

Bhera Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-18-1984

Reported in : AIR1986Raj113

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Acts : Rajasthan Land Acquisition Act, 1953 - Sections 11 and 12; [Constitution of India](#) - Article 226;

Appeal No. : Civil Special Appeal No. 120 of 1973

Appellant : Bhera Ram

Respondent : State of Rajasthan

Advocate for Def. : R.C. Maheshwari, Addl.Govt. Adv.

Advocate for Pet/Ap. : R.N. Bishnoi, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. This appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment dt. May 2, 1973 of the learned single Judge passed in S. B. Civil Writ Petition No. 1078 of 1972, by which, he allowed the petitioner-

appellant's writ petition under Article 226 of the Constitution and sent the case back to the Land Acquisition Officer to examine the case of the petitioner-appellant solely from the point of view of compensation under the relevant provisions of the Rajasthan Land Acquisition Act (No. 24 of 1953) (hereinafter referred to as 'the Act').

2. The appellant hereinafter will be referred to as the petitioner.

The petitioner filed the writ petition seeking to quash the orders (Ex. 6) dt. June, 24, 1968 of the Deputy Colonisation Commissioner, (Ex. 7), dt. Aug., 20, 1969 of the Commissioner Colonisation, (Ex. 8), dt. Nov., 22, 1970 and (Ex. 9), dt. May 22, 1971 of the Colonisation Minister, Government of Rajasthan and the notice (Ex. 10), issued by the Tehsildar Colonisation, Rajasthan Canal Project, Suratgarh No. 2, District Sriganganagar. It was also prayed that the petitioner may be declared the Khatedar tenant of the disputed lands and the order for the grant of land in exchange passed by the Land Acquisition Officer, Suratgarh be restored. A further relief was also sought that the respondents may be directed not to interfere with the possession of the petitioner in any manner whatsoever.

3. The petitioner has alleged that the lands described in para 1 of the writ petition had been in his personal cultivation prior to Svt. 2012 corresponding to 1955 A.D. Rajasthan Tenancy Act (No. 3 of 1955) (for short the Act of 1955) came into force on Oct., 15, 1955. The petitioner has averred that by virtue of Section 15 of the Act of 1955, he became Khatedar tenant. Subsequently, Section 15-A was introduced in the Act of 1955 and according to that section, Khatedari rights could not accrue in the lands which fell in the Rajasthan Canal Area. It is not in dispute that the lands of the petitioner fell within the Rajasthan Canal Area, It is, thus, clear that the Khatedari rights which had accrued to the petitioner had been taken away by the amended Section 15-A of the Act of 1955. However, Section 15-A was declared ultra vires by a decision of this Court but it was subsequently validated by an amendment in the Constitution. In a later decision in Jugat Kishore v. State of Rajasthan, 1973 WLN 52 : (AIR 1973 Raj 244), in which the validity of Section' 15-A was again questioned, it was held to be valid.

4. 39 Bighas of land of the petitioner which formed part of Khasra No. 146 was acquired for the construction of Ghaghar Canal in the year 1965-66. The award was given by the Land Acquisition Officer on April, 17, 1967 vide Annexure-R.1. It was held by him that the petitioner was not entitled to any compensation as after acquisition the petitioner still would have with him 70 Bighas of land which is beyond the ceiling fixed. A sum of Rs. 5460/- was, however, ordered to be paid as compensation for the price of the land to the State through the Collector, Sriganaganagar. Here, it may be stated that the Assistant Colonisation Commissioner, Rajasthan Canal Project, Suratgarh, District Sriganaganagar was also the Land Acquisition Officer under the Act who passed the order dt. April, 17, 1967 and he was arrayed as respondent 2 in the writ petition. The order (Annexure Rule

1) was passed by respondent 2 (Land Acquisition Officer, Suratgarh). The same Land Acquisition Officer by order (Ex.

3) dt. June 24, 1967 reviewed his earlier order and held that the petitioner has got a family of 15 members and the land left with him after acquisition is much less than the ceiling fixed and so, beset aside the order dated April 17, 1967. It was also found by him that the petitioner was entitled to have 39 Bighas of land in exchange of the land acquired from him. By this very order he even allotted 39 Bighas of land in Chak No. 5 SPD in Sardarpura Kharta. He maintained the order of payment of Rs. 5460/- to the State Govt. through the Collector, Sriganaganagar. By another order (Ex.

4) dt. June 26, 1967, he directed the Tehsildar Colonisation, respondent 5 to hand over possession of the land allotted to the petitioner and to make necessary entries in the records. The order was complied with. The possession of 39 Bighas of land was given to the petitioner and the papers were sent to the Deputy Colonisation Commissioner vide his order (Ex.

5) dt. June 4, 1968. The Deputy Colonisation Commissioner held vide his order (Ex.

6) dt. June 24, 1968 that the petitioner was not entitled to the land in exchange. He set aside the order (Ex.

3) of the Assistant Colonisation Commissioner cum Land Acquisition Officer. The petitioner challenged the order (Ex.

6) dated June 24, 1968 before the Colonisation Commissioner, Bikaner (respondent

4) but without any success. That order has been marked as Ex. 7 dt. Aug., 20, 1972. The petitioner approached the State Government in revision. The Minister Colonisation rejected the revision application by his order (Ex

8) dt. Nov. 22, 1970. The petitioner again sought a review but he failed. The order passed in review is Ex. 9 dt. May 22, 1971. The petitioner has filed the writ petition for the aforesaid reliefs.

5. The writ petition was opposed on various grounds. After considering the submissions that were advanced before him, the learned single Judge has recorded the following findings:

1. that the order (Ex. 3) dt. June, 24, 1967, passed by the Land Acquisition Officer is bad and cannot be sustained.

2. that the order (Ex. 3) dt. June 24, 1967 cannot be allowed to continue by setting aside the orders passed by the Deputy Colonisation Commissioner, Rajasthan Canal Project, Bikaner (respondent 3), the Commissioner Colonisation, Rajasthan Canal Project, Bikaner respondent 4) and the Minister Colonisation, for, the extraordinary powers under Article 226 of the Constitution cannot be availed of to sustain a wrong order even when the order was set aside by a authority not competent;

3. that the petitioner was entitled to compensation even if, he was not a Khatedar tenant since he was in possession of the land; and

4. that the order (Annexure-R. 1) dt. April 17, 1967 was held to suffer from an error apparent on the face of the record and, therefore, it was also set aside.

6. In view of the aforesaid findings, the learned single Judge by his order dt. May 2, 1967 allowed the writ petition and set aside the order (Annexure R. 1) and directed the Land Acquisition Officer to examine the case of the petitioner for awarding the compensation on account of compulsory acquisition of his land measuring 39 Bighas. Aggrieved, the petitioner has filed this special appeal as aforesaid.

7. We have heard Mr. R. N. Bishnoi, learned counsel for the appellant and Mr. R. C. Maheshwari, learned Additional Government Advocate.

It was contended by Mr. R. N. Bishnoi, learned counsel for the appellant that the part of the order of the learned single Judge under appeal may be set aside by which he remanded the case for [he examination by the Land Acquisition Officer and it was submitted that the order (Ex. 3) dt. June 24, 1967 of the Land Acquisition Officer may be restored as the petitioner is entitled to get the disputed land in exchange of the land which was acquired. The Land Acquisition Officer vide order (Annexure R. 1) dt. April 17, 1967 did not accept the claim of the petitioner for the grant of the land in exchange of the land acquired on the ground that the petitioner was holding excess land than the prescribed limit even after the acquired land. He even did not grant cash compensation to the petitioner as he was holding the land temporarily. By means of the order (Ex. 3) dt. June 24, 1967, he set aside, the order (Annexure-R. 1) dt. April 17, 1967 and ordered for allotting 39 Bighas of land in exchange of the land acquired.

8. The question is whether the Land Acquisition Officer was competent to do so inasmuch as after the passing of the order (Annexure R. 1) dt. April 17, 1967, he became functus officio. This was thus necessitated for us to consider the relevant provisions of the Act. Section 11 of the Act deals with Enquiry and Award by Collector. The Collector has been empowered to make an award within the time specified in the section. Section 12 provides for Award of Collector when to be final. It lays down that the Award shall be filed in the Collector's office and subject to what has been provided in the Act shall be final and conclusive evidence as between the Collector and the person interested. It was not contended before the learned single Judge that the Award (Annexure R. 1) dt. April 17, 1967 was not

made or that it was not filed. In the Award (Annexure R. 1), it was specifically held that the petitioner was not entitled to any compensation of the price of the land which belonged to the State Government. He, therefore, ordered for payment to the State Government through Collector, Sriganaganagar and that the remaining land left with the petitioner was beyond ceiling limit and, therefore, he was not entitled to claim any compensation. The learned single Judge was right when he held that it was a final order. Thus, under Section 12 of the Act, the Award became final and so thereafter, the Land Acquisition Officer could not review the order (Annexure R. 1) by making a second Award (Ex. 3) dt. June 24, 1967. The order (Ex. 3) dt. June 24, 1967 was not warranted as it was an order without authority and the Land Acquisition Officer did not have jurisdiction to pass that. Section 31(3) of the Act has been reproduced by the learned single Judge in the order under appeal and it is as under:

'Section 31(3). Notwithstanding anything in this section, the Collector may with the sanction of the State Govt. instead of awarding a money compensation in respect of any land, make an arrangement with a person having a limited interest in such land either by the grant of 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.'

A reading of Section 31(3) of the Act clearly shows that if the Land Acquisition Officer is of the opinion that instead of awarding the money compensation in regard to any land acquired, the interested person should be given the land in exchange even this cannot be done without the sanction of the State Govt. Admittedly, the sanction of the State Govt. was not obtained by the Land Acquisition Officer before allotting the land in exchange to the petitioner. Without sanction, the land could not be allotted. Thus, the Land Acquisition Officer had exceeded the powers. He directed the Tehsildar Colonisation to deliver possession of the land given in exchange and for making necessary entries in the Government records: We agree with the learned single Judge that the order (Ex. 3) dt. June 24, 1967 of the Land Acquisition Officer by which he reviewed the award/order of Annexure R.1) dt. April 17, 1967 is bad being illegal and cannot be sustained. It is true that the Land Acquisition Officer could not pass the order (Ex. 3) by reviewing the award/order dt. April 17, 1967 as he was not competent to do

so because it had become final under Section 12 of the Act. It was held in *Kashi Prasad v. Notified Area, Mahoba*, AIR 1932 All 598 that whatever be the nature of the proceedings and the character of the award, no review is possible and once the award is given under Section 11 and filed in the Collector's office under Section 12 of the Act, the Award shall except as provided by the Act become final. In *Baru Mal Jain v. State of U. P.*, AIR 1962 All 61, it was held that once the award is prepared and filed in the Collector's office, it becomes final and then it cannot be changed. Reference was made to *Kooverbai Sorabji v. Asstt. Collector, Surat*, AIR 1920 Bom 265 and *Surendra Singh v. State of U. P.*, AIR 1034 SC 194.

9. It is correct that the orders Exs. 6, 7, 8 and 9 are without jurisdiction as no appeal or revision lay against the order of the Land Acquisition Officer. The petitioner has sought the relief in the writ petition that the order (Ex. 3) dt. June 24, 1967 may be restored by setting aside the orders Exs. 6, 7, 8 and 9. For the restoration of the wrong order (Ex. 3) dt. June, 24, 1967, extraordinary jurisdiction under Article 226 of the Constitution cannot be exercised. It was held by a Full Bench of this Court in *Jagan Singh v. S. T. A. T.*, AIR 1980 Raj 1 that as allowing the writ petition would result in restoring the illegal order of the R. T. A. and as there had been no failure of justice in the instant case, it will not be proper for the High Court to interfere with the appellate order. *Gani Mohammed v. S, T. A. T.*, 1976 Raj LW 201 : (AIR 1977 (NOC) 183) and *G. Venkateswara Rao v. Govt. of A. P.*, AIR 1966 SC 828 were referred to. In the latter decision, the Supreme Court came to the conclusion that the State Govt. had no power under Section 72 of the Andhra Pradesh Panchayat Samitis and Zila Parishads Act to review its previous order, yet their Lordships refused to interfere with the order passed by the State Government, upon such a review on the ground that quashing of that order would lead to restoration of an illegal order passed earlier by the State Government. In the case on hand, the learned single Judge was right when he held that the extraordinary powers of this Court cannot be availed of for restoring a wrong order even when the order was set aside by the authority not competent. The petitioner is not entitled to the relief of restoration of the order (Ex. 3) dt. June 24, 1967 passed by the Land Acquisition Officer on review. The learned single Judge had also set aside the order dt. April 17, 1967 by which it was held that the petitioner was not competent to any compensation and remanded the case to the Land

Acquisition Officer to examine the petitioner's case solely on the point of compensation under the relevant provisions of the Act. This finding of the learned single Judge was not assailed by the respondents before us.

10. No other point survives for our consideration.

11. The result is that the appeal has no merit and it is, accordingly, dismissed without any order as to costs.

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