

(2019) 01 RAJ CK 0357
Rajasthan High Court (Jaipur Bench)
Case No: Civil Writs No. 24033 Of 2018

Chandra Kiran And
Ors

APPELLANT

Vs

Dedicated Freight
Corridor Corporation
Of India Ltd. And Ors

RESPONDENT

Date of Decision: Jan. 25, 2019

Acts Referred:

- Railways Act, 1989 - Section 20A, 20E, 20I, 20F(2)
- Constitution Of India, 1950 - Article 32, 226, 300A

Hon'ble Judges: Inderjeet Singh, J

Bench: Single Bench

Advocate: Anand Sharma, P.C. Sharma

Final Decision: Dismissed

Judgement

1. This writ petition has been filed by the petitioners with the following prayers:-

(i) By way of issue of appropriate writ, order or direction, notices dated 03.08.2018 and 28.03.2018 (collectively marked as Annexure-9) may kindly

be held to be arbitrary and illegal and same may kindly be quashed and set aside.

(ii) By way of issued of appropriate writ, order or direction proposed action of the respondents for dispossessing the petitioners from property in the

question situated in Khasra No. 6896, 6893, 6895 and 6878 Village Thok Maliyan, Tehsil & District Ajmer in pursuance of Award dated 14.07.2011

may kindly be declared without authority of law and in violation of Article 300-A of the Constitution of India; and in case, need so arises, aforesaid

Award dated 14.07.2011 may also be quashed to the extent to which it includes land & properties of the petitioners shown in Para. 2 of the writ petition.

(iii) By way of issue of appropriate writ, order or direction the respondents may kindly be restrained from taking forcible possession of petitioners

property without carrying out a valid land acquisition proceedings in relation to petitioner's property as mentioned herein above and they may also be

restrained from demolishing the construction raised by the petitioners over the property in question; and

Any other appropriate order, writ or direction which this Hon'ble Court deem fit and proper looking to the facts and circumstances of the instant case

in favour of the petitioners may also kindly be passed.

2. The facts of the case as not being disputed by the parties are that the residential houses of the petitioners were acquired by the respondents along

with certain other lands measuring total 9.6249 hectares situated at Village Thok Maliyan, Tehsil & District Ajmer. The competent authority after

conclusion of the acquisition proceedings passed an award on 14-7-2011. During pendency of the acquisition proceedings, the petitioners approached

the competent authority in June, 2011 by filing application for determining compensation as per the market value. The respondents vide notice dated

28-3-2018/3-8-2018 directed the petitioners to vacate & hand over the property in dispute within a period of seven days.

3. Counsel for the petitioners submitted that the award passed by the competent authority is against the provisions of law as provided under the

Railways Act, 1989 (hereinafter to be referred as 'Act of 1989'). Counsel further submits that sixty days' notice to vacate the property in dispute was

not given to the petitioners by the respondents as provided under section 20-I of the Act, 1989. Counsel further submits that certain other persons have

challenged the award dated 14-7-2011 before this Court by filing CWP-4970/2016 which was decided on 25-4-2016 & this Court has passed the

following order:-

Counsel for the parties agree that the petition may be disposed of in view of averments in the reply to writ petition.

It has been stated in the reply to the writ petition that the acquisition of land under the Railways Act, 1989 (hereinafter 'the Act of 1989') Award dated

14-7-2011 with reference to Section 20-F(2) thereof and consequent possession would be confined only to those parcels of land that were also

specifically included in the Notification under Section 20A of the Act of 1989 issued on 11-8-2009 and the notification under Section 20E of the Act of

1989 issued on 1-6-2010.

Accordingly it is directed that the respondent Railway should take possession of only those parcel of lands which were included in the Award dated

14-7-2011, to the extent they were also included in the notifications under Section 20A and 20E of the Act of 1989. It is directed that the award dated

14-7-2011 under Section 20-F (2) of the Act of 1989 to the extent of including lands not specifically included in the preceding Section 20-A

Notification dated 11-8-2009 and Section 20-E notification dated 1-6-2010 would stand quashed and set aside. The remainder award dated 14-7-2011

is upheld.

It goes without saying that the respondent Railway shall be free to take fresh proceeding for acquisition of parcels of land which were not included in

the Notifications under Section 20A and 20E of the Act of 1989 but in the award dated 14-7-2011 to the extent it has been set aside.

The writ petition stands disposed of accordingly.

4. Counsel further submits that according to the survey conducted by the respondents the land of the petitioners was shown in excess as mentioned in

the award dated 14-7-2011.

5. In support of the contentions, counsel for the petitioners relied upon the judgment passed by the Hon'ble Apex Court in the matter of Hindustan

Petroleum Corpn. Ltd. Vs. Darius Shapur Chenai & Ors., reported in (2005) 7 SCC 627, where in para-29 it has been held as under:-

The Act is an expropriatory legislation. This Court in State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma and Ors. observed that in such a

case the provisions of the statute should be strictly construed as it deprives a person of his land without consent.

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.

6 . Lastly prayed for quashing of the award dated 14-7-2011 as well as the notice dated 28-3-2018/3-8-2018.

7. Counsel for the respondents submits that the writ petition filed by the petitioners deserves to be dismissed on the ground of delay & laches as the

award under challenge herein has been passed by the competent authority on 14-7-2011 and the present writ petition has been filed by the petitioners

after a delay of seven years i.e. in the year 2018. Counsel further submits that the petitioners have participated in the acquisition proceedings and in

June, 2011 submitted application to the competent authority for granting compensation to them at the market value.

8. In support of the contentions, counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in the matter of Tamil Nadu Housing

Board, Chennai Vs. M. Meiyappan & Ors., reported in (2010) 14 SCC 309 where in para-13 & 18 it has been held as under:-

13. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ

petition must fail on the short ground that the writ petition had been filed 16 years after the award was announced by the Collector. It is trite law that

delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the

Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time

and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extra-ordinary jurisdiction and grant relief to

the writ petitioner.

18. Moreover, in relation to the land acquisition proceedings, the Court should be loathe to encourage stale litigation as the same might hinder projects

of public importance. The Courts are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226

or Article 32 of the Constitution if there has been inordinate unexplained delay in questioning the validity of acquisition of land. In this regard, it will be

useful to advert to the observations made in P. Chinnanna and Ors. v. State of A.P. (1994) 5 SCC 486, wherein this Court had observed thus:

11. In fact, in relation to acquisition proceeding involving

acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good.

9. Heard counsel for the parties and perused the record.

10. The writ petition filed by the petitioners deserves to be dismissed for the reasons; firstly by this writ petition the petitioners have challenged the award dated 14-7-2011 after a delay of seven years and in my considered view the writ petition filed by the petitioners deserves to be dismissed on the ground of delay & laches in view of the judgment of the Hon'ble Apex Court in the matter of Tamil Nadu Housing Board (supra), as in my view in support of the inordinate delay no sufficient justification/explanation has been tendered by the petitioners; secondly the contention of the petitioner that sixty days notice was not given to the petitioners as provided under section 20-I of the Act, 1989, in my considered view the notice dated 28-3-2018/3-8-2018 was given to the petitioners and by now the period of sixty days is already over, thirdly, the petitioners in June, 2011 approached the competent authority only for grant of adequate compensation and lastly since the present matter relates to acquisition of land for Dedicated Freight Corridor which is a special road project, in my considered view, the same is of national importance, therefore, in the facts and circumstances of the present case, the present writ petition deserves to be dismissed.

11. Accordingly, the writ petition fails and is hereby, dismissed.