Act was followed by the respondents while issuing notifications u/s 4 and 6 of the said Act, and it was too late in the light of the day for the petitioners to challenge the said notifications after the period of 8 years of their publications in the present petitions, more particularly when the petitioners had chosen not to challenge the orders passed by the learned Single Judge in the earlier petitions relegating the petitioners to the empowered committee. He also submitted that though their representations were rejected by the said committee, the petitioners had not challenged the said order passed by the said committee, and therefore the petitioners had waived the challenge of the said notifications and are now estopped from challenging the same in the present petitions. In response to the submissions made by the learned counsel Mr. Mehta for the petitioner on the deeming fiction contained in Section 24(2) of the Act of 2013, learned AAG Mr. Rajendra Prasad has submitted that the said provision has no application to the facts of the present case, inasmuch as physical possession of majority of lands covered in the notification under Sections 4 and 6 of the said Act has already been surrendered/handed over by the concerned land owners and the compensation in all the said cases have also been paid/deposited. He has fairly submitted that though the symbolic possession of the lands of the present petitioners was taken, physical possession could not be taken because of the interim orders passed by the High Court from time to time in the petitions filed by the petitioners alongwith the other petitioners, which orders were in operation till March 2012. He submitted that the period during which the possession could not be taken from the petitioners due to the stay orders passed by the High Court should be excluded from the period of five years mentioned in Section 24(2) and in any case, entire proceedings could not be deemed to have lapsed merely because possession of a very small part of lands was not taken, out of big chunk of lands. He further submitted that similarly the compensation has also been paid to all the land holders who had surrendered their lands voluntarily, and in some cases where references were made, compensation has been deposited in the civil courts, and in cases of petitioners also the compensation has been deposited in the civil court on coming into force of the Act of 2013. Hence, the petitioners, at the most could claim compensation under the new Act in view of the proviso to Section 24(2), however, entire proceedings could not be said to have lapsed. According to him the present set of petitions represent only 6% to 7% of the lands, admeasuring less than 80 hectares out of total area of 1578.958 hectares covered under the project of Ring Road spread into 47

villages. He also submitted that the construction work for the project has already started and earth work and gravel work upto 20 kms. of the road has also been completed, and that if any interim relief as prayed for by the petitioners is granted at this juncture, public exchequer would suffer huge loss, apart from causing delay in the project.

7. Now, so far as the maintainability of the present petitions is concerned, it may be mentioned that on the preliminary objections having been raised on behalf of the respondents in the earlier four petitions being sbcwp No. 8200/12 and three others, as the names of dead persons were shown as the petitioners, and the names of other petitioners were also repeated in the cause-title of the petitions, the court had orally directed the petitioners represented by the petitioner Virendra Singh (as the lawyers were on strike during those days) to file separate petitions for each of the group of petitioners, there being disputed questions of facts involved in the petitions. Accordingly pending the earlier petitions, the present petitions were filed by the petitioners. Subsequently the court had also permitted the petitioners to withdraw the earlier four petitions. However, it is true that prior to the filing of the said four petitions being SBCWP No. 8200/12 and three others, the present petitioners alongwith other petitioners had also filed eight petitions being SBCWP No. 997/06 and seven others, challenging the validity of the land acquisition proceedings initiated under the said Act and the said petitions came to be disposed of vide the orders dated 4.5.11 and 15.2.12 respectively, whereby the coordinate Benches had directed the petitioners to submit their representations before the empowered committee constituted by the State Government for the redressal of grievances of the land holders. It is pertinent to note that the said orders were not challenged by the petitioners though the learned counsel of the petitioners had objected against going to the said committee during the course of arguments, as transpiring from the order dated 15.2.12. Further, though the representations of the petitioners were rejected by the empowered committee vide the order dated 14.3.11, the said order of empowered committee has also not been challenged by the petitioners either in the present petitions or otherwise. Under the circumstances the court prima facie finds substance in the submission made by the learned AAG for the respondent No. 2 that the petitioners were estopped from challenging the validity of the notifications u/s 4 and 6 of the said Act in the present petitions, however the said issue is kept open to be decided at the time of final hearing of the petitions.

8. The Addl. Advocate General Mr. Rajendra Prasad for the respondents has also requested the court to take serious note on the mis-statement/suppression of material facts made by some of the petitioners in their writ petition, and the court has also found substance in the same more particularly in case of the petitioner Kanhaiya Lal and Shanti Devi in sbcwp No. 9158/14, who have stated that they were in possession of their lands in question, though from the documents filed by the respondent No. 2 alongwith its reply, it clearly transpires that the said petitioners had also surrendered their lands in question and

voluntarily accepted 25% developed land allotted to them in lieu of cash compensation, and that they had also sold out the said allotted lands by executing registered sale-deeds in favour of the various persons. The court takes serious note of the said fact against the said petitioners and shall pass appropriate orders against them at the time of final hearing of the petitions. From the said instance, the court also is hesitant in relying upon the averments made by the other petitioners in other petitions, more particularly when the identity of the petitioners in all the petitions has not been verified by the Oath Commissioner or by any advocate when the petitions were filed. As on today also Mr. Mehta has filed his Vakalatnama only in 15 matters out of 34 matters.

9. Having said that, if the merits of the submissions made by the learned counsel Mr. Mehta for the petitioners are examined, it appears from the reply filed by the respondent No. 2 that the project for the construction of the Ring Road and Developed Corridor around it, was initially conceived and prepared by the Public Work Department of the Government of Rajasthan in December, 2000 and that the JDA was handed over the said task in March, 2004 by the State Government. Subsequently the process of acquisition was commenced in the year 2005 as per the notification u/s 4 of the said Act. The court therefore hardly finds any substance in the submission made by Mr. Mehta that the acquisition proceedings were bad on account of noncompliance of the provisions contained in Chapter-VIII of the JDA Act. When the acquisition was not proposed by the JDA, the question of following the said provisions of the JDA Act did not arise.

10. Similarly, the challenge to the notifications issued u/s 4 and 6 of the said Act on various grounds having not been persuaded by the petitioners in earlier petitions filed in 2007-2008 and the petitioners having accepted the orders passed in the said petitions, it is too late in the light of the day for the petitioners to challenge the said notifications in the present petitions.

11. In any case, the court at this juncture is required to consider as to whether the petitioners should be granted the interim relief as prayed for in the present petitions. Heavy reliance has been placed by the learned counsel Mr. Mehta for the petitioners on the provisions contained u/s 24(2) of the Act of 2013 to submit that the acquisition proceedings should be deemed to have lapsed. There cannot be any disagreement with the proposition that if the physical possession of the land has not been taken or the compensation under the said Act has not been paid within 5 years of the award made u/s 11 of the said Act, the acquisition proceedings initiated under the said Act shall be deemed to have lapsed, in view of Section 24(2) of the Act of 2013. At this juncture the relevant part of Section 24(2) of the Act of 2013 is also required to be reproduced which reads as under:-

"24(1).....

(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 u/s 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

12. The said section with the proviso has been interpreted by the Apex Court in the decisions relied upon by the learned counsel for the petitioners, however, it is to be noted that in none of the said cases, the question as to the application of the said provision, where the physical possession of the majority of the lands acquired under one notification has already been taken, and the compensation to majority of such land owners has already been paid, has been considered. In case of *Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors.* (supra) the question was with regard to the meaning of the expression "compensation has not been paid" occurring in Section 24(2) of the Act of 2013, and the Apex Court while interpreting the said expression has held that the compensation may be said to have been paid within the meaning of Section 24(2), when the Collector or the Land Acquisition Officer has discharged his obligation and deposited the amount of compensation in the court and made that amount available to the interested person to be dealt with as provided in Section 32 and 33 of the said Act. In case of *Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu* (supra), the challenge was to the notification u/s 4 of the said Act and the High Court had stayed the dispossession of the concerned land owners. Though the petitions in the said case were dismissed by the High Court, the land owners had remained protected from being dispossessed from their lands in questions pending the proceedings before the Supreme Court. Thus it was not disputed in the said case that the physical possession of the lands in question was not taken by the State Government, though there was lack of clarity on the issue whether the compensation was paid to the majority land holders or not. Whereas in the instant case about 95% of the land owners of the lands covered under the notification u/s 4 of the said Act have already surrendered/handed over the possession of their lands voluntarily and received the compensation either in cash or in terms of developed land.

13. As stated by the respondents in their reply, the possession of about 95% of the lands under acquisition has already been surrendered/handed over by the concerned land owners and the disputed lands of the petitioners comprises area of only 78.5593 hectares out of the total area of 1578.958 hectares under acquisition. It is also stated in the said reply and was also demonstrated by the

learned AAG during the course of his arguments showing the map that the lands of the petitioners constituted less than 6% of the total lands acquired, spread in small patches across 47 villages. Hence, the entire project of Ring Road and the Corridor would be stalled if the interim relief as prayed for by the petitioners is granted by the court, when the implementation of such a huge project has already commenced by starting the earth work and gravel work in 20 Kms. of the road in question.

14. Under the circumstances, by holding at this stage that the entire land acquisition proceedings initiated under the said Act for the Ring Road and the Developed Corridor had deemed to have lapsed u/s 24(2) of the Act of 2013, would tantamount to granting final relief at the interim stage. The court also finds force in the submission of Mr. Rajendra Prasad for the respondent No. 2 that great hardship would be caused to the respondents if the interim relief as prayed for is granted, which would tantamount to stalling the entire project meant for the public at large. It is needless to say that "salus populi est suprema lex",-Regard for the public welfare is the highest law.

15. In the aforesaid premises, the court is of the opinion that the petitioners have failed to establish any prima facie case for the grant of interim relief, and the balance of convenience also tilts in favour of the respondents. The petitioners could be compensated in terms of money as per the Act of 2013, if they ultimately succeed in the petitions. However if the interim relief claimed is granted it would cause irreparable loss to the respondents and the public at large. In that view of the matter, all applications are dismissed.