

5
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Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT APPEAL NO. 308 /2014

APPELLANT
Petitioner

: Smt. Surinder Kaur, widow of
Late Rajinder Singh Sibbal,
aged about 55 years, resident
of Gurunanak Nagar, Raipur
(CG)
Civil & Revenue District
Raipur.

308/14
Manish Thakur
29/8/14
T. A. No.
Proposed by Mr.
Jain

Vs

RESPONDENTS

- : 1. State of Chhattisgarh,
through the Secretary,
Department of Revenue,
Mantralaya, Naya Raipur.
2. The Collector, Raipur,
District Raipur (CG)
3. The Sub-Divisional Officer
(Revenue)-cum- Land
Acquisition Officer,
Raipur, District Raipur (CG)
4. The Chhattisgarh Grih
Nirman Mandal, through
the Executive Engineer,
Division-1, Raipur, District
Raipur (CG)



WRIT APPEAL UNDER SECTION 2 (1) OF THE
CHHATTISGARH HIGH COURT (APPEAL TO DIVISION
BENCH) ACT, 2007



14/3/15

52

HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM: HON'BLE THE ACTING CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Writ Appeal No. 308 of 2014

APPELLANTS : Smt. Surinder Kaur and others

VERSUS

RESPONDENTS : State of Chhattisgarh and others

Writ Appeal No. 316 of 2014

APPELLANTS : Smt. Meena Ostwal and others

VERSUS

RESPONDENTS : State of Chhattisgarh and others

J U D G M E N T

Sd/-

24.02.2015

For consideration

Hon'ble Shri Justice Navin Sinha

Sd/-

Acting Chief Justice

Post for pronouncement of the judgment on 02.03.2015.

Sd/-

P. Sam Koshy
Judge



HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM: HON'BLE THE ACTING CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.

Writ Appeal No. 308 of 2014

APPELLANTS : Smt. Surinder Kaur and others

VERSUS

RESPONDENTS : State of Chhattisgarh and others

Writ Appeal No. 316 of 2014

APPELLANTS : Smt. Meena Ostwal and others

VERSUS

RESPONDENTS : State of Chhattisgarh and others

Appearance: Shri B. P. Sharma, counsel for the Appellants.
Shri R. K. Gupta, Dy. A.G. for the
State/respondents 1 to 3.
Shri Sanjay Patel, counsel for Respondent No.4.

JUDGMENT
{02.03.2015}

Per P. Sam Koshy, J:

1. Since the aforementioned two Appeals i.e. Writ Appeal No.308/2014 and Writ Appeal No.316/2014 arise out of the same judgment dated 17.07.2014 passed by the learned Single Judge in W.P.(C) No.7541/2010 and W.P.(227) No.227/2011, both are being disposed off by this common judgment.
2. By way of the two writ petitions the Appellant/Petitioners had challenged the land acquisition proceedings initiated by Respondents 1 to 3 whereby land for public purpose was acquired

for respondent No.4 for construction of a housing colony for economically weaker sections of the society. The main relief sought for by way of the writ petitions was for declaring the award dated 22.09.2010 under the Land Acquisition Act to be illegal and seeking for quashment of the same. The Petitioners had also sought for restoration of the possession of the land to the Petitioners or in alternative the open land of the Petitioners which is not being used for the construction may be returned back. In addition, the Petitioners had sought for ordering an enquiry on the action of the Respondents in illegally encroaching/trespassing upon the property of the Petitioners without a proper land acquisition proceedings and subsequently when the Petitioners raised an objection, Respondents initiated proceedings under the Land Acquisition Act, 1894 (for short 'the Act of 1894') and passed the award which according to the petitioners was an illegal action deserving setting aside of the award and the entire proceedings.

3. The petitions were filed by the petitioners mainly challenging the action of the State Government whereby initially when the land acquisition proceedings were initiated for the adjacent lands adjoining the lands belonging to the petitioners were notified for the acquisition and that the plan was also approved by the department of town and country planning. The lands belonging to the petitioners were not included and that there was no construction also proposed on the land of the petitioners in the approved map. Thereafter when the respondents started construction of their housing project, in a most illegal, unruly and negligent manner, they encroached/trespassed upon the lands belonging to the petitioners and started raising constructions in

spite of the fact that the said lands were not acquired by the State Government. When the petitioners came to know about it, they immediately protested the matter to the higher authority in the department. The State Govt. realizing the blunder mistake committed by the Officers of the Respondent department subsequently initiated land acquisition proceedings by first issuing notification under Section 4A of the Land Acquisition Act and in course of time, on completion of the formalities, Section 9 of the notification was also published and the impugned award dated 22.09.2010 was passed.

4. According to the petitioners, they have not been properly notified or intimated in respect of the acquisition proceedings and the entire acquisition proceedings have been made behind their back and they were never given any opportunity to substantiate their claim over the suit land. According to the petitioners, the provisions of the Land Acquisition Act have not been strictly followed by the respondents and therefore the award dated 22.09.2010 itself deserves to be set aside/quashed. The contention of the petitioners was also to the effect that the project of respondent No.4 of the construction of housing colony under the scheme is also illegal for the reason that it is contrary to the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short 'the Adhiniyam of 1973'). Further contention of the petitioners was that since in the scheme originally framed, the lands of the petitioners were not included for the construction and implementation of the housing scheme, it cannot be said that the acquisition is made for the public purpose.

5. The writ Court after pleadings were complete vide impugned

order held that the two writ petitions preferred by the petitioners were not having sufficient force calling for an interference with the action of the State Govt. and as such disposed of the Writ Petition (C) No.7541/2010 holding that the petitioners Smt. Surinder Kaur and others are not entitled for any relief because of the fact that petitioners Surinder Kaur and others in spite of being aware of the acquisition proceedings and being notified did not care to raise any objection during the pendency of the acquisition proceedings and after the impugned award was passed they have already raised a reference case under Section 18 of the Land Acquisition Act raising a dispute regarding the adequacy of compensation offered to them and the competent authority was directed to consider the case of Smt. Surinder Kaur and others in accordance with the provisions of the Act of 1984.

6. So far as the petition preferred by Smt. Meena Ostwal and others in Writ Petition (227) No. 227 of 2011 is concerned, the learned Single Bench held that since petitioners Meena Ostwal and others failed to substantiate any support to their contention that they were not given sufficient opportunity of hearing and that Smt. Meena Ostwal and others did not represent themselves before the concerned authority under the Land Acquisition Act when the acquisition proceedings were being drawn in spite of being aware of the acquisition proceedings and also the fact that they have not questioned the quantum of compensation awarded by the land acquisition Officer, the petitioners are not entitled for any relief. Accordingly, the said writ petition of Meena Ostwal and others was dismissed.

7. It is this judgment which has been subjected to challenge by



way of the present two writ appeals; one preferred by Smt. Surinder Kaur and others and the other preferred by Smt. Meena Ostwal and others.

8. The grounds of challenge in both the appeals are same and therefore this Court feels it proper to dispose of both the appeals by an analogous order.

9. The main contention of the appellants in the course of challenging the impugned judgment was that the learned Single Bench failed to appreciate certain material contentions put forth by the appellants through the writ petitions and that these facts would have gone into the question of maintainability of the award itself and also the acquisition proceedings. According to the Appellants, the learned Single Judge has committed an error of law while passing of the impugned judgment and therefore the same deserves to be set aside.

10. Contentions on the basis of which the appellants intend to challenge the judgment of the learned Single Judge was;

i) Whether the action on the part of the Housing Board/ respondent No.4 in the construction of the said housing colony without following the provisions of the Chhattisgarh Grih Nirman Mandal Adhiniyam, 1972 (for short 'the Adhiniyam of 1972') in particular, the procedure prescribed under Sections 31 to 34A of the said Act and in the absence of a proper procedure adopted under the Adhiniyam of 1972 and the said acquisition for a public purpose under the land acquisition Act can be said to be proper.

- 58
- ii) Whether the action on the part of Housing Board in construction of their original housing scheme beyond the original limits of the scheme would not be an offence under Section 36 of the Adhiniyam of 1973 and as such whether will it not amount to an unauthorized development calling for removal of the same.
 - iii) Whether the acquisition of the appellants' land would fall within the ambit of acquisition for public purpose as defined under Section 3 (f)(vii) of the Act of 1894.
 - iv) Whether the award in its present form can be said to be proper and legal in the light of the fact that the probable award being more than Rs.3 crores the award is liable to have got an approval from a Commissioner as per the notification issued by the Govt. of Chhattisgarh dated 03.12.2009.
 - v) Whether the action on the part of the respondents in determining the compensation payable on the basis of the guidelines applicable for the year 2009-10 is proper, legal and justified particularly when the determination of compensation ought to have been done on the basis of the guidelines that would be applicable for the year 2010-11 as Section 4 notification has been issued only on 12.04.2010.
 - vi) Whether in view of the fact that the construction of the housing colony by respondent No.4/Housing Board being contrary to the provisions of the Land Acquisition Act of 1894 as also is in total contravention to the provisions of the Adhiniyam of 1973, the construction made upon the appellants' land is liable to be removed and the appellants are entitled for possession of the vacant land as well as compensation for the unauthorized possession.

11. In support of his contention, counsel for the appellants placed his reliance on AIR 1995 SC 2244 (H.M.T. House Building Co-operative Society v. Syed Khader and others). In addition, counsel for the appellants also relied upon (2012) 9 SCC 503 (Patasi Devi v. State of Haryana and others) and (2012) 3 SCC 727 (Bangalore City Cooperative Housing Society Limited v. State of Karnataka and others).

12. As an alternative prayer counsel for the Appellants have also contended that if for any reason this Court is not inclined to interfere with the judgment of the learned Single Bench, at least, the appellants Smt. Meena Ostwal and others in W.P.(227) No.227/2011 may be permitted to raise a claim for proper quantification of the compensation under Section 18 of the Land Acquisition Act for which this Court may condone the delay, if any, in approaching the Authority. He further prayed that the appellants in the case of Smt. Meena Ostwal may be provided the benefit under Article 14 of the Limitation Act and in support of this contention counsel for the appellants relied upon two decisions in AIR 1994 Andhra Pradesh 5 (Smt. Suram Ramakka v. The Dist. Collector, Karimnagar and another) and AIR 1989 Gujarat 8 (Bhikhubhai and others v. State of Gujarat and another).

13. Having heard the rival contentions and on perusal of the pleadings that have come before the writ Court, it clearly shows that most of the grounds raised by the appellants in the appeal have not been specifically pleaded and argued before the writ Court in as much as neither is there any specific averments made by the appellants in respect of the grounds raised by them in challenging the impugned judgment reflected in the writ petitions

nor is there any rejoinder filed by the appellants specifically attacking the acquisition proceedings on these grounds, in rebuttal to the return filed by the respondents. In absence of a specific pleading in the writ petition or in the rejoinder, such point of argument or contention also does not find place in the judgment of the writ Court by which it could be presumed that the appellants had even raised these legal grounds before the writ Court during the course of final hearing. If we peruse the writ petition, it would clearly show that the basic ground of challenge in the writ petition was that the award has been passed without proper opportunity of hearing being given to the petitioners and that the action on the part of the respondents in initiating the land acquisition proceedings is arbitrary and illegal and is firstly contrary to the provisions of Land Acquisition Act and secondly is in total contravention to the provisions of the Adhiniyam of 1973. Further ground raised by the petitioners was that the public purpose has not been established by the Respondent authorities in initiating the proceedings under the Land Acquisition Act against the petitioners.

14. So far as the grounds which have been raised by the petitioners in the writ petition and which also appears to have been the grounds which have been agitated upon by the petitioners in the course of final hearing before the Single Bench is concerned, the learned Single Bench has elaborately and exhaustively dealt with all the objections and contentions put forth by the petitioners in deciding the petition and that a perusal of the impugned judgment from paragraph-4 onwards would show that all the grounds which have been raised by the petitioners in the writ petitions have been discussed and dealt with by the learned Single Bench giving specific



reasons on all the issues while deciding the said two writ petitions.

15. As far as the new grounds which have been agitated by the appellants is concerned, there is no specific pleadings in the writ petitions and the fact that such pleadings have also not been raised by way of any rejoinder in the writ petition. So far as the case of Smt. Surinder Kaur is concerned, the fact that while raising construction certain portion of land belonging to the petitioner was entered upon by the respondents has been categorically denied by the respondents authorities specifically stating that the respondents have entered upon the plot only after the final award dated 22.09.2010 has been passed and that there had been no encroachment or any sort of construction made on the said property of the petitioners till it had been duly acquired upon by the State Government and handed over to respondent No.4/Housing Board. So far as the acquisition proceedings and the notifications issued under Sections 4, 5A and 6 of the Act of 1894 are concerned, though it has not been denied by the appellants/petitioners about the publication of such notifications yet there has been no objection preferred by them against the said notifications and it is only after the award was finally passed on 22.09.2010 Smt. Surinder Kaur is said to have filed an objection.

16. In the case of Smt. Surinder Kaur it has also been reflected that she has already accepted the monetary compensation awarded by the Land Acquisition Officer and further exercising the power under Section 18 of the Land Acquisition Act has raised a reference case which establishes the fact that she by now is challenging only the quantum of compensation awarded by the Land Acquisition Officer. Even otherwise, the dispute, so far as the case of Smt.



Surinder Kaur and others is concerned, is now of only academic interest as she is now only challenging the quantum of the award passed by the Land Acquisition Officer.

17. So far as the case of Smt. Meena Ostwal and others is concerned, since there is a categorical finding of fact that the petitioners in W.P.(227) No.227/2011 were fully aware of the land acquisition proceedings initiated by the State Govt. and that even subsequent to the notice under Section 9 having been served upon the petitioners they had entered appearance before the Authority and taken time to file objection yet they did not file any objection whatsoever, the petitioners therein now cannot raise a ground that they were not granted sufficient opportunity of hearing. These facts have been exhaustively dealt with by the learned single Judge and that no sufficient materials substantial enough to interfere with the finding of the single Bench has been brought to the notice of this Court by which it could be said that there is any infirmity in the order passed by the Single Judge calling for an interference.

18. This Court is all the more not inclined to entertain the Writ Appeals in the light of the settled legal position of the fact that when the final award itself has been passed and the possession has also been taken over (which is an undisputed fact in the present case), the Court should not exercise its power under Section 226 of the Constitution of India interfering with the award which has also been dealt upon by the learned Single Judge.

19. So far as the ground in respect of the proceedings being in violation to the provisions of the Adhinyam of 1973 is concerned, the learned single Judge cannot be said to have ignored this fact as

63

- 11 -

is evident from para-27 of the impugned judgment wherein the Single Judge has dealt with the said issue relying upon the judgment of the Supreme Court in the case of Sulochana Chandrakant Galande v. Pune Municipal Transport & Others, (2010) 8 SCC 467 and has held that the same would not in any manner effect the acquisition proceedings. It is all the more necessary to add at this juncture that admittedly there was a duly approved housing colony by the competent authorities of the State Govt. and the acquisition proceedings had been completed in the adjacent area adjoining the land of the petitioners. If for any reason the Authorities at a later stage felt the necessity of this land also and if for the said purpose a land acquisition proceeding has been initiated by complying with all the provisions of the Land Acquisition Act, the proceedings initiated by the Authorities cannot be said to be bad in law, arbitrary or illegal in any manner.

20. The ratio laid down in the case of Bangalore City (Supra) cannot be made applicable in the facts of the present case for the reason that admittedly the housing scheme raised by respondent No.4 was after proper sanction and approval from the appropriate Government Authorities. Another aspect which has not been disputed is that the adjacent lands were initially taken over by way of separate land acquisition proceedings and subsequently the acquisition proceedings in respect of the lands belonging to the Petitioners were drawn and undoubtedly the whole scheme of the Respondent No.4/Board has the approval and sanction from the competent authorities under the Govt.

21. So far as the alternative relief sought for approaching the Authorities under the Land Acquisition Act for permitting the

petitioners for raising a reference challenging the quantum of compensation awarded by condoning the delay is concerned, the judgment of Gujarat High Court in the case of Bhikhubhai (Supra) cannot be made applicable in the facts of the present case as in the said case the application under Section 18 of the LA Act had already been moved with an application for condonation of delay and the reason for delay was shown to be of health problem of the counsel who was entrusted with the assignment of filing a reference under Section 18 of LA Act. Similarly, the ratio laid down in the case of Smt. Suram Ramakka (Supra) also would not be made applicable in the facts of the present case as in the said case also the Petitioners had already approached the Authority under Section 18 of the LA Act though by way of an oral prayer and therefore considering the peculiar facts of the case, the High Court of Andhra Pradesh decided the case in favour of the petitioners. In the instant case, the admitted fact is that till date the Petitioner has not at any point of time approached the Authority for enhancement of the compensation or have raised a reference for challenging the quantum of compensation awarded. No objection was even filed under Section 9 of the Act. In the instant case, admittedly, in the matter of Smt. Meena Ostwal, no such effort whatsoever at any point of time till date has been made by the petitioners and it is for the first time now in the course of arguing in the present Writ Appeal, the Appellants have raised such an issue. Another aspect in respect of the two judgments cited above in this regard is that both the said petitions before the High Court were filed exclusively challenging the rejection of their application under Section 18 of LA Act on the ground of limitation which again is not the case in the instant Writ Appeal. Thus, the Petitioners in the opinion of this



65

-13-

Court cannot be granted the alternative relief prayed by them.

22. Thus, for the aforementioned reasons we are of the opinion that no case is made out on behalf of the Appellants calling for any interference with the findings arrived at in the judgment of the learned Single Judge dated 17.07.2014.

23. As an upshot, both the Appeals, being shorn of merit, are liable to be and are hereby dismissed.

Sd/-
Acting Chief Justice

Sd/-
P. Sam Koshy
Judge

Bhola

