

(2012) 08 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1418 of 2012

Vishal Kumar Jain

APPELLANT

Vs

State of Chhattisgarh and others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 31, 31(3)

Citation : (2012) 5 MPHT 12

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Shiv Raj Singh, for the Appellant; Ajay Dwivedi, Dy. Govt. Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—The petitioner has preferred this writ petition for issuance of direction to respondent No. 2, the Collector, Bilaspur to allot the land demanded by the petitioner in his application dated 14-5-2012 (Annexure P-2) appropriating the cost from the compensation determined in his favour in lieu of the land acquired from him and in the alternative to direct respondent No. 2 to forthwith decide the said application (Annexure P-2) demanding Government land at Village Haafa described in the said application. From the contents of the writ petition and the documents, annexed thereto, it would appear that the petitioner's land admeasuring 0.18 acres bearing Khasra No. 1781/2 was acquired for construction of Koni-Mopka by-pass road and in Land Acquisition Case No. 14-A/82/2009-2010, Village Mopka, P.H. No. 19, Tehsil Bilaspur, an award was passed on 27-7-2011, in which the petitioner was held entitled to compensation of Rs. 6,77,577/-.

2. According to the petitioner, he has not withdrawn the amount and by application dated 14-5-2012 (Annexure P-2) purportedly filed u/s 31(3) of the Land Acquisition Act, 1894 (for short "the Act"), he has demanded an area of 2.22 acres of Government land at Village Haafa, R.I. Circle Sakri, Tehsil

Takhatpur, District Bilaspur in exchange of acquired land of petitioner.

3. Learned Counsel for the petitioner would submit that respondent No. 2 is under an obligation to consider the petitioner's prayer for grant of land in exchange as provided in Section 31(3) of the Act, 1894. Section 31(3) is relevant and quoted hereinbelow:--

31. Payment of compensation or deposit of same in Court.-- (1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or-if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference u/s 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest to the sufficiency of the amount:

Provided also that no person, who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of appropriate Government, instead of awarding a money compensation in respect of any land, make (sic) arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

4. On a plain reading of the above quoted provision particularly subsection (3) of Section 31 thereof, it can be gathered that the said provision applies to a person having a limited interest in such land (acquired land) and not in relation to holder of the acquired land for the simple reason that the holder of acquired land is already compensated in monetary terms and if any person other than the holder of the land is having a limited interest in the land like widow's estate or minor's estate, Mutawalli, tenant, an educational institution etc., then the said provision takes care of his interest. If the provision is read and construed in the

manner learned Counsel for the petitioner has tried to interpret, then in every land acquisition proceeding, the Government would be bound to provide land in lieu of land, which has never been held so and in fact, in the matter of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, Hon"ble the Supreme Court has held thus in Paragraph 19:--

19. We may, at this juncture, dispose of the contention that the ratio of Radhey Shyam case is per incuriam. The basic postulate of the contention is the omission to refer to Rules 31 and 36 of the Rajasthan Land Acquisition Rules, 1956. Rule 31 was made to guide the exercise of power of the Collector (LAO) u/s 31(3) of the Act. As seen, the Government has empowered the Collector to allot "any other land" in lieu of money compensation only when the land acquired belongs to a person having "limited interest in the land ", like widow's estate or minor's estate, Mutawalli etc. In that behalf, Rule 31 amplifies the exercise of the power by the authorised LAO. It says that the Collector cannot force a party to take land in lieu of cash. Where, however, the interest of the party is so limited, as in the case of a trustee of a Wakf property or a Hindu widow, as to make it extremely difficult, if not impossible, to arrive at an adequate cash estimate of its value or where, from the circumstances of a case, it is impossible to place the parties concerned by Cash compensation in the same or nearly the same position as before acquisition, sub-section (3) enables the Collector to arrange to award land (subject to the same limitation of interest) in lieu of cash. In Radhey Shyam case, the scope of sub-section (3) of Section 31 has been considered and explained in extenso. Rule 31 is only to elongate the discretion, which the LAO is expected to exercise in awarding land in lieu of cash consideration and the circumstances, in which it would be done. Equally, Rule 36 deals with disposal of the excess land acquired by the Collector for a company and imposition of the conditions for sanction of transfer of excess land. Therefore, the absence of reference to them does not make any dent into the principle of law laid in Radhey Shyam case.

(Emphasis supplied)

5. In earlier decision of the Supreme Court in the matter of Jaipur Development Authority Vs. Radhey Shyam and Others, the following has been held in Para 7 of the judgment:--

7. A reading of subsection (4) of Section 31, in our considered view, indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation, it does not empower him to give any land in lieu of compensation. Sub-section (3) expressly gives power "only to allot any other land in exchange". In other words, the land under acquisition is not liable to be allotted in lieu of compensation except u/s 31(3), that too only to a person having limited interest. If the contention of the learned Counsel for the respondents, that while awarding compensation the Collector (Land Acquisition Officer) has a higher power than

the limited power given under subsection (3) of Section 31, it would run counter to the scheme envisaged thereunder and would result in defeating the public purpose.

(Emphasis supplied)

No other point has been urged before this Court except the one dealt above. The petitioner being full owner of the acquired land and not a limited owner, he is not covered u/s 31(3) of the Act, 1894. Consequently, this writ petition is misconceived; the same being devoid of any substance, deserves to be and is hereby dismissed.