

(2017) 07 BOM CK 0296
In the Bombay High Court
Case No : 995 of 2009

Western Coal Fields Limited

APPELLANT

Vs

Smt. Pushpalata wd/o Harichandra Awari, & Ors.

RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

[Coal Bearing Areas \(Acquisition and Development\) Act, 1957](#), [Section 4](#), [Section 14](#), [Section 9](#), [Section 14\(2\)](#), [Section 2\(d\)](#), [Section 1](#)

Citation : (2017) 07 BOM CK 0296

Hon'ble Judges : S.B.Shukre

Bench : SINGLE BENCH

Advocate : Ramesh Darda, W.G.Charde, N.G.Solao

Final Decision : Allowed

Judgement

All these appeals are being disposed of by this common judgment as they give rise to common questions of facts and law.

1. These appeals challenge the awards passed by the Special Tribunal constituted under Section 14(2) of the Coal Bearing Areas (Acquisition and Development Act, 1957 (for short Act, 1957). By the awards impugned in these appeals, the tribunal directed the appellant to pay interest under Section 17 (3) of the Act, 1957 to the claimants i.e. respondents in these appeals. The interest was to be paid on the amounts of compensation paid to the respondents.

2. The respondents filed applications under section 14 of the Act 1957 claiming enhancement of compensation to be paid for the plots and houses acquired by the appellant under the provision of the Act, 1957. Section 4 of Act, 1957 notification was issued on 2/4/1994 and second notification declaring vesting of the acquired plots was issued on 15/8/1998. According to the respondents, compensation was paid to all of them at different rates for the plots and houses acquired under these notifications by the appellant but, same was inadequate.

Therefore, as provided under section 14 of the Act 1957, each of the respondents preferred separate applications before the Tribunal constituted under the Act, 1957 and sought enhancement of the compensation. Their applications were partly allowed and only interest Under Section 17 (3) of the Act 1957 was granted by the Tribunal and accordingly awards were passed. Not being satisfied with the same, the appellant decided to challenge the same and this is how the appellant is before this Court in all these appeals.

3. I have heard Shri Darda learned counsel for appellant and Shri Solao learned counsel for respondents in all these appeals. I have gone through the paper books of the appeals which contain relevant documents, such as applications filed under section 14, specimen reply, and written statement and so on. I have also perused the impugned awards. Now, the only point which arises for my determination is : Whether the applications filed under section 14 of 1957, Act were maintainable before the Tribunal?

4. Shri Darda learned counsel for the appellant submits that these applications were not at all maintainable because the respondents never claimed that they were owners of the acquired plots and admittedly the acquired lands belonged to the State Government. He further submits that if the respondents were not the owners of the acquired plots and houses they were not the persons interested to receive the compensation. He also submits that compensation that was paid to the respondents was only in pursuance of resettlement and rehabilitation policy of the appellant and never by admitting them to be the owners.

5. Shri Solao, learned counsel for respondents submits that in First Appeal No. 1139/2007 learned Single Judge of this Court by an order dated 6. 8.2009 held that the facts of that case being covered by the judgment of another bench of this court rendered in Appeal No. 166/96 decided on 8/5/2009, the appeal was liable to be dismissed summarily. He submits that, in appeal No. 166/1996 decided on 8/5/2009, this Court has upheld the similar awards as are impugned in these appeals. He submits that facts of the appeals are covered by those two orders and therefore all these appeals deserve to be dismissed with costs.

6. Under the provisions of the Act, 1957, when the lands are acquired for the purpose of coal mining, the acquisition has to be made under Section 9 of the Act, 1957 and the compensation is payable under Section 13(5) of the Act 1957. These provisions of the Act, 1957 lay down that compensation must be paid to the persons interested, further prescribing the procedure for quantification of the compensation that must be paid. The expression "person interested" used in SubSection 5 of Section 13 is significant. It denotes that compensation is payable to only that person who is interested in the land under acquisition. The expression "person interested" has been defined under Section 2 (d) in the following terms :

(d) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land, or of the

acquisition, extinguishment or modification of any rights in or overland, under this Act;

Reading of definition of expression "person interested" would make it clear to us that the expression includes all those persons who have some or the other legal interest in receiving the compensation. It does not take into account those persons who are unauthorized occupants or encroachers. This appears logical for the reason that a right a trespasser or an encroacher would have be no more than adherence to due process of law in removing him from the property. It would not extend to lay a claim for compensation for the land acquired, as if he himself is the owner. At the most such a person, if at all he could say so, can ask for sometime to vacate the encroached land so that he can safely move himself, others in his family and his belongings to some other place. But, by no stretch of imagination can it be said that he has some interest in compensation. Interest in claiming compensation for compulsory acquisition of land can flow only from title to the land or some right to retain the land, for and on behalf of the owner, which attributes or characteristics are not possessed by an encrocher.

7. In the present appeal, it can be seen that none of the respondents pleaded that he or any of them had any interest in receiving the compensation or that the respondents were the persons interested in compensation in terms of Section 13 (5) of the Act, 1957. Admittedly, the lands which were acquired and involved in these appeals were the lands belonging to the State Government. Their total area was of 11.55 Hectors out of which, the portion admeasuring 8. 55 Hecor was under encroachment. The plots and houses of these respondents are from this portion of land, which admeasures 8.55 Hecor. The respondents did not produce any document of their having some legal interest or legal right in these acquired lands. If it was so, the applications filed by the respondents under Section 14 of the Act of 1957 could not have been entertained by the Tribunal. These applications were not maintainable before the Tribunal and I find them to be so. The Tribunal, without considering the material aspects of this case and discussed earlier, however, entertained the applications and even proceeded to pass the awards impugned herein, albeit patently wrongly and illegally.

8. There is one more reason for recording a finding that the applications filed under Section 14(2) of 1957 were not maintainable. The compensation that has been granted to all the respondents was under the resettlement and rehabilitation policy of the appellant. It was never under the provisions of the Act, 1957. It was not shown by the respondents that the compensation that they received was under the provisions of Act, 1957 and not under the resettlement and rehabilitation policy of the appellant. Therefore, the application under section 14 of the Act, 1957 was not maintainable and the Tribunal had no jurisdiction to entertain such applications. The Tribunal would have jurisdiction only when the compensation is awarded in recognition of a legal right or is not awarded though rightfully due, under the provisions of the Act, 1957. For something given gratuitously, as for example, a sum of money paid on humanitarian

considerations constituting foundation of a rehabilitation and resettlement policy like the one followed by the appellant, no claim under Section 14 of Act, 1957 seeking more from the policy maker can lie, for a gratuitous getter takes what he gets under the policy and if he thinks the policy is arbitrary, the remedy lies elsewhere, surety not under Section 14 of the Act, 1957. It would then follow that, no interest could have been awarded by the Tribunal. This view also receives support from the view taken by this court in the bunch of First Appeals starting with first appeal No. 1348/2009 decided on 28/10/2016.

9. So far as concerned the order passed by this Court on 6/8/2009 following the decision of this court dated 8/5/2009 rendered in First appeal No. 166/96, I must say, both the said orders were based upon facts peculiar to those cases. The facts of the present case are different and clearly show that the tribunal had no jurisdiction to pass the impugned awards, which does not appear to be the case with those appeals decided on 6/8/2009 and 8/5/2009. Therefore, those orders would be of no help to the respondents in the present case. The point is thus answered as in the negative.

The appeal is allowed with costs. The impugned orders are hereby quashed and set aside. The amount deposited in this court by the appellant be refunded to the appellant with interest, if any.