(2015) 10 KL CK 0029

In the High Court Of Kerala

Case No : W.A. No. 2283 of 2015 in WP(C) 16224/2012 and W.A. No. 2289 of 2015

V.P. Satheedevi and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A
Land Acquisition Act, 1894 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1), 24(2), 4, 6

Citation : (2015) 10 KL CK 0029

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

Bench : Division Bench

Advocate : K. Ramakumar, Senior Advocate and S.M. Prasanth, Advocate, for the Appellant; P.I. Davis, Senior Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J.

1. Heard Sri. K. Ramakumar, the learned Senior Counsel appearing for the appellants.

2. These two appeals have been filed against the common judgment dated 29.7.2015 rendered by the learned Single Judge in W.P.(C) Nos. 16224 of 2012 & 20865 of 2011 and connected cases. It shall be sufficient to refer to the facts and pleadings in W.P.(C) No. 16224 of 2012 for deciding both the writ appeals. The parties shall be referred to as described in the writ petition.

3. The petitioners'' lands were acquired by initiating proceedings under the Land Acquisition Act, 1894. Notification under Sec. 4 was issued on 5.2.2011, Ext. P7. The declaration under Sec. 6 was issued on 13.10.2011. The petitioners, challenging the land acquisition proceedings, had filed the writ petition, seeking for the following reliefs:--

"(i) To call for the records leading upto Exts. P7 and P9 and quash the same by the issuance of a Writ of Certiorari or any other appropriate writ, order or direction

(ii) To issue a Writ of Mandamus directing the respondents to examine the third alignment again and choose the lesser expensive and less inconvenient proposal avoiding the third proposal which causes more inconvenience to persons like the petitioners

(iii) To declare that the proposal to implement the present proposal namely the third proposal evidenced by Ext. P8 deviating from the first two alignments, is violative of Articles 14 , 19 , 21 and 300A of the Constitution of India and therefore, liable to be totally void, inoperative and unenforceable."

In the writ petition, additional counter affidavit was filed by the Assistant Executive Engineer, Bridges Sub Division, Kottayam, where it was pleaded that an award has already been passed on 10.12.2012. The copy of the said award has been annexed as Exts. R5(b), R5(c), R5(d), R5(e) and R5(f). Learned counsel for the petitioners submits that the Award was never served on the petitioners and hence, they are not accepting the factum of passing of the Award.

4. Sri. K. Ramakumar, the learned Senior Counsel appearing for the petitioners/ appellants contends that the appellants are now confining their challenge only to the extend that they are entitled for compensation in accordance with the 2013 Act and their compensation be computed according to the new Act. Learned counsel submits that since the possession of the petitioners has not been taken nor they have been paid any compensation, the Award has to be prepared according to the new Act. It is submitted that for applicability of Proviso to Sec. 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ''the Act''), there is no requirement that the Award should have been passed five years ago. He submits that the benefit of computation under the new Act has to be given in the facts of the present case. Learned counsel placed reliance on the judgment of the Apex Court reported in Radiance Fincap (P) Ltd. Vs. Union of India (UOI) .

5. Learned Government Pleader appearing for the respondents, disputing the submission of the learned counsel for the appellants, contends that present is a case in which the computation of compensation cannot be done according to the new Act. Since the Award was passed prior to the enforcement of new Act, as per Sec. 24(1) , the respondents are entitled to proceed as if the new Act has not come. He submits that for applicability to the Proviso to Sec. 24(2) , the conditions enumerated under Sec. 24(2) have to be fulfilled. It is submitted that since, in the present case, the Award has been delivered on 10.12.2012 and even the notification under Sec. 4 was issued after 1.1.2009, there is no question of applicability of Sec. 24(2) . Learned Government Pleader submits that against the same common judgment dated 29.7.2015, the petitioners in W.P.(C) No. 11476 of 2011, had filed W.A. No. 2041 of 2015, the same was dismissed by this

Court by judgment dated 14.10.2015, wherein, this Court held that the benefit of computation of compensation under the new Act cannot be granted to the petitioners since the Award was not rendered five years before the enforcement of the 2013 Act. It is submitted that in W.A. No. 2041 of 2015, the Award was rendered on 10.12.2012.

6. We have considered the submissions of the learned counsel for the parties and perused the records.

7. The learned Single Judge had rejected the writ petition holding that the computation of compensation under the new Act cannot be possible since the Award in the present case was not rendered five years before the enforcement of the Act. The learned Single Judge took the view that Proviso to Sec. 24(2) shall be applicable only when the Award was rendered more than five years ago. As noted above, W.A. No. 2041 of 2015 has been filed against the very same common judgment, against which present writ appeals have been filed and we, by our judgment dated 14.10.2015 in W.A. No. 2041 of 2015 has confirmed the view taken by the learned Single Judge for holding that for the applicability of Proviso to Sec. 24(2) , the Award has to be rendered five years before the enforcement of new Act.

8. Learned counsel for the appellants, relied upon the judgment of the Apex Court cited supra, contended that in the said case, the Apex Court has permitted the appellants to initiate proceedings under Sec. 24 before the competent Forum. It was submitted that in the case before the Apex Court, the compensation was not paid and decision was also not taken as the same as in the present case.

9. In view of the above submission, the judgment of the Apex Court in the said case needs consideration in detail. In the said case, the Apex Court passed orders in the pending matters. The first order was passed on 12.1.2015, wherein, the Apex Court held that the land acquisition proceedings shall stand lapsed in view of Sec. 24(2) of the Act. The submission which was pressed on behalf of the respondents before the Apex Court was that in view of the Amendment Ordinance, 2014 dated 31.12.2014, 2nd proviso was inserted to Sec. 24 of the Act, by which, the period of stay obtained in the judicial proceedings shall be excluded for computation of five years'' period. Hence, Sec. 24(2) shall not apply. The Court repelled the said argument and observed that since the Ordinance cannot be said to be retrospective in operation, the said benefit cannot be claimed by the respondents and directed that proceedings shall stand quashed. The case before the Apex Court was not a case in which, the Award was rendered within five years from the enforcement of new Act. Hence, the said judgment does not help the appellants.

10. In the second order of the Apex Court dated 6.2.2015, paragraph 6 to 10 clearly indicate that the Award in the said case was delivered on 6.8.2007. Hence, the conditions for applicability of Sec. 24(2) were satisfied. The third order dated 26.2.2015 was delivered in a case, where, the Apex Court held that

for fulfilling the factual conditions for operation of Sec. 24(2) , the facts are required to be examined. In the above case, the Apex Court granted liberty to the appellants to approach the High Court or such other Forum to seek the benefit of Sec. 24 of 2013 Act. It is useful to extract paragraphs 11, 16 and 18 of the said order, which are to the following effect:--

"11. All of these appeals were admitted before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. After commencement thereof, the appellants changed the tack of their challenge-originally framed under the Land Acquisition Act, 1894 - and impugned the acquisition proceedings in toto, by evoking the deemed lapse of proceedings under Section 24(2) of the 2013 Act. Any determination under this provision must proceed sequentially. First, the factum of an award under Section 11 of the Land Acquisition Act, 1894, must be clearly established. The said award must predate the commencement of the Act i.e. 1.1.2014, by at least five years (or more) i.e. the award must have been passed on or before 1.1.2009. This having been established, if possession is found to not have been taken, or compensation not paid, then the proceedings shall be deemed to have lapsed. Thereafter, the appropriate Government, if it so chooses, may reinitiate acquisition proceedings in respect of the same land, but under the 2013 Act''s regime.

16. In the event that there is no ambiguity (a) that the award is over five years old; and (b) that compensation has not been paid; or(c) that possession of the land has not been taken, the acquisition is liable to be quashed. In Rajiv Choudhrie HUF v. Union of India, nothing that the physical possession of the land had not been taken by the respondents, nor compensation paid by the respondents to the appellant in respect whereof the award was passed on 6.8.2007, the acquisition proceedings had been declared as having lapsed. The same position was arrived at in Rajiv Chowdhrie HUF v. Union of India by a different Bench of this Court.

18. Having heard all the learned counsel, we are persuaded to dispose of these proceedings, without entering on the merits, by granting liberty to the landowners before us to pray for the revival of the appeals in the event that orders under Section 24 of the 2013 Act are adverse to their interest. We, therefore, permit the landowners to initiate appropriate proceedings in the proper forum/court, seeking the benefit of Section 24 of the 2013 Act, within eight weeks from today. We clarify that, in the event that any landowners have already approached the High Court concerned, their plea under Section 24 of the 2013 Act shall be decided on merits."

In the above case also the Apex Court held that for applicability of Sec. 24(2) , the conditions as laid down by the Apex Court in the judgment in Rajiv Chowdhrie Huf Vs. Union of India (UOI), have to be fulfilled.

11. Present is a case where the conditions enumerated under Sec. 24(2) as laid

down by the Apex Court in Rajiv Chowdhrie HUF''s case as well as in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, have not been satisfied. The above judgments of the Apex Court relied upon by the learned counsel for the appellants does not help them in the facts of the present case nor in the said cases any such proposition has been laid down for granting the benefit of Proviso to Sec. 24(2) in cases, where the Award was not rendered five years before the enforcement of the new Act.

In any view of the matter, against the same common judgment an appeal had already been filed, which was dismissed by our judgment dated 14.10.2015, we are not persuaded to take any different view in the matter. Accordingly, both the writ appeals are dismissed.

