
(2016) 11 CHH CK 0016
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1862 of 2007

Yogendra Patel

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 247
Land Acquisition Act, 1894 — Section 18

Citation : (2017) AIRCC 546

Hon'ble Judges : Shri P. Sam Koshy, J.

Bench : Single Bench

Advocate : Ms. M. Asha, Panel Lawyer, for the Respondents Nos. 1, 2 & 3; Mr. Anand Dadariya, Advocate, for the Petitioner; Mr. B.D. Guru, Advocate, for the Respondent 4

Final Decision : Allowed

Judgement

Shri P. Sam Koshy, J. - The present writ petition under Article 226 of the Constitution of India has been filed assailing the order dated 4.2.2005 (Annexure P-4) passed by the Additional Collector (Land Acquisition Department), Raigarh refusing to make a reference under Section 18 of the Land Acquisition Act (hereinafter referred to as "the Act") for enhancement of the compensation which has been given to the Petitioners against the acquisition of the land of the Petitioners for mining purposes by the State Government.

2. Brief facts which are necessary for the adjudication of the present writ petition are that in the year 1997 the State Government initiated a proceeding under the provisions of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as "the Code") for taking over surface right of the property of the Petitioners which situates at Village Tapranga in District Raigarh. The State Government intended to take over the said property for handing over the same to Respondent No.4, M/s. Jindal Steel & Power Ltd., for extraction of coal. The acquisition proceeding was initiated in the year 1997 and the award was passed under

Section 247(4) of the Code on 30.8.2003 (Annexure P-2) by the Sub Divisional Officer (Revenue), Gharghoda, Raigarh.

3. Dissatisfied from the amount of compensation paid by the Respondents, the Petitioners filed an application dated 3.12.2004 to the Collector, Raigarh for making a reference under Section 18 of the Act. The Additional Collector while considering the said application, vide impugned order dated 4.2.2005 (Annexure P-4) held that since the land which is said to have been acquired was not acquired invoking the provisions of the Land Acquisition Act but was acquired under the provisions of the Land Revenue Code invoking the provisions of Section 247 and, therefore, a reference cannot be made to the concerned Court and the application for enhancement of the compensation was returned back to the Petitioners for taking appropriate legal remedies which are otherwise available to them under the provisions of the Code or for that matter a Civil Court having jurisdiction. It is this order which is under challenge in the present writ petition.

4. Counsel for the Petitioners makes a limited prayer that the only grievance of the Petitioners in the present case is the refusal on the part of Respondent No.2 in making a reference under Section 18 to the competent Court for consideration of appropriate compensation which the Petitioners are otherwise entitled for. He submits at the moment all that he has to convince this Court is that the finding of the Collector vide Annexure P-4, dated 4.2.2005, is contrary to the provisions of Section 247(4) of the Code and therefore the same deserves to be set aside and it needs to be sent back to the concerned Collector for passing an order afresh on the application dated 3.12.2004.

5. According to the Counsel for the Petitioners, sub-Section 4 of Section 247 of the Code clearly in its later part stipulates that for the purpose of calculating compensation or in the event if the aggrieved person is not satisfied with the amount of compensation calculated by the Sub Divisional Officer, his case has to be dealt with in accordance with the provisions of the Act. He further quoting Section 18 of the Act submits that it has been very categorically held that if the person whose property has been acquired is dissatisfied with the amount of compensation calculated by the Collector he has to move an application under Section 18 in this regard so that an appropriate reference can be made by the concerned Civil Court for deciding the fair compensation for the land acquired.

6. Counsel for the Petitioners next submitted that once when Section 247(4) stipulates that calculation of compensation or its enhancement has to be considered in accordance with the provisions of the Act, there was no occasion for the Collector to have refused to make a reference. Rather it should have made a reference if the Petitioners meet all other requirements as is required under the provisions of the relevant Act, and thus prayed for the quashing of the impugned order dated 4.2.2005 (Annexure P-4).

7. Counsel appearing for Respondent No.4 has adopted the reply that the State

has filed wherein it has been categorically accepted by the State Government that the remedy in fact available to the Petitioners against the order of the Sub Divisional Officer for calculating the compensation part was under the provisions of the Act. But, the Counsels appearing for the Respondents submit that in the facts of the present case the date of application for making a reference was itself beyond a period of six weeks within which they have to otherwise make an application and in the instant case there is a delay of about 16 months after which the application has been made, therefore, the application otherwise suffers from delay and the authority has rightly refused to make a reference, and thus prayed for the rejection of the writ petition.

8. At this juncture, Shri B.D. Guru, Counsel for Respondent No.4, also makes a submission that as of now the situation has changed and the lease which has been granted to Respondent No.4 has been cancelled and the lease has since been given to the South Eastern Coalfields Limited and henceforth any relief for which the Petitioners are entitled to would be from the South Eastern Coalfields Limited.

9. The limited scope which this Court has to look into is whether the order of the competent authority i.e., 4.2.2005 (Annexure P-4), is proper, legal and justified or not?

10. This Court is not venturing into the dispute between the parties of what would be the fair compensation and who would be liable to make it and whether the application is barred by limitation or not. All that this Court intends to decide is, whether the Collector could have refused to make a reference on the ground as has been assigned in the impugned order, Annexure P-4, which for ready reference is reproduced herein under :

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11. A perusal of the impugned order would clearly reflect that the Collector had refused to make a reference only on account of the land belonging to the Petitioner being not acquired invoking the provisions of the Act, rather, the stand of the Collector is that the property has been taken over by the State Government invoking the provisions of the Code and since the property was acquired under the provisions of the Code and compensation has been made under the Code, the provisions of the Act cannot be invoked for the purpose of making a reference seeking enhancement of the compensation paid for.

12. At this juncture, it would be trite to refer to Section 247(4) of Code :

"247. Government's title to minerals.?

(1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894."

13. A plain reading of the said provisions of law would show that the makers of the law were very clear in their mind while drafting the said provisions and they were fully conscious of the provisions of the land acquisition proceedings as also the compensation and the method of compensation and also the procedure for enhancement available under the provisions of the Act which was an Act enacted much prior to the Code came into force. It was precisely for this reason that the makers of the law while drafting the Section 247(4) had enunciated the fact that

the amount of compensation for the occupation or disturbance of the surface of the land taken over by the Government shall be calculated by the Sub Divisional Officer in accordance with the provisions of the Act. It was also spelt out in the said provision that if the award of the Sub Divisional Officer also is not acceptable to the concerned person whose land has been taken over by the Government even then the remedy available to him was that of the provisions of the Act. Thus, it is amply clear that the provisions of law, i.e., Section 247(4) of the Code very clearly spells out that so far as the calculation of compensation and the proceeding for enhancement of compensation is concerned it would have to be strictly in accordance with the provisions of the Act.

14. In the said factual background of the case, this Court is of the opinion that the order of the Additional Collector while issuance of Annexure P-4, dated 4.2.2005, was not proper and justified.

15. So far as the ground of limitation raised by the Respondents is concerned, the said issue has not been decided by the Collector while passing the impugned order dated 4.2.2005 and therefore it would not be proper for this Court to venture into the issue which has not been decided by the competent authority and the issue is left open for the competent authority to decide while considering the application of the Petitioners dated 3.12.2004.

16. This Court only holds that the reason assigned in refusing the reference that of the non-applicability of the provisions of Act in the light of the provisions of Section 247(4) of the Code, the same is bad in law and for the said reason the impugned order deserves to be and is accordingly set aside/quashed.

17. The matter is remitted back to the Collector, Raigarh for taking an appropriate decision on the application dated 3.12.2004 filed by the Petitioners against the award dated 30.8.2003 and to further pass an appropriate order strictly in accordance with the provisions of the law. Since the matter relates to the acquisition of the land in the year 2003 i.e., almost 13 years having passed, it is expected that the Collector/competent authority shall take a decision on the said application as expeditiously as possible.

18. With the aforesaid observations, the writ petition is allowed.