

Allahabad High Court

Triveni Prasad & 6 Ors. vs Union Of India Thru. Secy. ... on 5 April, 2016

Bench: Amreshwar Pratap Sahi, Attau Rahman Masoodi

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Reserved

Court No. - 1

A.F.R.

Case :- LAND ACQUISITION No. - 39 of 2014

Petitioner :- Triveni Prasad & 6 Ors.

Respondent :- Union Of India Thru. Secy. Ministry Of Surface Transport,

Counsel for Petitioner :- Ravi Shanker Tewari, Shiv Pal Singh

Counsel for Respondent :- C.S.C., A.S.G, Lav Kush Pratap Singh, Samidha, Vimlesh Kumar

Hon'ble Amreshwar Pratap Sahi, J.

Hon'ble Attau Rahman Masoodi, J.

This writ petition by seven petitioners was filed claiming relief over plot no. 696 contending that they are the recorded tenure holders of the said plot which has been unlawfully occupied by the National Highways Authority of India to widen the road and to raise a Toll Plaza. Directions were issued on 24.4.2014 to obtain instructions but since instructions were not coming forward a Division Bench of this Court on 18.7.2014 passed an interim order restraining the respondents from interfering with the possession of the disputed land being plot no. 696 at village Dakhina Sheikhpur, Tehsil Mohanlalganj, District Lucknow till further orders.

The National Highways Authority of India moved an application for vacating the said order along with a counter affidavit dated 24.9.2015 wherein it has been stated that a notification for acquisition was issued under the National Highways Act, 1956 inviting objections and pursuant thereto reports were obtained on the objections so filed, whereafter, on opportunity being provided the compensation was determined and the award was delivered on 25.7.2015. The counter affidavit categorically states that the notification was issued for acquisition of the disputed plot to the extent of 0.3110 Hect. only for which compensation has been awarded and the petitioners have been put to notice for disbursement of such compensation. A dispute has been raised with regard to the

quantum of the same as the petitioners' are claiming assessment and quantification in terms of The Right to fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. The petitioners also urge that an alternative nearby land was available and, therefore, acquiring the roadside land of the petitioner has put them to considerable loss and they would also be deprived of any access to their remaining land from the roadside. These facts have been said in the rejoinder sworn by Sri Narmada Prasad dated 8.10.2015.

An amendment application has been filed by the petitioners wherein they allege that they had moved a representation for acquiring plot no. 807 belonging to the Gaon Sabha but the same was rejected by the communication dated 22.11.2014 which is subject matter of challenge in the said application with a prayer to quash the notification dated 16.2.2015 and the notification dated 8.9.2014 issued under the 1956 Act. Objection to the said amendment application has been filed and we have heard Ms. Samidha for the National Highways Authority of India who has pointed out that this cannot now be permitted inasmuch as the compensation has already been dispensed with and the policy decision which was taken to assess the feasibility of the acquisition of the disputed land, had been approved by the competent committee, which was done completely in public interest without any intention of causing any prejudice to the petitioners. The Authority has taken a conscious decision keeping in view the location of the land and the alternative land suggested by the petitioner was unacceptable. A rejoinder affidavit to the said objection has been filed by the learned counsel for the petitioners where it has been asserted that the petitioner cannot use their property appropriately as they have been deprived of the roadside facing area of their land. It has also been alleged that the acquisition of the petitioners plot is not required for alignment of the road but for constructing a toll plaza.

We have gone through the contents of the respective affidavits and we have heard Sri Tiwari for the petitioners and Ms. Samidha for the respondents.

It is evident from the aforesaid facts on record that the interim order dated 18.7.2014 has not allowed the construction of the toll plaza to proceed and the road to be accordingly widened. The revenue map is Annexure R.A.-1 to the rejoinder filed by the learned counsel for the petitioners which indicates that plot no. 806 is the existing national highway which is sought to be aligned with plot no. 686 by widening. Plot no. 696 lies on the north-eastern side of the road where plot no. 806 is slightly narrow and it appears that for the said reason that plot no. 696 was chosen for widening as has been asserted in the affidavit filed on behalf of respondents based on a report of the appraisal committee. The choice of the said land, therefore, cannot be contested as an arbitrary exercise nor can be a matter of judicial review by us as it is the expert body of the National Highways Authority which is best suited to choose the land. The contention of the petitioners, therefore, that plot no. 807 ought to have been acquired as an alternative, therefore, cannot be a matter of judicial choice by us as there is no material to draw an adverse conclusion so far as the choice of land is concerned. The area of plot no. 696 as occupied and acquired appears to be in alignment with the directional proximity required for widening.

Coming to the issue of compensation it is also now on record that the land was subjected to proper acquisition proceedings whereafter compensation has been awarded. The acquisition is for a public

purpose. That being clearly fulfilled and there being no material to controvert the same, the challenge raised through the amendment application, therefore, does not deserve to be entertained by us in these proceedings. In the event any separate challenge has been raised to the same the same would not be affected by our order on the amendment application on this count. The challenge to the notification on our assessment through the amendment is unsubstantiated and when a clear public purpose is deciphered and the choice of the land does not appear to be an arbitrary exercise of discretion, we see no reason to interfere with the acquisition proceedings at the instance of the petitioners. The amendment application is, therefore, rejected as the challenge raised to that extent is unsustainable in law.

There is, however, one aspect which we find necessary to mention which is the right of the petitioners to claim compensation and its quantum. This claim is subject to the applicability of the provisions of the 1956 Act which has to be read along with the Land Acquisition Rehabilitation and Resettlement Act, 2013. Section 105 of the Act which is as follows :

"105. Provisions of this Act not to apply in certain cases or to apply with certain modifications.-

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of Section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."

The aforesaid information has been promptly tendered to us by Sri Abhinav Trivedi learned counsel for the State and has been ably explained by him who has invited the attention of the Court towards the Fourth Schedule appended to the 2013 Act indicating the list of enactments as mentioned in Section 105(3) aforesaid. The Fourth Schedule is extracted here under:

"THE FOURTH SCHEDULE (See Section 105) LIST OF ENACTMENTS REGULATING LAND ACQUISITION AND REHABILITATION AND RESETTLEMENT

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
2. The Atomic Energy Act, 1962 (33 of 1962).
3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
4. The Indian Tramways Act, 1886 (11 of 1886).
5. The Land Acquisition(Mines) Act, 1885 (18 of 1885).
6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).
7. The National Highways Act, 1956 (48 of 1956).
8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land ) Act, 1962 (50 of 1962).
9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).
10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).
11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).
12. The Electricity Act, 2003 (36 of 2003).
13. The Railways Act, 1989 (24 of 1989)."

He has also invited the attention of the Court towards Ordinance No. 9 of 2014 and clause 10 thereof which is extracted herein under:

"The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 [No. 9 of 2014]

10. Amendment of Section 105.- In the principal Act, in Section 105,-

(i) for sub-section (3), the following sub-section shall be substituted, namely-

"(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";

(ii) sub-section (4) shall be omitted."

This was followed by Ordinance No. 4 of 2015 wherein clause 12 provides as under :

"The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 [No. 4 of 2015]

12. Amendment of Section 105.- In the principal Act, in Section 105,-

(i) for sub-section (3), the following sub-section shall be substituted, namely-

(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";

(ii) sub-section (4) shall be omitted."

This was again followed by Ordinance No. 5 of 2015 wherein clause 12 reads as under :

"The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance, 2015 [No. 5 of 2015]

12. Amendment of Section 105.- In the principal Act, in Section 105, -

(i) for sub-section (3), the following sub-section shall be substituted, namely-

"(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015.";

(ii) sub-section (4) shall be omitted."

The aforesaid ordinances have been followed by a notification dated 28.8.2015 of the Central Government through the Ministry of Rural Development that is extracted hereunder :

"MINISTRY OF RURAL DEVELOPMENT ORDER New Delhi, the 28th August, 2015 Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

1. (1) This order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

The petitioners, therefore, have a full right to contest their claim with regard to their entitlement of a free and fair compensation in accordance with the provisions of 2013 Act keeping in view the ordinances and the notifications referred to herein above. It is open to the petitioners, therefore, to raise their plea with regard to any such claim which may be admissible and permissible under the aforesaid provisions before the competent authority or the Court where any such issue of enhancement of compensation or claim of fair compensation has been raised or is pending consideration in relation to the acquisition of the land of the petitioners. This issue, therefore, will have to be decided by the appropriate forum and the petitioners will have full right to raise this issue appropriately which the competent forum is obliged to decide in law.

Consequently, for all the aforesaid reasons we decline to interfere with the acquisition part of the land and we consequently vacate the interim order dated 18.7.2014 but at the same time we dispose of the writ petition without prejudice to the rights of the petitioners to contest their claim with regard to the quantum of compensation and their right to claim a fair compensation before the appropriate forum in accordance with law and in view of observations made herein above.

Order Date :- 5.4.2016 Om.

[Attau Rahman Masoodi, J.] [Amreshwar Pratap Sahi, J.]