

Basiruddin and anr. Vs. Collector of Sundergarh and ors.

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Court : Orissa

Decided On : Sep-09-1952

Reported in : AIR1953Ori42; 19(1953)CLT251

Judge : Jagannadha Das, C.J. and ;Panigrahi, J.

Acts : Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 - Sections 7 and 7(1)

Appeal No. : O.J.C. No. 183 of 1951

Appellant : Basiruddin and anr.

Respondent : Collector of Sundergarh and ors.

Advocate for Def. : Govt. Adv. and ;R. Das, Adv.

Advocate for Pet/Ap. : P. Misra and ;A.K. Tripathy, Advs.

Disposition : Application allowed

Judgement :

Panigrahi, J.

1. The petitioners and (are?) the recorded tenants of about 103 acres of land in Mouza Liploi, P. S. Raj-Gangpur in the district of Sundergarh. For the purpose of

starting a cement factory. Government acquired about 70 acres out of plots 421 and 83/735 belonging to the petitioners, under the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Orissa Act 18 of 1948) and published a Notification to that effect under Section 3(1) of the Act. The petitioners objected to the acquisition and filed their statement under Section 6 of the Act. Their case was that they purchased these lands by an oral sale in their favour made by one Budhu Kumbhar, father of opposite parties 2 and 3 and the father-in-law of opposite party 4 and that they were recorded as tenants in the Record of Rights prepared in the year 1932-33.

It appears that on 12-2-1951 the opposite parties 2 to 4 filed an objection before the Land Acquisition Collector claiming compensation in respect of these lands on the ground that they were in possession. It would thus appear that there were rival claimants. But the Collector, without notice to the petitioners, held an enquiry and submitted a report to the District Magistrate, Sundergarh, on 6th August 1951, recommending that the opposite parties were entitled to receive the compensation fixed. On 9th August 1951 the District Magistrate passed orders accepting the recommendation of the Land Acquisition Officer. The petitioners complained that they had no notice of the enquiry held by the Land Acquisition Collector and that the procedure adopted by that Officer was improper and not in consonance with the requirements of the Act.

On 3rd September 1951 they filed an application before the District Magistrate praying that a fresh enquiry be held and that the matter be submitted to the State Government for adjudication by an arbitrator as laid down in Section 7 of the Act. That application was rejected by the District Magistrate who confirmed his earlier order dated 9th August 1951 directing compensation to be paid to opposite parties 2 to 4. It is against this order that the petitioners have now come up with a prayer for the issue of a writ of mandamus under Article 226 of the Constitution.

2. The Act provides that any person interested in any land acquired by Government may file his objection before a competent authority and such authority may, after such enquiry as it thinks fit, either dismiss the objection or release the

land from acquisition. Section 7 of the Act provides the machinery for determining compensation and says :

'7(1). Where any land has been acquired under this Act, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say:

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached the Provincial Government shall appoint as arbitrator a person qualified for appointment as Judge of a High Court.'

Clauses (c), (d) and (e) provide what may be done before the arbitrator in fixing a fair amount of compensation and the principles to be followed by the arbitrator in making his award. Section 7(2) reads as follows :

'The arbitrator shall, in awarding any compensation under this section, apportion the amount thereof between such persons, if any, as may appear to him to be entitled thereto.'

Sub-section (3) of Section 7 provides for an appeal to the High Court from the award of the arbitrator appointed under the Act.

3. It is claimed for the State Government that the procedure adopted by the competent authority is in accordance with what has been laid down in Section 7 as opposite parties 2 to 4 agreed to the amount of compensation fixed by that authority and accepted the same. It is therefore contended that the requirements of Clause (8) of Sub-section (1) of Section 7 have been complied with and that the petitioners can have no grievance whatever. It is no doubt true that the opposite parties 2 to 4 agreed to accept the amount of compensation but the agreement contemplated in Section 7 is an agreement among all the contending parties and not only among some. Section 7(2) empowers the arbitrator to apportion the amount of compensation 'between such persons, if any, as may appear to him to be entitled thereto.' This indicates, that it is the function of the arbitrator to go into the question of title and apportion the amount of compensation as between

persons who, in his opinion may be 'entitled thereto.'

In the present case the Collector held that the opposite parties 2 to 4 were in possession even before the Settlement and that they were continuing in possession of the lands acquired. In the view of the Collector the opposite parties had acquired a prescriptive title against the petitioners and he accordingly referred the petitioners to establish their title in a Civil Court. It should be noted that the Act does not enable the Collector to go into the question of title and decide who, among the various persons claiming compensation, is or are entitled to the land, or to apportion the amount of compensation among such persons. That is the function of the arbitrator. The agreement contemplated in Section 7(1) (a) should be the agreement of all the persons interested and not only among those who come forward and express their willingness to accept the amount fixed.

The contention on behalf of the State that the agreement contemplated need not be of all the persons interested but only of those who are willing to accept the amount fixed, may make some sense of Sub-section (2) of Section 7 taken by itself but would make nonsense of the enactment as a whole. Section 4 of the Act directs the competent authority to serve notices on the owner of the land as well as on the occupier in cases where the owner is not in occupation of the land. Where the ownership is in dispute a notice has to be issued published in the Gazette stating the particulars specified in Section 3. The Act, therefore, contemplates disputes relating to ownership of the land in question and accordingly makes a distinction between 'owner' and 'occupier'. If the competent authority is to ignore the owner and enter into an agreement only with the occupier why should the Act prescribe notice to be issued to the 'owner'?

There may be cases in which several owners may raise disputes with regard to their respective shares. If the contention raised on behalf of the State were to prevail the competent authority can enter into an agreement with any one of them and pay out the compensation. If that were the true meaning of Section 7 (1)(a), then there would be no need for giving notice to the other contestants or persons interested in the land acquired. Indeed, if that were so there would be no need for the appointment of an arbitrator as contemplated in Section 7 (1)(b). The correct

interpretation of these two clauses appears to me to be that the competent authority can pay the amount of compensation only if there is unanimity of agreement among the several claimants who receive it.

There may be causes where such unanimity of agreement is not possible and there may be disputes with reference to the extent of the rights of the different claimants to the land or their shares 'inter se', or to the amount of compensation fixed by the Collector. In all such cases Clause (b) of Sub-section (1) of Section 7 would come into play and the State Government will appoint an arbitrator to decide the dispute. Sub-section (2) of Section 7 empowers the arbitrator so appointed to apportion the amount among the persons entitled thereto. This would clearly indicate that the arbitrator is the only person who is empowered to decide as to who are the persons entitled to the land. The language of the Act is unfortunately elliptical and may lead to some misunderstanding of the provisions of the Act but the rules framed under the Act and published in the Orissa Gazette dated 23rd June 1940 (sic) leave no room for doubt as to the intention of the Legislature.

4. Rule 5 lays down how the enquiry into the objections is to be held and says that the competent authority shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to notice given under Rule 4 and shall make a record in writing of the true area of the land, the compensation which, in his opinion, should be allowed for the land, and the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or whose claims, he has information whether or not they have respectively appeared before him. Rule 6 says that if the person or persons agree to accept the compensation offered by the competent authority, or if there be any dispute as to the right to receive compensation in whole or in part, the competent authority shall deposit the amount of compensation as Revenue Deposit in his favour, and refer the case to Government as provided in Rule 9 for adjudication by the arbitrator.

Rule 9 lays down that where no agreement is reached, the competent authority shall submit a report to the State Government stating the names of the persons whom he has reasons to think to be interested in such lands and the interests in

such lands which he considers as entitled to compensation: If the objection be to the interests entitled to compensation the grounds on which such interests were determined shall also be stated. These particulars required to be stated in the report submitted by the competent authority, indicate that the competent authority is not the authority empowered to decide disputes relating to the rival interests in the land. Rule 10 lays down that the State Government shall thereupon (that is to say, after the receipt of the report mentioned in Rule 9) appoint an arbitrator under Clause (b) of Sub-section (1) of Section 7 of the Act'.

The language of Rule 10 therefore makes it clear that the Act contemplated the appointment of an arbitrator where there are persons claiming rival interests in the land. It appears that the Land Acquisition Collector has overlooked Rr. 6 and 7 of the Rules framed by the State Government, in directing payment of compensation to opposite parties 2 to 4. He had no jurisdiction to decide that the opposite parties 2 to 4 had acquired a prescriptive title to the lands acquired and he should have reported the matter to the State Government, under Rule 9, and directed the amount of compensation to be deposited as a Revenue Deposit pending adjudication by the arbitrator.

5. I am satisfied that this is a clear case in which there has been a violation of the rules framed by the State Government and a non-compliance with the statutory duty enjoined on the Land Acquisition Collector by the Act. I would, therefore, set aside the order of the Collector directing payment of compensation to opposite parties 2 to 4, and would direct him to refer the matter to the State Government under Section 7(1) Clause (b) of the Act and Rule 9 of the rules framed thereunder. The petitioners shall have the costs of this application. Hearing fee is assessed at Rs. 100/- (Rupees one hundred only).

Jagannadha Das, C.J.

6. I agree with the order proposed by my learned brother. The main argument of the learned Government Advocate before us is that the Collector has the power to decide who prima facie out of the rival claimants, is entitled to the compensation and to pay it over to him, if that claimant agrees to the quantum of compensation has been paid (sic) on such an agreement; if the person prima facie appearing to

the Collector to be entitled to receive it, no question of reference to the arbitrator arises and that the only remedy of any person that may be affected thereby is to go to the Civil Court in the normal course and obtain redress. I am satisfied that a careful consideration of the provisions of the Act and the rules framed thereunder, shows that this contention is untenable.

7. The Act provides in Section 3 thereof for a notification of the proposed acquisition stating the area and the boundaries of the land to be published in the Gazette and for public notice of the same to be given at conspicuous places on or near the land to be acquired. By Section 4, it is provided that after publication of the notification as above a notice of the acquisition by registered post shall be caused to be served on the owner of the land, and in addition there is to be a further publication in the Gazette and affixture on the land and proclamation by beat of drum. Notice by registered post has to be given also to the occupier in cases where the owner is not in occupation of the land or the person to be served is not readily traceable or the ownership of the land is in dispute. Under Section 5, when the notice of the acquisition is served and published in accordance with provisions of Section 4, the land proposed to be so acquired, vests absolutely in the State Government, free from all encumbrances as on the date when the notice is so served or published in the Gazette.

The concerned authority is thereupon entitled to take possession of the property (immediately or) at any time thereafter. By Section 6, it is provided that any person interested in the land so acquired may, within one month from the vesting thereof in the State Government, file his objection, if any, to the acquisition before the competent authority. The said authority may make such inquiry as he thinks fit and may either dismiss the objection or release the land from acquisition. Under Section 7 of the Act, for the land so acquired in pursuance of the procedure under Sections 3, 4 and 5, compensation must be paid by the Government the amount of which is to be determined in the manner and in accordance with the principles set out in the Act.

Those provisions prescribe, that where the compensation can be fixed by agreement it shall be paid in accordance with such agreement and where no such

agreement can be reached, the State Government should appoint an arbitrator. The arbitrator may have the assistance of two assessors, one on the side of the Government and the other on the side of the person to be compensated and the compensation is to be fixed in accordance with the provisions of Section 23, Central Land Acquisition Act, subject to certain special provisions. Against the decision of the arbitrator, an appeal lies to the High Court whose decision is declared as final.

8. The above is the scheme of the Act and it is certainly remarkable that so far as the Act is concerned, it does not appear in terms, to indicate who is to decide a dispute about the title to the land proposed to be acquired when such a dispute arises in the course of the proceedings. But it is fairly clear that the Collector has not been vested with the power to come to any *prima facie* conclusion as to who is the person entitled, when there is a dispute.

The only power given to the Collector to decide anything under the scheme of the Act appears to be that under Section 6 thereof. Under that section, a person interested may file his objection to the acquisition within one month from the date of vesting. But that objection, as provided, is in terms, only to the acquisition of the land. That is clear not merely from the wording of Section 6(1) but also from the nature of the order that the concerned competent authority is required to pass on inquiry. He has to pass an order either dismissing the objection, or releasing the land from acquisition. This section therefore does not, in terms, contemplate the filing of an objection putting forward, a claim to the title of the land, nor does it contemplate any summary decision of the Collector on those matters.

It is no doubt true that the application is contemplated to be made by a person 'interested' and it may be that if a person with no-conceivable or obvious interest files a frivolous, objection, the Collector may decline to entertain it. For that purpose, therefore, he may, in an appropriate case, have to consider for himself whether an objector has an interest. But that does not mean that he has any power to come to a summary decision about the title or interest in land as between rival claimants, and to treat such decision as effective for the purposes of the Act. What is to be noticed is that while Section 4 itself contemplates that there may be

cases where the ownership of the land may be in dispute and that in such a case an individual notice by registered post is to be given to the occupier, quite clearly enough,, there is no specific power given to the Collector by Section 6 to decide such a dispute or to treat the occupier as representing the owner. This provision is in marked contrast with Section 11, Central Land Acquisition Act, which requires. the Collector to make an award both in respect of quantum of compensation and also impliedly as regards 'all persons known or believed to be interested in the land' (vide Clause (ii) of Section 11). It would be surprising if the local Act which by Section 17 has taken out of the Collector the power to make a summary decision as: regards the quantum, impliedly gave him such power under Section 6 as regards title.

I am quite clear, therefore, that the Collector has no power to come to a prima facie conclusion, or to treat the occupier himself as the prima facie owner in cases where there is a dispute about the title, or where the owner is not readily traceable. It is in the light of these considerations, which appear from Sections 4 and 5 of the Act, that the relevant provisions of Section 7 have to be construed.

9. If the Collector has no power to come to any prima facie conclusion about title as above pointed out, it would be absurd, as my learned brother points out, to construe the requirement of agreement in Clause (a) of Sub-section (1) of Section 7, as the agreement of the person appearing to the Collector to be so entitled. Such a construction would deprive the real owner of the very valuable right which he undoubtedly has got, of getting proper and adequate compensation for the deprivation of his property. The very scheme of Section 7 is that so far as the quantum of compensation is concerned, either it is a matter of agreement, or it is to be determined by an arbitrator, subject to an appeal from the arbitrator's award to the High Court, and in both the cases it is intended to be final. This finality in the case where the matter goes to arbitration is specifically provided for under Sub-section (3), and where the quantum has been settled by agreement the very fact that it is based on agreement, is assumed to make it final.

It would be unreasonable to construe the provisions of the Act so as to deprive a person claiming title to the lands, of the recourse to arbitration as regards the

quantum of compensation by making the agreement of a rival claimant to title binding on him. The learned Government Advocate suggests that in such a contingency, the person who claims title may seek his remedy in a civil Court. But so to construe the Act would entail the result that the question of compensation may be reopened in a civil Court by the ignored party, and would defeat the scheme of the Act which indicates that the question of compensation as such, is not intended to go to the civil Court at all excepting by way of an appeal to the High Court, from the arbitrator.

These considerations compel a Court to hold that the agreement contemplated under Clause (a) of Sub-section (1) of Section 7 of the Act, which obviates the necessity for an arbitrator, must be the agreement of all the persons who come forward claiming title to the land, by the time the occasion for the application of Section 7 arises. Where conflicting claims to the title to compensation come to the notice of the authority concerned before the payment of compensation as in this case, it appears to me to be impossible to say that the agreement of one of the claimants is enough to exclude the operation of Clause (b) of the said sub-section, merely because the Collector thinks him to be the person entitled. I am, therefore, in agreement with my learned brother in thinking that the Collector had no right to treat the quantum of compensation as having been agreed to under Clause (a) of Sub-section (1) of Section 7 and to refer the applicant before us to the civil Court or to the High Court. In the circumstances, he was bound to treat the case as one in which there was no agreement as regards the quantum of compensation, and should, therefore have required the Provincial Government to appoint an arbitrator under Clause (b) of Sub-section (1) of Section 7.

10. I may add that it is not quite clear with reference to the terms of Section 7 of the Act what would be the legal position, in case no dispute as regards the title comes to the notice of the Collector before he pays the compensation. If in such a contingency the Collector treats the person who appeared to him to be entitled as the person whose agreement is enough in the absence of a rival claim or if in the absence of an agreement of such a person, arbitration proceedings have been gone through, whether either the agreement or the arbitration proceedings in such circumstances bind the real owner, is one which does not appear to have been

contemplated or provided in the Act, and i propose to say nothing about it.

But that cannot be any reason for holding that, where the rival claimant appears on the scene before the payment of compensation, an agreement behind his back can be treated as binding or as sufficient to exclude recourse to arbitration. What I have mentioned above appears to be a lacuna in the Act which requires to be specifically provided for as early as possible.

11. Though the question as to whether the arbitrator has the power to decide the question as between rival claimants of the title to the land, is not one that directly arises for decision by us in this case, I think it right to say that I agree with my learned brother in thinking that the arbitrator has such power under the Act, by virtue of Sub-section (2) of Section 7, which says, as follows :

'The arbitrator shall, in awarding any compensation under this section apportion the amount thereof between such persons, if any, as may appear to him to be entitled thereto.'

The learned Government Advocate, however, urges that the only power that the arbitrator has got under this provision is to determine, who are the persons entitled to apportionment of the compensation amount' and not decide the question of title as between the rival claimants to the entirety of the amount. While, no doubt, the use of the word 'apportion' gives room for some argument as above, I think the power vested in the arbitrator to determine the apportionment as between the persons appearing to him to be entitled thereto, includes the power to determine also who is the person entitled when a dispute arises thereto.

This is clearly implied by Section 8 of the Act which says as follows :

'The compensation awarded shall be paid by the competent authority to the person entitled thereto according to the award.' It is clear from the use of the word 'award' in relation to the compensation, and also the phrase 'according to the award' in relation to the person entitled thereto, that it is contemplated that the award is to deal both with the quantum of compensation as also with the title of the person thereto. In this connection, it is relevant to notice the use of the word

'apportionment' in Clause 3 of Section 11, Central Land Acquisition Act, in terms wide enough to cover also 'claims.'

I am, therefore, prepared to hold that even on the construction of the Act, though there is some room for argument that the arbitrator has not been in express terms vested with the power to decide the question of rival title to the entirety of the compensation, to my mind, the implication of Section 6 which does not give any such power to the Collector and of Section 8, which contemplates the award as relating also to title, makes it reasonable to construe Sub-section (2) of Section 7 as vesting the arbitrator with the power to determine the person entitled to the compensation itself. As my learned brother has pointed out, the rules framed under the Act, place the matter beyond any reasonable doubt.

A comparison of the provisions of this local Act with the provisions of the Central Land Acquisition Act also fairly indicates that while in order to secure speediness, the local Act has provided for the vesting in the Government, of the title to the land proposed to be acquired, and for taking possession thereof, at a very early stage by providing for it immediately on the notifications and notices under Sections 3 and 4, and by dispensing with the preliminary investigation provided for by Sections 4-15 of the Central Act, the local Act has maintained the essentials of the procedure for land acquisition by providing for a preliminary notification and notice and the chance of the affected persons objecting to the acquisition itself and by substituting the summary decision both as regards the quantum of compensation and as regards the title, by an arbitrator, instead of the Collector, excepting in cases where there has been an agreement, and by providing for a direct appeal therefrom to the High Court instead of reference first to the District Court and then an appeal to the High Court. This comparison of the provisions between the local Act and the Central Act leaves no doubt in my mind that it must have been clearly intended that the arbitrator was to be vested with the power to determine, the question of title also, where there is a dispute about the same.