SUPREME COURT OF INDIA

Collector of Land Acquisition

Vs.

M/S. Andaman Timber Industries

C.A.No.1810 of 2009

(V.Gopala Gowda and C.Nagappan JJ.)

11.12.2014

ORDER

V.GOPALA GOWDA, J.

This I.A. No. 7 is filed by the appellants in Civil Appeal No. 1810 of 2009, which was disposed of on 28.11.2013 by this Court. The appellants have filed this application to modify the said order in the appeal and pass such other order or orders as this Court may deem fit and proper in the facts and circumstances of the case and urged certain relevant facts.

The learned Attorney General of India, Mr. Mukul Rohatgi, appearing on behalf of the appellants has contended that the land bearing Survey No. 22/3-23 measuring 8.86 hectares in Shorepoint Village, Bambooflat, South Andaman, was recorded as Grant in favour of Krishi Gopalan Shilpa Shikshalaya, Calcutta. Thereafter, it was allotted in favour of the respondent herein by way of a licence deed in Form - AG-3, which was executed on 2.1.1990 by the Deputy Commissioner, Port Blair in exercise of his power under Clause (ii) of Section 146 of the Andaman and Nicobar Islands, Land Revenue and Land Reforms Regulation, 1966 (for short "The Regulation, 1966") for commercial purpose, subject to the general provisions of the said Regulation made therein with certain conditions for a period of 30 years, which was effective from 1.1.1968. The relevant conditions in Clauses 6 and 7 of the Form AG-3, upon which strong reliance has been placed by the appellants which terms of the licence state that

the granting authority has the power of cancellation or modification of the licence and it can resume forthwith the whole or part of the land under licence and in the event of cancellation or resumption of the licence as aforesaid, no compensation shall be paid to the licensee. Further, the licence is subject to the payment of premium of Rs.1,06,320/-. Further, reliance was placed upon the notifications issued under Sections 4(1) (2), 6(1), 7 and 17 (1) & (4) of The Land Acquisition Act, 1894 (for short "the L.A.Act"), to show that, what was proposed to be acquired by the respondent were pieces and parcels of the land along with the trees and structure if any, standing thereon which are needed for public purpose namely, for the development of Port related facilities. The learned Attorney General further submits that the land was granted by way of licence to the respondent for the purpose of running the respondent's timber industry, hence, he cannot be called as an interested person in terms of Section 3(b) of the L.A. Act, as the land was granted in his favour as a licensee. It is further contended that under the provision of Section 146 clause (i) of the Regulation, 1966, a licence can be granted in favour of the licensee in respect of the government land for a maximum period not exceeding 30 years with an option for renewal for a like period i.e. upto 60 years, for the purpose of cultivation of rubber crop, a longer period may be specified by the Chief Commissioner with the approval of the Government. Reliance was also placed by him upon the provision of Section 38(1) of the Regulation, 1966 to substantiate the plea of the appellants that all the land in the Union Territory of Andaman and Nicobar Islands is vested absolutely with the Government, save as provided by or under this Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner whatsoever, except by a conveyance executed by or under the authority of the Government.

Further, reliance was placed upon Section 141 of the Regulation, 1966 which states that there shall be 4 types of classes of tenants namely,(i) Occupancy tenants; (ii) Non-occupancy tenants; (iii) Grantees; and (iv) Licensees and also Section 142 (a) and (b) and Section 143 which defines different kinds of occupancy and non-occupancy tenants. Section 144(1) provides for the class of grantees. Section 144(2) is a non-obstante clause, which provides that a person who, not being an occupancy or non-occupancy tenant, is in possession of any coconut or arecanut in the Nicobars, shall be deemed to be a grantee for the purpose of the Regulation, for such period as the Chief Commissioner may by notification specify from time to time. Section 144 clauses (1) and (2) of the Regulation, 1966 clearly state that the respondent is neither a tenure

holder nor a grantee but a licensee governed by the provision of Section 146 clauses (i) and (ii). Therefore, the respondent is not an "interested person" in terms of the definition of Section 3(b) of the L.A. Act to prefer a claim for compensation upon the land in question before the Land Acquisition Collector.

Further, reliance was placed on behalf of the appellant upon the award No.5-39/LA/ADM/2002 passed on 26.9.2002 by the Land Acquisition Collector, wherein a mistake had crept in, with relation to the property acquired namely, the building and the trees by the Union Territory under the notification read with the provisions of Sections 17(4), 4 and 6 of the L.A Act. The Land Acquisition Collector wrongly referred to the land in respect of the licensee, as it was contrary to the acquisition notifications, particularly in the final notification, it is specifically mentioned in express terms that the respondent is a licensee/tenant and not the owner of the land. The notification dated 23.07.2002, published under the provisions of Section 4(1) of the L.A. Act, expressly stated that the building structures, the trees and crops standing on the land mentioned in the Schedule including Survey Nos. 22/3 (6.91 hectares) and 23 (1.95 hectares) which comes to a total of 8.86 hectares, are classified as commercial. Therefore, the Land Acquisition Collector erred in determining the market value of the land to the extent of a portion of the property at Rs.3,03,03,567/-, the amount which is already paid to the respondent. Further, on the basis of the notifications referred to supra, a writ of mandamus was filed by the respondent before the Circuit Bench of Calcutta High Court, at Port Blair, which was allowed by issuing a writ of mandamus as prayed by him. The writ appeal was preferred by the appellants against the judgment and order of the learned single Judge, which was dismissed on merits and the cross-objections filed by the respondent in the said writ appeal was allowed and the said judgment and order of the Division Bench of the High Court was affirmed by this Court in the aforesaid civil appeal vide order dated 28.11.2013 by recording its reasons. This application is filed by the appellant with a view to modify the order for the reasons stated in the application. The legal contentions urged by the learned Attorney General on behalf of the appellants, contending that the mistake committed by the Land Acquisition Collector in passing the award which is contrary to the acquisition notification, was neither brought to the notice of the learned single Judge and the Division Bench of High Court nor this Court, which is a mistake on the part of the appellants. In support of the above legal submissions, he has placed reliance upon the judgment of this Court in A.R. Antulay v. R.S. Nayak & Anr.[1], wherein this Court has succinctly laid down the law in support of the proposition that

"an elementary rule of justice is that no party should suffer by mistake of the Court". Therefore, the present application has been filed by the appellants to see that the public interest shall not suffer on account of mistake committed by the Land Acquisition Collector, which relevant fact has been neither brought to the notice of the High Court nor this Court. Therefore, he has contended that miscarriage of justice has taken place and the same can be corrected by this Court by modifying the order as prayed in the application. He has also placed strong reliance upon the C.B.I. final report no.1 dated 2.5.2008, produced with the rejoinder affidavit filed by the appellants at paragraphs 27 and 28 wherein, the lack of original land records was stated as the reason due to which a decision for resumption of land could not be taken.

It is stated in the report that it was not possible for the C.B.I to fix the responsibility and establish mala fides/criminality on the officers, who have not pressed for resumption of the land for cancellation of licence of the respondent in respect of the land involved in the proceedings. It is further stated in the report that during the course of investigation conducted by the CBI, no evidence came up showing the dishonesty on the part of the officials who dealt with the matter. Further, instead of resumption of land, during the period 1990 to 2002, the same method of awarding compensation had been followed in all the cases of acquisition, which indicated that the acquisition of the land in question by giving substantial compensation was more of a result of a systemic failure than any criminality or mala fides on the part of the concerned public servants, who have processed the matter. Therefore, the learned Attorney General submits that the prayer made in the application requires to be granted, otherwise a great miscarriage of justice will be allowed to sustain and thereby public interest will be affected, if the judgment and order of issuing a writ of mandamus given to the appellants by the High Court in favour of the respondent is required to be complied with, which is in violation of the provisions of Section 38 read with Section 146 (ii) of the Regulation, 1966, in respect of the Government land, which is neither acquired nor could be acquired in law.

The learned senior counsel, Dr. A.M. Singhvi, on behalf of the respondent has placed reliance upon the lease deed of land which was executed on 1.9.1960, stating that the said lease is a permanent lease. The said lease deed was registered prior to the Regulation, 1966 which came into force and therefore, the said Regulation is not applicable to the land involved in this case. Therefore, the respondent is an interested person upon the land in question in terms of the definition under Section 3(b) of the

L.A. Act and reliance has been placed by him upon the judgment of this Court in the case of Saraswati Devi v. Delhi Development Authority & Ors.[2], and in the case of The Special Land Acquisition & Rehabilitation Officer v. M.S. Sheshagiri Rao & Anr.[3] In the case of Saraswati Devi (supra), this Court took notice of the facts with respect to the evacuee property, acquired by the Central Government under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, "the Act, 1954"). On acquisition of such property under Section 12 of the Act, 1954, it became part of the compensation pool under Section 14 of the said Act in exercise of the power conferred under Section 20 of the Act, 1954, upon the managing officer or the managing corporation to transfer the property out of the compensation pool. The above property was notified to be sold by way of public auction on 21.6.1958. The husband of the appellant who bid Rs.24,500/- for the above said property, was the highest bidder, which was accepted by the Auctioning Authority. Sale certificate as contemplated under the provisions of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 was issued and the same was registered with the Sub-Registrar on 15.7.1981. Dr. Singhvi, learned senior counsel placed strong reliance on paragraphs 44 & 45 of the above decision, wherein it is stated that on creation of an encumbrance, the subject property could be acquired under the Act, even though the ownership of the land vested with the Central Government. He has further relied upon the decision of this Court in the case of Delhi Administration v. Madan Lal Nangia & Ors.[4], wherein it has been held that at the time of acquisition of evacuee property under Section 12 of the Act, 1954, the interest on such property vests on a private person, under the Land Acquisition Act, even though the land is owned by the Government. He submits that the said case is aptly applicable to the fact situation of the present case in support of the respondent. Therefore, the judgment and order is sought to be modified by the appellants, as this Court has affirmed the orders of the learned single Judge and the Division Bench of the High Court in the writ appeal filed by the respondent by issuing a writ of mandamus to the appellants to pay compensation to the remaining extent of 5.22 hectares of land acquired by the government under the notifications referred to supra, upon which reliance was placed by the learned Attorney General. It was contended that the judgment and order sought to be modified are impermissible in law as there is no miscarriage of justice as urged by the learned Attorney General. For the same proposition, he has placed reliance upon the judgment of this Court in M.S. Sheshagiri Rao & Anr. (supra) wherein this Court has followed the case of Attorney General v. De Keyser's Royal Hotel, Ltd.[5] by the House of Lords wherein it is held that the Land Acquisition Act is the source of

power for divesting the claimants of their possession from their property and further the law enjoins the payment of compensation to them for the acquisition of their land under the provisions of the L.A. Act. The process by which the respondent is divested of the land involved in this case is not permitted by the conditions of grant, but as provided by the provisions of the L.A. Act.

Further, the learned senior counsel has placed reliance upon Order XL of the Supreme Court Rules, 1966, (for short, "The Rules, 1966") which states that if any error is committed in the order by this Court, the procedure required to be followed by the concerned party is that a review application is required to be filed and if the review petition is not allowed on the grounds urged, then curative petition can be filed by the aggrieved party. It is further contended by him that as observed many a times by this Court, the applications are filed by the parties seeking clarification/ modification/ recall or rehearing, not because any clarification/ modification is found necessary but because the applicant in reality wants a review of the judgment and also wants hearing, by avoiding circulation of the review petition in the Chambers as provided under the Rules, 1966. Therefore, he has urged that the appellants cannot be permitted either to circumvent or bypass the circulation procedure and indirectly obtain a hearing in open Court and get the judgment and order reviewed. This Court has held time and again that what cannot be done directly should not be allowed to be done indirectly. The practice of the litigants to overcome the provisions by filing review petitions under Order XL of the Rules, 1966 by filing application for modification and clarification after hearing has to be deprecated. In support of this submission, the learned senior counsel has placed reliance upon the cases Cine Exhibition Pvt. Ltd. v. Collector, District Gwalior & Ors.[6] (para 6) A.R. Antulay (supra), Delhi Administration v. Gurdip Singh Uban & Ors. Etc.[7] (para 17) and Ram Chandra Singh v. Savitri Devi & Ors.[8] (paras 8,12-17), Sone Lal v. State of U.P.,[9](para 4). Therefore, the learned senior counsel on behalf of the respondent submits that the application filed by the appellants is not maintainable, hence the same is liable to be rejected. With reference to the above said rival legal contentions, we have carefully perused each one of the rival legal submissions made by the learned Attorney General, learned Additional Solicitor General and the senior counsel on behalf of the parties and we proceed to pass the following order.

The submission made on behalf of the respondent that if there is any error in law which is apparent on the face of the record, either on the facts or in law, the same can

be corrected by following the procedure as contemplated under Order XL of the Rules, 1966, as has been considered by this Court in Cine Exhibition Pvt. Ltd. (supra) (para 6). The observations made therein are required to be accepted and the legal principle laid down in that case with reference to Order XL of the Rules, 1966 shall be followed and the procedure laid down under the Rules cannot be dispensed with in this case.

Having said so, in view of the relevant legal aspects involved in this case, we have perused the licence deed of 2.1.1990, giving the right to the licensee that he shall utilize the land under licence for the purpose for which it is granted with effect from 1.1.1968, particularly condition No. 6, which reads thus:

> "6. If the licensee fails to observe any condition specially mentioned in the licence, or any provisions of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation or the rules made thereunder and in force of the time being, the granting authority, may cancel or modify the licence and resume forthwith the whole or part of the land under licence. In the event of cancellation or resumption of the licence as aforesaid, no compensation shall be paid to the licensee."
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> (emphasis supplied) The learned Attorney General on behalf of the appellants has rightly placed reliance upon Section 38 of the Regulation, 1966, in support of the plea that the ownership of the land upon which the building and any other structure were existing, ownership of such land always, will be with the Union Territory of Andaman and Nicobar Islands and is absolutely vested with the Government.

Further, the licence right granted in favour of the respondent under Section 146 of the Regulation, 1966, is valid for a period not exceeding 30 years with an option for a further extension for a like period subject to the approval of the Government. Further, the respondent is not a classified licensee either under Section 141 or Section 143 of the Regulation, 1966. But on the other hand, Section 143(a)and (b) of the said Regulation, clearly state that a person granted licence under clause (ii) of Section 146 of the Regulation, with respect to any agricultural land is a licensee or a non occupancy tenant. Therefore, the Condition No.6 clearly states that the licence granted on the land by the Government can be cancelled and resumed by it. On careful perusal of the acquisition notifications, it is made very clear that acquisition is only in respect

of buildings and structure existing on the land in respect of which licence right has been granted in favour of the respondent for a specified period. These facts were not noticed by the Land Acquisition Collector at the time of passing of the award. The award was passed in respect of the land, the buildings and structures which is not permissible in law and compensation of Rs.3,03,03,567/- awarded in favour of the respondent, for which he is not entitled to in law, is the legal ground urged on behalf of the appellants by highlighting various provisions of the Regulation, 1966, along with the licence granted in favour of the respondent. However, the said part of the award has been complied with by paying the compensation amount to the workmen working in the factory of the respondent in pursuance of the award passed by the Land Acquisition Collector though he is not entitled to the same as per law. The said fact was not brought to the notice of the Division Bench of the High Court and this Court at the time of hearing. Therefore, the learned Attorney General has rightly contended that it is a mistake of fact. A factual mistake has been committed by this Court in affirming the order of the High Court in issuing a writ of mandamus to the appellants for its compliance by holding that the extent of land notified in the acquisition notifications are not passed because neither the acquisition proceedings of the land have lapsed nor the possession of the land was taken by the Government from the respondent. Therefore, the order passed by the High Court for issuing a writ of mandamus for payment of the compensation to the respondent in respect of the land has also been affirmed by the Division Bench of the High Court and this Court in the civil appeal by passing the judgment and the same is sought to be modified by the appellants by filing the application.

The procedure prescribed under the Rules, 1966, for the purpose of review of the judgment and order of this Court on either facts or error in law, which is apparent on the face of the record, has to be followed. Therefore, reliance placed upon the judgment of this Court by the learned senior counsel on behalf of the respondent, in the case of Cine Exhibition Pvt. Ltd.(supra) and other cases in support of his submissions that the procedure provided under Order XL of The Rules,1966, shall be followed, the said cases referred to supra, viz. Sone Lal(para 4), Gurdip Singh Uban & Ors. (para 17) and Savitri Devi (para Nos. 12-17) are aptly applicable to the fact situation in support of the respondent.

Having regard to the facts and circumstances of the case, particularly the legal statutory provisions of the Regulation and public interest involved in this case, the

appellants are given liberty to file review petition within six weeks. If such review petition is filed, the same is required to be heard in open Court. When such a review petition is filed, the same may be placed before the Court to hear the parties after obtaining necessary orders from the Hon'ble Chief Justice. The review petition may be disposed of on the merits of the case.

With the above observations and liberty given to the appellants for filing review petition along with condonation of delay application within six weeks from the date of receipt of copy of this order, the application, along with the contempt petitions are disposed of in the above terms, but without costs.

[1] (1988) 2 SCC 602
[2] (2013) 3 SCC 571
[3] (1968) 2 SCR 892
[4] (2003) 10 SCC 321
[5] [1920] AC 508
[6] (2013) 2 SCC 698
[7] (2000) 7 SCC 296
[8] (2004) 12 SCC 713
[9] (1982) 2 SCC 398