

SUPREME COURT OF INDIA

S.Soorajmull Nagarmull

Vs.

State of Bihar & Ors.

C.A.No.10394-10396 of 2011

(Vikramajit Sen and Abhay Manohar Sapre,JJ.,)

17.08.2015

JUDGMENT

Vikramajit Sen,J.,

1 The Appeal before us involves an acquisition of land under Section 17 of the Land Acquisition Act, 1894 (L.A. Act for brevity). The Respondent State initiated acquisition proceedings in 1981 by Notifications under Section 4 and Section 6 of the L.A. Act, both dated 25.3.1981, invoking the urgency provisions contained in Section 17. The operation of Section 5A was simultaneously made inapplicable by resorting to Section 17(4). Possession of the land was taken by the Respondent State after almost five months on 20.8.1981. The land has subsequently been declared to be a 'Protected Forest' as envisaged in Section 29 of the Indian Forest Act, 1927 as per Notification dated 4.9.1990. Thereafter, proceedings were once again initiated by the Respondent State vide another Section 4 Notification dated 24.5.1995. This was followed by a Notification dated 17.8.1996 issued under the urgency provisions of Section 17, whereby Section 5A was yet again dispensed with. The Appellant landowner challenged these proceedings by way of a writ petition. The High Court found that since the same land for which acquisition proceedings had initially commenced invoking the emergency provisions fourteen years ago was being re-acquired once again for an unspecified public purpose, there was clearly non-application of mind by the Respondent State and the action was mala fide in law. The writ petition came to be allowed on 22.7.1998 and has subsequently attained finality. It is pertinent to note that the Respondent State, in its counter affidavit in that matter, stated that it was initiating fresh acquisition proceedings because the 1981 acquisition had lapsed due to the delay in publishing the Award. On 17.11.2003, the Respondent State took steps to annul the second proceedings by attempting to rely on Section 48 with the objective to withdraw from the acquisition. Subsequently, the Appellant filed another writ petition seeking the issuance of a direction commanding the Respondent State to release the land in question and hand over its possession to the Appellant. A writ petition giving rise to CWJC No.15767 of 2004 was also filed by the Divisional Forest Officer challenging the action of the Respondent State in endeavouring to withdraw from the acquisition proceedings. The Forest Officer also sought a direction restraining the Authorities from dispossessing the Forest Department from the land.

A Public Interest Litigation also came to be filed by one Sunil Kumar Singh, a self proclaimed social activist, with the intent and purpose of protecting and preserving the forest. While these writ petitions were pending, pursuant to an internal communication dated 14.11.2005 of which the Appellant had no notice, an Award was published on 27.9.2006, purportedly in continuity of the 1981 acquisition proceedings. The Respondent State has submitted that a cheque was sent to the Appellant albeit bearing the wrong name. When the Appellant was asked to return the cheque so that a new one could be issued, the Appellant asked the Respondent State not to take any further action as the matter was sub-judice. The Appellant, on the other hand, contends that upon its refusal to accept the compensation, the Respondent State ought to have complied with Section 31 of the L.A. Act by depositing the amount with the Court, which it neglected to do.

2. All three writ petitions were heard together by the High Court. The arguments put forward by the Appellant were that since no Award had been passed till 2006, the acquisition had lapsed under Section 11A; that the 1981 proceedings had lapsed by virtue of the proceedings initiated in 1995- 96; that the land was neither arable nor waste with the legal consequence that Section 17 was not available to the Respondent State; and that a Notification under Section 4 and a Declaration under Section 6 were issued on the same day. However, it was not denied that the Appellant had not challenged 1981 acquisition proceedings or the Award belatedly published pursuant thereto.

3. In light of the fact that the 1981 acquisition proceedings had not been withdrawn by the Respondent State and the incontrovertible position that the Appellant had not challenged those proceedings, the Impugned Order held that the possession of the land as well as the title thereof vested in the Respondent State, notwithstanding the avowedly delayed publication of the Award. Reliance was placed upon *Lt. Governor of Himachal Pradesh vs. Shri Avinash Sharma*¹, according to which land that is statutorily vested in the Government cannot revert to the original owner by way of mere cancellation of the Notification. Support was also drawn from *Satendra Prasad Jain vs. State of Uttar Pradesh*² which was erroneously understood by the High Court to have held that the provisions of Section 11A do not apply to acquisitions under Section 17 of the L.A. Act.

4. We have dealt with a substantially similar factual and forensic scenario in *Laxmi Devi vs. State of Bihar*³, in which we have discussed the relevant legal issues at length. Having had the benefit of hearing the arguments in this matter prior to pronouncing that Judgment, we had taken into consideration the arguments raised in the present Appeals in coming to a considered conclusion on the legal regime pertaining to the acquisition of land. We shall therefore decide these Appeals in accordance with our decision in *Laxmi Devi*, on the strength of that decision.

5. It has been mentioned in these Appeals themselves that on 13.11.1979, the Commissioner, Bhagalpur had recorded that the subject land was not required by the Health Department and it may be given to the Forest Department instead. It is also the admitted position, and as already noted above, that on 25.3.1981, consequent upon contemporaneous Notifications under Sections 4, 6 and 17, the Appellant's property was sought to be acquired for the Office

of the Conservator of Forests and its staff quarters. Thereafter, possession of the land was duly taken by the Respondent State, which however failed to pass an Award in respect thereof. Since the acquisition was initiated in 1981, there was no statutory obligation to pass an award within two years, as Section 11A came to be introduced by way of an amendment in 1984. However, upon Section 11A coming into force on 24.9.1984, the Respondent State was under a statutory obligation to pass an Award within two years of its commencement. No Award was passed in 1986 (i.e. within two years), or in fact even till 2006, causing grave prejudice to, nay deracinating, the Constitutional rights of the Appellant landowner. It seems to us that the realization by the Respondent State that the failure to pass an Award for over a decade was likely to render the acquisition void, is the reason that prompted it to once again initiate steps to acquire the land, in terms of the Notification dated 13.8.1996. under Section 4 and 17(4) of the L.A. Act.

6. It is thus clear that the validity of the 2005 revival and the 2006 Award is immaterial, as the 1981 acquisition in itself cannot be allowed to stand for its abject failure to comply with the requirements of Section 11A of the L.A. Act. The Respondent State has argued that the Appellant has not challenged the 1981 acquisition proceeding, or indeed the 2006 Award, till today. While it is true that the Appellant had initially prayed for the issuance of a writ of mandamus commanding the Respondent State to hand over possession of the land, the restricted nature of that demand was because the Appellant's case was predicated on the premise that the 1981 acquisition had lapsed, as is clear from a perusal of the Appellant's Affidavit filed before this Court. We shall therefore not be prejudiced by the fact that the Appellant has not directly challenged the 1981 proceedings, but has instead done so indirectly. To penalize the Appellant for a viewpoint that the Respondent State clearly adhered to as well, till the time of initiating the 2005 revival of the acquisition, would be patently unfair.

7. Furthermore, in light of the judgments in *Land Acquisition Officer- cum-RDO vs. A. Ramachandra Reddy*⁴ and *Bhimandas Ambwani vs Delhi Power Company Limited*⁵, the 1981 acquisition stood superseded upon the issuance of the fresh Notifications in 1996. This Court has consistently held that old notifications are superseded and obliterated by subsequent ones, as the subsequent acquisition proceeding manifest and indicate the intention of the State to abandon the preceding one. This is particularly clear in the case at hand, where the Respondent State, in its Counter Affidavit in previous litigation, had asserted that it believed that the 1981 acquisition had lapsed. We find no reason or basis to allow the Respondent State to revive the lapsed acquisition.

8. We therefore conclude that the actions of the Respondent State have denied the Appellant just and fair compensation as envisaged and postulated in the L.A. Act, for its land from which it was dispossessed well over three decades ago. The 1981 acquisition is accordingly set aside for non-compliance with the provisions of Section 11A of the L.A. Act. We must hasten to reiterate the submission made by the learned Solicitor General to the effect that Section 11A, or the necessity to pass an Award, is not necessary in view of the exposition of the law in *Satendra Prasad Jain*. We may adumbrate, since it already been discussed by us in detail in *Laxmi Devi*, that the ratio of the Three judge bench in *Satendra*

Prasad Jain is confined to the proposition that the errant Respondent State is precluded from endeavouring to have the acquisition set aside for its own failure to carry out compliance with Section 11A, and that once possession has been taken by the State under Section 17 of the L.A. Act, it is no longer open to the State to relinquish or return the land to the legal entity who had been dispossessed from it. Accordingly, we refrain from passing any orders or directions interfering with the possession of the Respondent State over the subject land.

9. In this situation the current acquisition law needs to be analysed. We have already concluded that the 1981 acquisition had lapsed because of the failure of the Respondent State to pass an Award and secondly because it had launched upon a fresh acquisition in 1996. Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter 2013 Act) deserves to be placed here –

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. – (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), - Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or 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 (1 of 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 of 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 Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

10. At first perusal, there seems to be an unexplained inconsistency between Section 24(1)(a), which allows an acquisition to stand despite a failure to pass an award while only requiring the compensation to be determined under the 2013 Act, and Section 24(2), which deems the acquisition to have lapsed for a failure to pay compensation or take physical possession of the land where an award has been passed over five years prior to the commencement of the 2013 Act. It appears that the State is in a better position in situations where it has been remiss in taking any action, towards publication of an award than in situations where it has taken partial steps towards the completion of the acquisition proceedings. However, it is possible that the reason behind this differentiation is that Section 24(2) gives the State the option to initiate fresh proceedings, as opposed to placing an

obligation upon it to do so. To give the State the discretion to set aside an acquisition for its own error in not passing an award would be in the face of the decision in Satendra Prasad Jain. The Parliament has therefore sought to give the erstwhile landowner the benefit of enhanced compensation under the 2013 Act, while restraining the State from taking advantage of its own wrong. Section 24(2), on the other hand, seeks to allow the land to be returned to the landowner party in situations where there is genuinely no need for it, thus benefiting both the dispossessed landowner and the State. There still remains an incongruity, but which presently we are not burdened to unravel. Which provision in the 2013 Act governs a situation where the State has not progressed beyond making a Declaration under Section 6; where possession of the land has not assumed by the State; where neither part nor whole of the compensation has been paid or tendered! However, since in this Appeal we do not have to traverse this legal labyrinth, we shall refrain from indulging in a more detailed discussion of it.

11. In conclusion we declare that acquisition proceedings with regard to the subject lands have lapsed. The Respondent State is directed to initiate fresh acquisition proceedings or take any other action available to it in accordance with law within six weeks from today. The Appeals are allowed in these terms.

Judgment Referred.

¹(1970) 2 SCC 0149

²(1993) 4 SCC 0369

³(2015)7SCALE 0555

⁴(2011) 2 SCC 0447

⁵(2013) 14 SCC 0195