

Bharat Kumar

v.

State of Haryana & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE S.A.
BOBDE

Civil Appeal No. 1971 Of 2014 (Slp(C.) No. 1891 Of 2008) | 04-02-2014

1. Delay condoned.

2. Leave granted.

3. This appeal is directed against the judgment and order passed by the High Court of Judicature of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 18375 of 2004. By the impugned judgment and order, the High Court has dismissed the writ petition filed by the appellant.

4. The appellant claims that he is the owner and is in the possession 6 Kanals and 5 Marlas of land in dispute bearing Khewat No. 67, Khatauni No. 82, Rectangle No. 9, Kolla No. 21 (6-9), situate within the revenue estate of village Adampur, Tehsil, District Gurgaon, Haryana.

5. The Respondent- State of Haryana issued a Notification under Sections 4 and 6 to acquire large extent of lands, including the appellant's land. Aggrieved by the preliminary and final notifications so issued, the appellant had approached the High Court. In the said Writ Petition, the appellant had taken up two contentions. Firstly, that the procedure prescribed under Section 5-A of the Land Acquisition Act, 1894 (for short 'the Act') was not complied with by the acquiring authority and secondly, that the acquired land had constructions and, therefore, should be released in favour of the appellant as the other 1.40 acres of land had been released in favour of the land owners.

6. The High Court has answered the aforesaid issues against the appellant. It is apropos to notice here that the High Court was reluctant to release the residential portion of the land in favour of the appellant only on the ground that the Joint Site Inspection Committee had found that the construction by the appellant is only of type 'B' construction and therefore the release of such structures would have defeat the very purpose of acquisition i.e. to set up commercial as well as residential Sectors 49 and 50 at Gurgaon.

7. The learned Counsel appearing for the appellant, apart from the other contentions, would bring to our notice Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013"). He would contend that in view of Section 24(2) of the Act, the award passed by the Land Acquisition Collector is required to be set aside. In aid of this submission, the learned Counsel would submit that although the award had been passed in the appellant's case, the physical possession of the land had not been taken and the compensation has also not been paid to the appellant. In support of this contention, the appellant has taken us through the pleadings, both in the Writ Court as well as before this Court, to contend that the physical possession of the land continues to be with the appellant, in spite of the award being passed by the Land Acquisition Collector.

8. To appreciate the contention raised by the learned Counsel for the Appellant, the said Section is required to be extracted.

"Section 24 of the Act, 2013 is as under:

24. (1) Notwithstanding anything contained in this Act in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in Sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

Sub-section (2) of Section 24 commences with a non obstante clause. It is a beneficial provision. In view of this provision, if the physical possession of the land has not been taken by the Acquiring Authority though the award is passed and if the compensation has not been paid to the land owners or has not been deposited before the appropriate forum, the proceedings initiated under the Act, 1894 is deemed to have been lapsed.

9. Keeping the aforesaid provisions in view, we have specifically looked into the assertions made by the appellant and the way it is countered by the respondents. In our opinion though the award has been passed by the Land Acquisition Collector, they have not taken the physical possession of the land and have not paid the compensation to the appellant or had deposited the said compensation before an appropriate forum.

10. In that view of the matter, in our considered opinion, Sub-section (2) of Section 24 of the Act, 2013 squarely applies to the appellant's case and the appellant is entitled to relief sought for in their petition.

11. In the result, we allow this appeal, set aside the order passed by the High Court qua the appellant only. We declare that the acquisition proceedings insofar as the appellant is concerned are deemed to have lapsed.

12. We, permit the respondents, if they so desire, to initiate appropriate proceedings for acquisition of the land in question afresh in accordance with the provisions of the Act, 2013.

13. Ordered accordingly.