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Court : Chhattisgarh

Decided On : Dec-08-2010

Judge : Shri Satish K Agnihotri

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 6(1), 17(1), 11, 48

Appeal No. : WRIT PETITION No 5875 of 2000

Appellant : Manoj Rathi, and ors.

Respondent : State of Madhya Pradesh, and ors.

Advocate for Pet/Ap. : Shri Bhaskar Payasi, Adv.

Judgement :

1. By this petition, the petitioners seek quashing of the notification issued under section 4(1), 6(1) and 17(1) and the award dated 08.12.1999 (Annexure P/10), of the [Land Acquisition Act, 1894](#) (hereinafter referred to as 'the Act, 1894').

2. The indisputable facts, in nutshell, as projected by the petitioners are that the petitioners are the owner of the disputed land situated at village Mandir Hasaud, Tahsil Arang, District Raipur. Admittedly, a notification under section 4(1) of the Act, 1894 was issued on 19.02.1999 in the official gazette. Thereafter, a notification under section 17(1) of the Act, 1894 was published in the local news papers namely Nav Bharat and Dainik Bhaskar on 7 and 8th May, 1999 respectively. The respondent No. 2, on 25.05.1999 submitted an application for invoking provisions of section 17(1) of the Act, 1894. The Commissioner, vide

order dated 10.06.1997 granted approval for invoking the provisions of section 17(1) of the Act, 1894. The Sub Divisional Officer, on 1.7.1999 directed for publication of notification under section 4(1) and 17(1) of the Act, 1894. Accordingly, notification under section 4(1) and 17(1) of the Act, 1894 was published on 7.8.1999 in the gazette. Prior to that, declaration under section 6 of the Act, 1894 was published in the gazette on 30.07.1999. Thereafter the proceedings of the land acquisition was completed and the award was passed on 08.12.1999 (Annexure P/10). The Tahsildar, Raipur, was directed by the Sub Divisional Officer-cum-Land Acquisition Officer on 14.02.2000 to take over the possession of the land in dispute which was handed over to the respondent No. 2 on 17.02.2000.

3. According to learned counsel for the petitioners, the entire land acquisition proceedings were initiated in violation of the Act, 1894. The entire proceedings have been initiated behind the back of the petitioners and the principles of natural justice was not followed. Shri Payasi further submits that according to the notification issued by the Government under section 11 of the Act, 1894, the competent authority to pass the award is the Collector. But in the case on hand, the award has been passed by the Sub Divisional Officer on 08.12.1999 (Annexure P/10). Thus, the same is not sustainable. Thus, the entire land acquisition proceedings as well as the impugned award may be quashed.

4. Be that as it may, the law on the issue as to whether a writ petition is maintainable after passing of the land acquisition award, is well settled. The petitioners slept over their right for a long period, even after passing of the award. The award was passed on 08.12.1999 and the petitioners had filed this petition on 05.10.2000. A notification under section 4(1) of the Act, 1894 was issued on 19.02.1999 and no objection was taken by the petitioners. A notification under section 6 of the Act, 1894 was published in the official gazette on 30.07.1999. The petitioners did nothing during the acquisition proceedings and even after passing the award.

5. It is well settled principle of law that a writ petition questioning of the award is not maintainable as after taking over the possession of the land the same vests

absolutely in the Government free from all encumbrances. Even under section 48 of the Act, 1894, the State Authority also cannot withdraw from acquisition after possession has been taken over.

6. In the matter of Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Others¹, the Supreme Court held as under:

"29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt discretionary powers under Article 226 of the Constitution of India to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

7. In the matter of State of Rajasthan & Others v. D.R.Laxmi & Others², it was held as under:

"9...When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference."

8. In the matter of Municipal Council, Ahmednagar & another v. Shah Hyder Beig & Others³, it was held as under:

"17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C.

Padma v. Dy. Secy. to the Govt. of T.N.).

9. In *State of Karnataka & Another v. Sangappa Dayappa Biradar & Others*⁴, the Supreme Court held as under:

"12. A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the civil court. An agreement between the parties as regards the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say that without questioning the validity thereof, the respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the respondents were for quashing the order dated 23-8-1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the civil court. The High Court while exercising its jurisdiction under Article 226 of the Constitution, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regards the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution or had not been drawn up in the prescribed pro forma."

10. In *Swaika Properties Pvt. Ltd. & another v. State of Rajasthan & Others*⁵, the Supreme Court held that a writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches."

11. Recently, the Supreme Court, in *Sulochana Chandrakant Galande v. Pune Municipal Transport & Others*⁶, it was observed as under:

"16. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, the State has absolute title/ ownership over it.

17. In *Satendra Prasad Jain v. State of U.P.*, this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in *Awadh Bihari Yadav v. State of Bihar*, *U.P. Jal Nigam v. Kalra Properties (P) Ltd.*, *Pratap, Chandragauda Ramgonda Patil v. State of Maharashtra*, *Allahabad Development Authority v. Nasiruzzaman*, *State of Kerala v. M. Bhaskaran Pillai*, *M. Ramalinga Thevar v. State of T.N.*, *Printers (Mysore) Ltd. v. M.A. Rasheed*, *Bangalore Development Authority v. R. Hanumaiah and Govt. of A.P. v. Syed Akbar*.

22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever."

12. No exceptional or extraordinary grounds exist or raised to invoke extraordinary jurisdiction under Article 226 of the Constitution of India, to take a departure from the well settled principles of law.

13. The petition is accordingly dismissed. No order as to costs.

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