

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Appeal Nos. 1328 and 943 of 2016

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

These appeals, under Clause 15 of the Letters Patent, are preferred against the orders passed by the learned Single Judge in Writ Petition Nos. 37425 of 2015 and 6612 of 2016, dated 18.11.2015 and 1.3.2016 wherein the petitioners have questioned the notification, issued under Section 4(1) of the Land Acquisition Act, 1894 dated 15.3.2010, as null and void.

In the orders under appeal the learned Single Judge, relying upon the judgment of the Supreme Court in **Swaika Properties Pvt. Ltd., vs. State of Rajasthan**¹, held that, since the consent award was passed as early as in May, 2013, the petitioners were not entitled to question the land acquisition proceedings. In **Swaika Properties**¹, the Supreme Court held that, as the writ petition had been filed after taking possession and the award having become final, it deserved to be dismissed on the ground of delay and laches.

Sri B. Shankar, learned counsel appearing on behalf of the appellants-writ petitioners, would rely on the judgment of the Supreme Court in **Kedar Nath Yadav vs. State of West Bengal**², to submit that, in the facts and circumstance of the present case, the petitioners claim to have the notification, issued under Section 4(1) of the Land Acquisition Act, set aside necessitated examination in the Writ Petitions after counter affidavits were filed by the respondents; while the urgency clause under Section 17

¹ 2008 4 SCC 695

² 2016 (8) Scale 346

was invoked along with the 4(1) notification dated 15.3.2010, and a draft declaration was issued on 18.3.2010, 80% of the compensation, required to be paid to the appellants, was not paid; and it was more than four and half years after the notification was issued were they paid compensation, that too more than a year after the award was passed on 11.5.2013.

The consequences of non-compliance with the statutory obligation of payment of 80% compensation before possession of land is taken pursuant to invocation of the urgency clause, and whether the other contentions put forth in the Writ Petitions would have justified the Section 4(1) notification being set aside, could have been examined, along with the petitioners claim for being entitled to be paid compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, after the respondents filed their counter-affidavits. We consider it appropriate, therefore, to set aside the orders under appeal and restore the Writ Petitions to file. The Writ Petitions shall be heard and decided in accordance with law after the respondents file their counter affidavits.

Suffice it to make it clear that we have not expressed any opinion on the petitioners' claim, or that of the learned Government Pleader that the writ petitions are liable to be dismissed on the ground of delay and latches, as these are matters which are required to be examined in the Writ Petitions. We have interfered with the orders under appeal only because the petitioner's entitlement to a part of the relief, sought for in the Writ

Petitions, was rejected at the stage of admission without even a counter affidavit being filed by the respondents.

The Writ Appeals stand disposed of accordingly. The contentions urged by the appellants herein, in the Writ Petitions filed by them, shall be heard and decided afresh in accordance with law, including on the grounds on which they have questioned the validity of the Section 4(1) notification. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

8th December, 2016

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