

Sajini Devi and ors. Vs. State and ors.

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Court : Rajasthan

Decided On : Dec-15-2006

Reported in : 2007(2)WLN303

Judge : Bhagwati Prasad, J.

Appeal No. : S.B. Civil Writ Petition No. 5571/2004

Appellant : Sajini Devi and ors.

Respondent : State and ors.

Judgement :

Bhagwati Prasad, J.

1. Heard.

2. The principal challenge in this writ petition by the petitioners is of the nature that since the award was not made within two years of the publication of the declaration under Section 6 of the Land Acquisition Act, the entire proceedings stands lapsed under Section 11A of the Act.

3. The respondents have come in reply and have challenged the stand of the petitioners that possession of land was taken over by the respondent department before two years i.e. 08.08.2003 and the declaration under Section 6 read with Section 17(4) of the Act was published on 12.03.2001. Respondents have

disputed the claim of the petitioners on the ground that the possession of the land was taken on 26.02.2003. Once the possession is taken, the implication of Section 11A of the Act is ruled out. 'Mauka Fard' was prepared on 26.02.2003 and declaration under Section 6 was issued on 12.03.2001 which is well within two years. Once the possession is taken, Courts are unanimous on the question that Section 11-A has no application. Learned Counsel for the petitioner submitted that fact of taking possession is a false because till date, the petitioners are in possession.

4. The argument of the petitioners does not merit consideration in the background that the Courts have been unanimous that it is the symbolic possession which is to be considered to have been taken and format of taking possession specifically is not necessary. In this regard referred can be made to decision of Satendra Prasad Jain and Ors. v. State of U.P. and Ors. reported in : AIR 1993 SC2517 wherein, the Hon'ble Supreme Court has held as under:

In ordinary case, however, when the Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. Clearly, Section 11-A can have no application to the cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the Act by which land statutorily vested in the Government can revert to the owner.

5. Reference in this connection can also be made to decisions reported in the matter of U.P. Jal Nigam, Lucknow v. Kalra Properties (P) Ltd reported in : [1996]1SCR683 , Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan and Ors. reported in : 1993(66)ELT47(SC) . Himmat Jain v. State of Rajasthan and Ors. reported in Balmokand Khatri Educational and Industrial Trust v. State of Punjab and Ors. reported : [1996]2SCR643 and Larsen & Toubro Ltd. v. State of Gujarat reported in : [1998]2SCR339 .

6. In the light of the aforesaid, the possession having been taken, the ownership stood divested. In that view of the matter, the petitioners' claim is not liable to be

sustained as Section 11-A of the Act has no application. The award has already been made and that is the subject matter of challenge in reference proceedings as well. In that view of the matter, nothing further is required to be done. The Reference Court will consider the case of those who have challenge the acquisition.

7. No case for interference in extra-ordinary jurisdiction of this Court is made out. The writ petition having no force is hereby dismissed.

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