

Khangaram and ors. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Nov-27-1981

Reported in : 1981WLN(UC)413

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 1184/81

Appellant : Khangaram and ors.

Respondent : The State of Rajasthan and ors.

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

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. The petitioners seek to quash the acquisition of their land, at the instance of respondent No. 4 Vikas Adhikari, Panchayat Samiti, Sindhari. A request for acquisition of the land, for the construction of 2km long road from Ramsar-ka-kuwa School to the Bus-stand of Ramsar-ka-kuwa was made to the Collector on 11th November, 1970. A resolution of the Panchayat Samjti duted October 10, 1970 was submitted to the Collector, The petitioners gave the description of their land in para 1 of the writ petition. The Collector then forwarded the matter to the State

Government and, thereupon, the State Government issued an order requiring the Sub-Divisional Officer, Barmer to proceed under under Section 4 of the Rajasthan Land Acquisition Act (hereinafter referred to as 'the Act'). A notice was issued, stating that land is required for public purpose i.e. for construction of a road in village Rawatsar, Tehsil Barmer, The land comprised of Khasra No. 766 was also mentioned in the notice. The Sub-Divisional Officer conducted the enquiry, reported the matter to the State Government and a notice was issued to the petitioners, as well as public notice was also issued inviting objections. The objections were heard and thereafter, a report was submitted to the State Government recommending the construction of the road through the petitioners field Khasra No. 766. Thereafter, a declaration was made under Section 6 of the Act vide Gazette notification dated January 4, 1973. The Sub-Divisional Officer than issued notices to the petitioners under Section 9 of the Act for filing any objections in respect of the measurement of the land and compensation etc. The petitioners submitted their objections on December 11, 1972. On the fixed date i.e. December 13, 1972, the petitioners did not appear and they also did not appear on the adjourned date of December 13, 1972, the petitioners did not appear and they also did not appear on the adjourned date of 30th December, 1972 or any other subsequent dates and finally on April 6, 1973 the Land Acquisition Officer made an award. According to the petitioners, in the month of March 1981 the petitioners were told by the staff of Public Works Department that the Executive Engineer, PWD (D&P;), Barmer is taking stops for constructing a road through Khasra No. 766. Thereupon, on enquiry, the petitioners case to know that 4 K.M. gravel approach road from Ramsar-ka-kuwa to village Rawatsar has been proposed by the Executive Engineer and necessary amount has also been allotted by the Collector. The petitioners than filed a revenue suit in the court of Sub-Divisional Officer, Barmer under Sections 188 and 92(A) of the Rajasthan Tenancy Act, 1955, for permanent injunction against the Executive Engineer, PWD (D&P;), Barmer, the Chief Engineer, PWD (D&P;) Rajasthan, Jaipur and the Tehsildar, Barmer. In that suit, the written statement was filed. An application for temporary injunction was also filed. However, the Sub-Divisional Officer expressed that he is unable to issue any any temporary injunction as he himself in his capacity as a Land Acquisition Officer gave the award on April 6, 1973. The Sub-Divisional

Officer handed over the attested copy of the award to the petitioner Khangararam and his counsel Bharatmal Solanki on July 8, 1981. Thereafter, the Land Acquisition file was inspected & it came to the notice of the petitioners that the Panchayat Samiti, Sindhari failed to provide the compensation amount specified in the award. Thereupon, the Collector, Barmer filed the papers and took no proceedings. The Vikas Adhikari, Panchayat Samiti, Sindhari (respondent No. 4) by his letter dated July 28, 1975 informed the Collector that there is no provision for funds, for making compensation to the cultivators. The petitioner's main ground of attack is that they were given notice of the award on July 8, 1981 after a lapse of more than 8 years, This has resulted in depriving the petitioners from getting due amount of compensation. It was stated that as a result of a long delay, the compensation which the petitioners would be paid on their dispossession of the land will have no substantial relation to the value of the land prevailing at present. During these 8 years the price of the land has gone very high. The dilatory nature of the proceedings has acted so oppressively on the petitioners as to make the compensation awarded to them really no compensation at all. The petitioners prayed that the notification issued under Section 4(1) and 6, and subsequent proceedings and the award dated April 6, 1973 and all further proceedings may be quashed.

2. Respondents No. 1 to 5 submitted reply to the show cause notice, wherein it was stated that the execution of the proposal for constructing the road was included in the Crash Project of 1971-72 and necessary notifications were issued. The construction of the road could not be carried under the Crash Project, which has resulted in its postponement. As such no immediate step was taken. The petitioners continued to remain in possession and cultivated the land. During the year 1981, in the Famine Project, the construction of the said road was undertaken and the road has in fact been constructed upto the land of the petitioners on both the sides and only that portion has remained to be constructed over the land in dispute because the petitioner is causing obstruction. It was stated, that on 7th July, 1981, possession has been taken over vide Anx. R/4. It was also stated that merely because the petitioners were allowed to continue in possession because of the postponement of the proposed scheme of constructing the road, the acquisition proceedings can not come to an end nor the land, which has been

validly acquired in accordance with law goes out of acquisition. It was stated that it is a mis-conception of the petitioners that the construction of the road is being done by the Panchayat Samiti. The road is to be constructed by the Public Works Department at the State Govt. expenses. The petitioner's averments regarding the rise in price of the land upto Rs. 500/-per bigha were denied and it was stated that the rate of the land in the area where the disputed land is situated was not more than Rs. 13/- per bigha at the relevant time and that has been awarded to the petitioners. The delay in taking possession of the land has been to the benefit of the petitioners in as much as the petitioners have enjoyed fruits of the land for more than 8 years, possession of which could have been taken as back as 1973. The petitioners can not make any grievance on this score. The respondents raised an objection that the writ petition is liable to be dismissed solely on the ground that there has been laches on the part of the petitioners. The delay in the case is fatal to the petitioners. It was also stated that the lands of the other persons were also acquired and they have surrendered their land for construction of the road even without claiming compensation voluntarily in the larger interest of the village. The extra-ordinary jurisdiction of this Court may not be allowed to,be invoked to frustrate the work of public utility. It was prayed that the writ petition may be dismissed.

3. I have heard Mr. R.N. Bishnoi, learned Counsel for the petitioners and Mr. Rajesh Balia, learned Deputy Government Advocate.

4. It may be stated that the only ground pressed before me in this petition is that the petitioners were served with the award as late as 1981 and so it will be deemed that the award has been made on July 8, 1981. As such there has been considerable delay in making the award, so the acquisition proceedings are liable to be quashed on this ground alone because the petitioners would be paid compensation at the rate, which was prevailing some 8 years back and not at the rate when the award was served on the petitioners.

5. Mr. Bishnoi, learned Counsel for the petitioners urged that Sub-section (2) of Section 12 provides that the Collector shall give immediate notice of his award or the amendment thereof to such of the persons interested as are not present

personally or by their representative when the award or the amendment thereof is made. Admittedly, the petitioners or their counsel were not present on April 6, 1973 when the award was made, so it was obligatory for the Land Acquisition Officer to have given immediate notice of the award to the petitioners. There was gross delay and neglect on the part of the 1 and Acquisition Officer in not giving immediate notice of award, which has resulted into tremendous loss to the petitioners and the petitioners would be deprived of their property without payment of due compensation.

6. It is argued by Mr. Bishnoi that the acquisition proceedings are required to be conducted expeditiously and unreasonable delay would necessarily result in causing loss to the petitioners when the market value of the land rises during the pendency of the acquisition proceedings. Reliance was placed by Mr. Bishnoi on some case was law, which I shall be dealing with little later.

7. Mr. Balia, on the other hand urged that the conduct of delay and laches on the part of the petitioners disentitle them to seek any relief under Article 226 of the Constitution of India. Besides that, as the road has been constructed on both the sides of the land in dispute, the case is not a fit one for the exercise of the extraordinary jurisdiction of this Court He also referred to some case-law in support of his submission.

8. From the submissions, made by the learned Counsel for the parties, the crucial question, which emerges for consideration, is, as to whether the entire acquisition proceedings can be quashed on the ground that the petitioners were served with the award after more than 8 years and the mandatory provision of Section 12(2) of the Act has not been followed, in as much as, immediate notice of the award was not given and the power under Section 12(2) of the Act has been exercised unreasonably and unfairly to the detriment of the petitioners, as the petitioners will be deprived of the legitimate amount of compensation.

9. In Patel Shankerbhai Mahijibhai and etc. v. State of Gujarat and Ors. : AIR1981 Guj67 cited by Mr. Bishnoi, learned Counsel for the petitioners, a notice under Section 9 was issued about 4 1/2 years after publication of the declaration under Section 6, it was held as under;

Such a long lapse of time subjects the land owner to a number of unforeseen and avoidable hardships. Some of them are (1) It freezes the investment of the owner in the land for an unduly long time; (2) he can only get market value as on the date of the notification under Section 4; (3) he will not be able to take advantage of rise in the land prices, (4) he will not be able to improve the land or repair the building, if a building is under acquisition, even though it may require urgent repairs, except probably at the cost of losing such an outlay; (5) the owner will enjoy only a qualified ownership and enjoyment of his property during this period because he can not build upon the land under acquisition; (6) he can profitably let it out because no good tenant under the fear of being thrown out at any time, will take it on rent and (7) the Government can always withdraw under Section 48(1) from acquisition before possession has been taken if prices are falling while the owner has no corresponding choice if the prices are rising. The interest on the amount of compensation allowed at 4 1/2% per annum is no substitute or solace for the loss which the owner suffers under several heads. Profits which investment in business brings or the interest which a Bank charges his unsecured borrower are manifold higher than this paltry interest at 4 1/2% p.a. Therefore, notice under Section 9 ought to have issued within a reasonable period of time from the publication of the declaration under Section 6 and, since it was not done in this case is required to be struck down.

10. It was also observed in that case, that where the Statute does not prescribe any period of time for the exercise of a particular power, it must be exercised within a reasonable period of time. The delay in issuance of the declaration under Section 9 was tested on the ground of reasonableness and it was observed that 'what is a reasonable period of time in a given case depends upon the facts of that case. It is a highly flexible concept and its application varies from case to case depending upon the facts of each case.' In that case, notification under Section 4 was published on July 13, 1972 and declaration under Section 6 was published on July 11, 1975. The petitions were filed in 1980, a little less than 8 years after the impugned notification under Section 4. In that case, addendum to the declaration under Section 6 was published on December 27, 1979. The contention was raised on behalf of the respondents that such a stale petition should not be entertained. On this objection, the three decisions of the Supreme Court namely : (i) *Aflatoon v.*

Lt. Governor of Delhi : [1975]1SCR802 , (ii) Smt. Ratan Devi v. Chief Commissioner, Delhi : AIR 1975 SC1699 and (iii) Babusingh v. Union of India : AIR 1979 SC1713 were considered. After considering the decisions in para 15, it was observed that 'the validity of notification under Section 4 is a *sine qua non* of all valid land acquisition proceeding. So far as delay is concerned, what we find in the decisions referred to above is,' as follows: 'If the land acquisition proceedings have been completed or if the rights of third parties have come into existence during the period intervening between the issuance of notification under Section 4 or the declaration under Section 6 and the institution of the writ petition, delay assumes a very great importance and should be pressed into service in order not to disturb the settled rights or proceedings which have been finalized.' It may be mentioned that in the present case, the Land Acquisition proceedings were completed on April 6, 1973 and the proceedings were conducted since the issuance of the notification under Section 4 expeditiously.

11. The next case relied upon by Mr. Bishnoi is P. Appalamurthy and Ors. v. State of Andhra Pradesh and Ors. AIR 1981 SC 278. In that case, after issuing declaration under Section 6, there was a lull for a period of three years, until the notices under Section 9(3) and 10 were issued. Then again, the Land Acquisition Officer froze the proceedings for almost five years when he passed the award. On facts, in the writ petitions, which were the subject-matter of the above decision, it was observed as under:

In the absence of any valid explanation for this delay, and also in the absence of any statutory prohibition or restraint against the passing of award, it must be held that this delay in passing the award makes the very exercise of power; viz. the power to acquire the lands in accordance with the provisions of the Act, unreasonable, oppressive and unfair. Every public authority is bound to act reasonably and fairly in exercise of its power. An arbitrary and unreasonable exercise of power can not be countenanced by Courts; more so, when it causes prejudice and loss to the citizens.

In para 9 of the report, after considering the facts an amount of which, the delay is said to have been caused by the Government, it was observed that 'the

Government can not say that it will keep the notification issued under Section 4(1) of the Land Acquisition Act alive and, at the same time, wait for the result of the proceedings under the ceiling laws, so as to ultimately opt for the more advantageous alternative. This would be an unreasonable and arbitrary exercise of power. A notification can not be issued for the purpose of pegging down the price, or for freezing the price, as the case may be, and then wait for a convenient and opportune time to give an award. Such a line of thinking and the course of conduct is alien to the scheme and intendment of the Land Acquisition Act.

12. Reference was made to the two decisions, one of the Supreme Court in *Ambalal v. Ahmedabad Municipality* : [1968]3SCR207 and, another decision of Madras High Court in *Krishna Iyer v. State of Madras* (1967) 2 Mad LJ 422. In *Ambalal's* case (supra), it was observed that it is intended by the scheme of the Act that the notification under Section 6 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any unreasonable delay. Similarly, in *Krishna Iyer's* case (supra), it was observed that though the statute does not prescribe any time limit for issuing the Section 6(1) declaration after the Section 4(1) notification or for passing an award at a subsequent stage, that circumstance does not deprive the aggrieved party of a remedy where undue prolongation of the proceedings has operated in an oppressive manner on the owner of the land, especially in circumstances where land values have increased by leaps and bounds in the intervening time.

13. The contention of laches on the part of the petitioners was raised in that case but it was negatived. One writ petition was filed one day before the award. The second writ petition was filed three days before the award and to the other two cases, the award was not at all passed by the date of interim orders of the court. It would appear that the writ petitions were filed before passing of the awards. In para 9, the learned Judge observed as follows:

It must clarify that once an award is passed, the State can no longer be held responsible for any delay on account of reference to Civil Court. The matter will go to Civil Court only if asked for by the claimant, or if there is a dispute between the claimants. The State can not be blamed for the delay which may occur after the

passing of the award. But what is essential is that the award must be passed with reasonable expedition after the publication of the declaration under Section 6. Indeed, the Courts have been insisting that even the declaration under Section 6 must be made without any avoidable delay, after publication of the notification under Section 4(1).

14. Mr. Bishnoi, on the basis of the decision of the Supreme Court to Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and Anr. : [1962]1SCR676 and State of Punjab v. Mst. Qaisar Jehan and Anr. : [1964]1SCR971 contended that the award should be deemed to have been made, when the award is communicated to the party. Award is an offer or tender of compensation and the same would be completed only when it is communicated to the owner of the property. In this view, Mr. Bishnoi submitted that the award was communicated or served on the petitioners after a lapse of more than 8 years and so there has been considerable delay in making of the award. As the authority acted unreasonably in not giving notice of the award, so the proceedings are liable to be struck down. It may be stated that their Lordships of the Supreme Court, in these decisions were concerned with interpretation of proviso (b) of Section 18(2) relating to the question within what time, reference can be made under Section 18 to the competent court. Their Lordships in the first case over ruled the decision in Johangir Bormanji and Ors. v. C.D. Gaikward : AIR1954 Bom419 and a decision of the Kerala High Court in the State of Travancore Cochin v. Narayani Amma : AIR1958 Ker272 . In para 6 of the report, their Lordships observed as under:

If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately effect the rights of the owner of the property and in that case, like all decisions which effect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party effected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually

or constructively. If the award is pronounced in the presence of the party whose rights are effected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party effected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be reasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way.

and it was further observed as under:

In this connection, it is material to recall the fact that under Section 12(2) it is obligatory on the Collector to give immediate notice of award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under Section 11 followed by its filing under Section 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory Words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression 'from the date of the Collector's award' in the proviso to Section 18. It is because communication of the order is regarded by the Legislature as necessary that Section 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement, it tends to show that the literal and mechanical

construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under Section 12(2) should directly tend to make ineffective the right of the party to make an application under Section 18, and this result could not possibly have been intended by the Legislature.

15. In the Punjab case (supra), the view taken in Raja Harishchandra Raj Singh's case (supra), was followed and it was observed that having regard to the scheme of the Act, knowledge of the award must be knowledge of the essential contents of the award.

16. Mr. Balia, learned Deputy Government Advocate referred to the two decisions of the Calcutta High Court (i) Nader Chand Mallick v. State of West Bengal and Ors. : AIR1972 Cal67 and (ii) Kamala Kunwar v. Kakshan Goala and Anr. : AIR1967 Cal105 . In the first case of the Calcutta High Court, it was observed that it cannot be said that an award is not 'made' under Section 11 until notice has been given under Section 12(2). An award is made when the Collector draws up and signs the award. The function is not a judicial one and there is no necessity of announcing it. The giving of notice is required by law and it must be given, but if not given, it cannot make the award invalid. In the second case as well, it was observed as under:

Now absence of notice under Section 12(2) of the Act does not in my view vitiate the award. Notice under Section 12(2) unlike a notice under Section 9 of the Land Acquisition Act is not a notice intended to invite objections to an act which has not been done completed yet. A notice under Section 12(2) is only a notice ex post facto and a notice of a fait accompli, namely it is a notice of an award already made. Section 12(2) of the Land Acquisition Act provides;

The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

The whole object of this notice is to inform such interested persons who were not present personally or by representatives when the award was made. It is only an

informative notice. The purpose, of such information is to enable such persons to the call for; reference under Section 18 of the Land Acquisition Act within the time allowed by the proviso to Section 18(2). It is not a kind of notice which goes to the rest of the matter in the sense that failure to give notice that an award has already been made will vitiate the award itself.

17. In the second Calcutta case, Mukarji J., referred to the above two decisions of the Supreme Court--(i) Raja Harishchandra Raj Singh v. Deputy Land Acquisition Officer : [1962]1SCR676 and, (ii) The State of Punjab v. Mst. Coisar Jahan Begum : [1964]1SCR971 and observed that on the interpretation as has been taken by the Supreme Court of the provision contained in Section 18(2)(b), the plaintiffs could have called for reference under Section 18. In Kamala Kanwar's case (supra), the suit was filed by the plaintiffs, which was held to be not maintainable as remedy by way of reference was available to the petitioner.

18. Their Lordships of the Supreme Court in Raja Harishchandra Raj Singh's case (supra), were called upon to examine the question of limitation for making reference application, where the award is not made in the presence of the parties and notice under Section 12(2) is not given or served. Then, in that situation, when six months' time should run for making a reference application, their Lordships expressed that six months' time would run from the date of knowledge of the award and it is in this context that their Lordships observed that the communication of the award is an essential element, to make the award binding. Their Lordships did not express that the date of the award under Sections 11 and 12 shall be the date of knowledge of the award. Section 12 of the Act makes it clear that the award shall be filed in' the Collector's Office and shall be final and conclusive evidence as between the Collector and the interested persons, whether they have respectively appeared before the Collector or not, of the true nature and value of the land and the apportionment among the persons interested. It is only after filing of the award, which has become final and conclusive that immediate notice is required to be given of an award under Sub-section (2) of Section 12 of the Act to such of the persons interested as are not present personally or by their representatives, when the award or the amendment thereof is made. Thus, for the purpose of Section 12 of the Act, the award would be taken to have been made on

April 6, 1973. Though, for the purpose of Section 18, the limitation for making a reference application may begin from the date of service of the award.

19. Now the question arises, can the entire acquisition proceedings be quashed on the ground that although, the award was made on April 6, 1973 but was communicated as late as July 8, 1981? In my opinion, neither the award is vitiated nor the proceedings are liable to be quashed on that account. I may recall that from time to time, notices of the proceedings were served on the petitioners. After issuance of the notice under Section 9 of the Act, the petitioners submitted their objections, but thereafter, they chose to remain absent and their objections were dismissed on December 30, 1972 and the award was made and signed on April 6, 1973. The petitioners could and should have known the result of the proceedings. It is true that the Land Acquisition Officer failed in his duty & an obligation is cast on him under Section 12(2), to give immediate notice of the award. But, in the particular circumstances of the case, I am not inclined to quash the acquisition proceedings on account of delayed service of communication of the award to the petitioners. The petitioners waited for more than 8 years for filing this writ petitions. They continued to remain in possession of the land, reaped and enjoyed fruits and benefits arising from the continued possession. Further, what is most weighing with me is that the roads on both the sides have already been constructed and the only intervening portion is left to be constructed, which falls in the petitioners land. The conduct of the petitioners is equally blame-worthy and it can be said that the petitioners were not serious in the result of the acquisition proceedings and after lapse of 8 years feeling that they may get enhanced compensation on account of rise in price, have presented the present writ petitions.

20. In Babu Sing's case (supra;), it was observed that even if the possession is not taken, the notification under Section 6 would not thereby become invalid. The possession is taken under Section 16 or under Section 11 of the Act, in case of urgency. Under Section 16, when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the State Government free from all encumbrances. Delay in taking possession would not affect the award and the land shall vest in the State only on taking such possession. According to the respondents, possession of the land in question has

also been taken.

21. Thus, in view of what I have discussed and considered above, the acquisition proceedings beginning from notification under Section 4 dated July 9, 1972 and culminating into an award dated April 6, 1973 are not liable to be quashed, in the exercise of the extra-ordinary jurisdiction of this Court in the facts and circumstances of the case.

22. In the result, this writ petition has no force, so it is hereby dismissed with no order as to costs.

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