

(2012) 09 JH CK 0031

Jharkhand High Court

Case No: Writ Petition (C) No. 2296 of 2009

Dalchand Mahto and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Sept. 3, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 12, 13A, 18, 28A

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Manjul Prasad, Praveen Kumar and A.K. Sinha, for the Appellant; Anil Kumar Sinha, Advocate General Sumir Prasad, S.C.I. and V.K. Prasad, S.C.(L and C), for the Respondent

Final Decision: Allowed

Judgement

Narendra Nath Tiwari

1. In these writ petitions, the petitioners have prayed for quashing the order dated 24.02.2009 and notices dated 10.02.2009 whereby the petitioners have been asked to show cause as to why legal action should not be taken against them for realization of excess awarded amount paid to them. According to the petitioners, their land and building were acquired on the basis of the requisition of respondent no. 4 by letter no. 445 dated 26.11.2001 and letter no. 357 dated 04.10.2001 along with the other lands of Village-Salga, P.S. Keradari, District-Hazaribagh. For that purpose, Land Acquisition Case no. 01 of 2004-05 was initiated under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). After completing all legal formalities and process, the land was acquired and Award was finally prepared on 19.10.2007 determining the amount of compensation. There was no objection against the Award and the same became final. The amount of compensation as awarded was paid to the petitioners on 3.10.2008. The land and building of the petitioners were thereafter taken in possession by the respondents.

After lapse of more than 11/2. years, the petitioners were served with the impugned notices dated 10.02.2009 asking them to appear before the Land Acquisition Officer and to show cause as to why the excess amount paid by way of compensation be not recovered from them. The petitioners have challenged the said notices issued to them.

2. Learned counsel, appearing on behalf of the petitioners, submitted that the said notices are wholly arbitrary, illegal and without jurisdiction. After due enquiry under the provisions of the Act, the Award was finally prepared and the same has become final. The Land Acquisition Officer or any administrative authority has no jurisdiction to issue such notices after the proceeding has become final and the Award is prepared and published and the compensation amount is paid to the petitioners. The Award has not been altered or set aside by any competent court of jurisdiction and the award is final and binding as per the provisions of section 12 of the Act. The impugned notices are, thus, arbitrary and are liable to be quashed by this Court.

3. The writ petitions have been contested by the respondents by filing counter affidavit. It has been stated, inter alia, that the excessive valuation of the land was made in collusion with some subordinate officers, which was subsequently discovered in re-valuation report submitted by the Executive Engineer. Building Division, Hazaribagh. On the basis of the said report, the respondents have taken decision to issue notices to the Awardees before passing any order of realization of the excess amount awarded to them on the basis of wrong assessment of valuation of the land by some officers. Since the amounts awarded were inflated, order has been passed for keeping the payment of the awarded amount to the Awardees in abeyance.

4. Learned Advocate General, appearing on behalf of the respondents, submitted that assessment of disproportionately excess compensation in collusion with some officers is a serious concern for the department. Notices have been issued to the concerned persons asking them as to why the valuation fixed incorrectly be not corrected and excess amount paid on that basis be not realized from them, after assessing and determining proper value of the structure and amount of compensation and award be not amended accordingly. He submitted that the said step has been taken in public interest and there is no illegality or arbitrariness in the action of the respondents, as alleged by the petitioners.

5. I have heard learned counsel for the parties and perused the record.

The impugned notices have been issued to the petitioners for the purpose of re-assessment of the valuation and amendment of the Award.

6. According to the respondents, the inflated compensation was awarded to the petitioners for their structures in connivance of and in collusion with some officers of the department. It is the duty of the State to see that the public money be not misused by such malicious act of the interested Government Officials.

7. Learned counsel for the petitioners, on the other hand, submitted that the Award was finally prepared after following due process of law and compliance of the provisions of the Act. The Award became final under the provisions of section 11 of the Act. The compensation amount has been also paid to the petitioners. There is no order or the decree of any competent court of jurisdiction holding that the Award was fraudulently obtained. Since the Award has become final under the provisions of the Act, the respondents have no jurisdiction to unilaterally or illegally declare that the Award was obtained by collusion and excess amount was assessed and paid to the petitioners. The respondents have no jurisdiction to make reassessment of the valuation and determination of compensation amount and alter the Award.

8. I find much substance in the submission of learned counsel for the petitioners.

9. Section 11 of the Act prescribes provisions for enquiry and award by the Collector, which runs as follows:

11. Enquiry and award by Collector.(1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land [at the date of the publication of the notification u/s 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act."

10. Section 12 of the Act provides that such Award shall be final and conclusive evidence, as between the Collector and the persons interested, once the Award is prepared and filed in the Collector's office.

11. Section 12 of the Act runs thus:

72. Award of Collector when to be final.-(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

12. By Land Acquisition (Amendment) Act, 1984, a new provision has been introduced, as section 13A, for correction of clerical errors etc. in the Award, which is as follows:

13A. Correction of clerical errors, etc.-(1) The Collector may at any time but not later than six months from the date of the award, or where he has been required u/s 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority;

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue.

13. In the instant cases, correction of award has been sought on the ground of wrong assessment made by the officials and that too after lapse of more than one

and half years. Such reassessment does not come within the ambit of section 13A of the Act.

14. The other provision has been Introduced for re-determination of the amount of compensation by enacting section 28A of the Amending Act The said provision provides for revising the award and giving benefit of those deprived person, who failed to take advantage of the right of reference to the civil court u/s 18, in case amount of compensation is enhanced and awarded in excess of the amount by the Collector in respect of the land covered by the same notification u/s 4 on the reference made u/s 18 of the Act by some other awardee.

15. No other provision has been brought to my notice for reopening of an Award, which becomes final and conclusive under the provision of section 12 of the Act.

16. The respondents have, thus, failed to furnish any legal justification for issuing the impugned notices calling upon the petitioners for the purpose of reassessment of the valuation of the structure and for realization of the alleged excess amount awarded and paid to the petitioners.

17. In view of the above discussion, these writ petitions are allowed. The impugned notices, contained in Annexure-3 series, are quashed.

18. It has been submitted on behalf of the petitioners that on the basis of the said notices, a direction has been issued by the Collector restraining operation of the petitioners' Bank Account. The said order has not been brought on record. It is made clear that any such order, issued by the Collector in view of the impugned notices, which have been hereby quashed, shall become redundant and inoperative.