

Shashikant Patel Vs State of Madhya Pradesh

Court: MADHYA PRADESH HIGH COURT (INDORE BENCH)

Date of Decision: Nov. 10, 2016

Acts Referred: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 105, Section 2

Citation: (2017) 172 AIC 296

Hon'ble Judges: Mr. S.C. Sharma, J.

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. S.C. Sharma, J.â€"Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously

heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No. 1548/2016 are narrated hereunder.

2. The petitioner before this Court who is an agriculturist and owner of agricultural land bearing Survey No. 229/2/2/1 admeasuring 0.871 hectare

situated at village Balwada, Tehsil Badwaha, Distt. Khargone, has filed this present writ petition being aggrieved by the Notification dated

21/1/2016 issued by the respondents under the provisions of Madhya Pradesh Bhumigat Pipeline, Cable Evam Duct (Bhumi ke Upyokta ke

Adhikaron ka Arjan) Adhiniyam, 2012.

3. The contention of the petitioner is that by issuing the aforesaid Notification dated 21/1/2016 (Annexure P/1) the State of Madhya Pradesh is

using the land belonging to the petitioner as the State Government is laying pipelines, cables, ducts which are necessary for a project i.e., Narmada

Malwa Gambhir Link Pariyojna.

4. The contention of the petitioner is that the respondents are not paying compensation to the petitioner keeping in view the provisions of Right to

Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. The contention of the petitioner is that for all purposes he will not be able to use his land as there is a rider under the Act of 2012, he will not be

able to construct over the land at any point of time. The petitioner's grievance is that if the land is being acquired, he is entitled for the

compensation as per the provisions of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement

Act, 2013.

6. Mr. Vivek Dalal, learned counsel for the petitioner has drawn attention of this Court towards Section 2 of the Act and his contention is that in

case the Government acquires the land for use, hold and control, compensation has to be given as per the Right to Fair Compensation and

Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013. He has also drawn attention of this Court towards Section 105

of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 and he has argued that

the Act of 2012 of the State of Madhya Pradesh is not included in 4th Schedule and, therefore, the Right to Fair Compensation and Transparency

in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 is very much applicable in the peculiar facts and circumstances of the case. He

has prayed for issuance of an appropriate writ, order or direction, for quashment of Notification dated 21/1/2106.

7. This Court by an interim order dated 26/2/2015 has initially granted stay in favour of the petitioner, however, the interim order was modified on

15/3/2016 and the State Government was permitted to proceed ahead with the laying of pipeline, meaning thereby, the State Government has

been permitted to use the land in question, however, the only question left is whether the petitioner is entitled for compensation under Right to Fair

Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 or not.

8. Mr. Milind Phadke, learned counsel for the respondent - State has vehemently argued before this Court that in the light of the reply filed by the

State Government, the question of grant of compensation under the Right to Fair Compensation and Transparency in the Land Acquisition,

Rehabilitation and Resettlement Act, 2013, does not arise. He has drawn attention of this Court towards Madhya Pradesh Bhumigat Pipeline,

Cable Evam Duct (Bhumi ke Upyokta ke Adhikaron ka Arjan) Adhiniyam, 2012 read with the Rules framed thereunder known as Madhya

Pradesh Bhumigat Pipeline, Cable Evam Duct (Bhumi ke Upyokta ke Adhikaron ka Arjan) Niyam, 2013 and his contention is that the

compensation has to be paid as per the formula under Rule 7 of the Madhya Pradesh Bhumigat Pipeline, Cable Evam Duct (Bhumi ke Upyokta ke

Adhikaron ka Arjan) Niyam, 2013. Contention of the learned counsel for the respondent is that the petitioners are not entitled for compensation

under the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013.

9. Heard learned counsel for the parties at length and perused the record and the matter is being disposed of with the consent of the parties at the

motion hearing stage itself.

10. In the present case, it is an undisputed fact that the State Government has issued a Notification which is on record as Annexure P/1 dated

21/1/2016 in respect of the land of the petitioner. It is an undisputed fact that the State Government is laying underground pipeline cable duct over

the land of the petitioner. As per the stand of the State Government, the petitioner is entitled for compensation by taking into account the Rules of

2012.

11. Section 2 of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as

under :

2. Application of Act. - (1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when

the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and

shall include the following purposes, namely :-

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital

to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely :-

(I) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number

13/6/2009- INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture

and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or

by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing

Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes

for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or

affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled

by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the

appropriate Government acquires land for the following purposes, namely:-

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in

subsection (1);

(b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for-

(i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of

section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of

clause (c) of section 3,

shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section

4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or

judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,-

(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate

Government, through private negotiations with the owner of the land in accordance with the provisions of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the

rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by

the private company and acquired by the Government for the project as a whole.

12. Section 105 of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as

under :

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.

13. Schedule 4 appended to the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013

reads as 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).

14. This Court in the light of the aforesaid is of the opinion that the Act enacted by the State Government i.e., the Adhiniyam of 2012 does not find

place under the Fourth Schedule and, therefore, if the land is being used or is being put on hold or is under the control of the Government, the

State Government is under an obligation to pay compensation as per the Right to Fair Compensation and Transparency in the Land Acquisition,

Rehabilitation and Resettlement Act, 2013. It is nobody's case that the land in question is not being used by the respondent. Not only this, the

petitioner will not be able to construct anything over the land which is being used by the State Government by constructing ducts by laying

underground cables and other things and, therefore, as the Act of 2012 does not find place under the Fourth Schedule, the provisions of the Right

to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 are very much applicable in the

peculiar facts and circumstances of the case.

15. The another important aspect of the case is that under Fourth Schedule a similar act i.e., The Petroleum and Minerals Pipelines (Acquisition of

Right of User in Land) Act, 1962 (50 of 1962) finds place, meaning thereby, in those cases where the pipelines are being laid for the purposes of

petroleum and for transporting other mineral which is in liquid/semi-liquid form, the Act of 2013 is not applicable only because the aforesaid Act

finds place in the Fourth Schedule. The Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement

Act, 2013 is a statute enacted by the Parliament and will certainly supersede the Act framed by the State Government for laying the pipelines and,

therefore, this Court is of the considered opinion that as the State Government is constructing ducts and using the land, the question of quashing the

Notification at this juncture does not arise. However, the petitioners shall be entitled for compensation as per the statutory provision as contained

under the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013.

16. With the aforesaid, the present Writ Petitions stand allowed. The exercise of granting compensation by calculating it by taking into account the

Act of 2013 be concluded within a period of three months from the date of receipt of certified copy of this order.