

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4854 of 2016 (O&M) (O&M)
Date of decision: 29.3.2016

Darshan Singh

.. Petitioner

v.

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate for the petitioner.

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Rajesh Bindal J.

The present petition has been filed challenging the vires of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (for short, 'the 2013 Act').

Learned counsel for the petitioner submitted that the land of the petitioner was notified for acquisition under Section 4 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') on 15.12.2006. The petitioner filed objections under Section 5A of the 1894 Act on 10.1.2007. Not accepting the same, the land was notified under Section 6 of the 1894 Act on 14.12.2007. The Land Acquisition Collector (for short, 'the Collector') announced the award on 11.12.2009. The petitioner challenged the acquisition by filing CWP No. 6480 of 2010—Darshan Singh v. State of Haryana and others, which was dismissed by this court vide order dated 8.4.2010. Even Petition for Special Leave to Appeal (Civil) No. 16931 of 2010 filed against the order passed by this court was dismissed by Hon'ble

the Supreme Court on 19.11.2010.

In the aforesaid factual matrix, the vires of Section 24(2) of the 2013 Act are sought to be challenged on the ground that the period fixed therein has no nexus with the object sought to be achieved. The 2013 Act has been enacted for providing just and fair compensation to the landowners, whose land has been acquired. There is no nexus with the object sought to be achieved in fixing the period of five years from the date of commencement of the Act. It should have been five years from the date of award. In the case in hand, possession of the land has not been taken. He also referred to a communication dated 2.1.2014 from Administrator, HUDA, Rohtak to Chief Administrator, HUDA, Rohtak. In support of his argument regarding arbitrary fixation of cut-off date, reliance was placed upon the judgment of Hon'ble the Supreme Court in D. S. Nakara and others v. Union of India, (1983) 1 SCC 305 and judgments of this court in CWP No. 6860 of 2007—Maharana Pratap Charitable Trust (Regd.) v. State of Haryana and others, decided on 24.12.2014 and CWP No. 6652 of 2014—Sunita Sahrawat and others v. State of Haryana and others, decided on 29.5.2015.

After hearing learned counsel for the petitioner, we do not find any merit in the submissions made. The challenge in the present petition to the vires of Section 24 (2) of the 2013 Act is sought to be made only on the ground that the cut-off date fixed is arbitrary. The relevant provisions of the Section are extracted below:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.- (1)

Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made

then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

A perusal of Section 24 of the 2013 Act shows that the same starts with a non-obstante clause. Sub-section (1) thereof provides that where proceedings have been initiated under the 1894 Act and no award had been passed under that Act, then the provisions relating to determination of compensation under the 2013 Act shall apply.

In the present case, admittedly the award was passed on 11.12.2009 before the enactment of 2013 Act. Where the award had been pronounced under the 1894 Act, the proceedings under that Act will continue if the same had not been repealed.

Sub-section (2) of Section 24 of the 2013 Act, the vires of which have been challenged by the petitioner, provides that notwithstanding anything contained in Section 24 (1) of the 2013 Act, where award under Section 11 of the 1894 Act had been made 5 years or more prior to the commencement of the 2013 Act, i.e., 1.1.2014 but physical

possession of the land had not been taken or the compensation had not been paid to the landowners, the said proceedings shall be deemed to have lapsed. Proviso to the aforesaid provision provides that even in the cases where the award had been made but compensation in respect of majority of the landholdings has not been deposited in the accounts of the beneficiaries, then all the beneficiaries shall be entitled to compensation in accordance with the provisions of the 2013 Act.

The grievance of the petitioner is that the period of 5 years or more provided prior to the date of commencement of the 2013 Act is unreasonable. The period should have been 5 years from the date of award, which would have resulted in taking the date to a date after the commencement of the 2013 Act, whereas the object is to give benefit to certain category of landowners where the State kept quiet and did not take steps either to take possession of the land despite pronouncement of award or to pay compensation to the landowners.

After considering various judgments of Hon'ble the Supreme Court including the judgment in D. S. Nakara's case (supra), Hon'ble the Supreme Court in State of Punjab and others v. Amar Nath Goyal and others, (2005) 6 SCC 754 opined that with reference to cut-off date, there cannot be any scheme which can be held to be foolproof as there shall always be a section of persons, who may be adversely affected. For example, where cut off date is 1st January of a year, any person falling on 31st December would be adversely affected and may raise a plea that fixation of cut-off date is arbitrary. Similar is the view expressed in the subsequent judgments of Hon'ble the Supreme Court in Government of Andhra Pradesh and others v. N. Subbharayudu and others, (2008) 14 SCC 702; Sudhir Kumar Consul v. Allahabad Bank, (2011) 3 SCC 486 and Mineral Exploration Corporation Ltd. v. Arvind Kumar Dixit and another, (2015) 3 SCC 535.

The contention raised by learned counsel for the petitioner that the cut-off date should have been 5 years from the date of award, meaning thereby taking it beyond the commencement of the 2013 Act, is merely to be noticed and rejected for the reason that the same would have given leverage

to the Collector to take physical possession of the land if not already taken on the date of the commencement of the 2013 Act or pay the compensation. In case the period was still available, the same could result in discriminatory and arbitrary exercise of power. The Parliament in its wisdom had rightly not left that discretion with the Collector.

For the reasons mentioned above, we do not find that the provisions of Section 24 (2) of the 2013 Act are ultra vires. Accordingly, the writ petition is dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

29.3.2016
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(Refer to Reporter)