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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2459 of 2011****Judgment Reserved on 20.02.2017****Judgment Delivered on 03.03.2017**

1. Ganga Prasad Rathore son of late Shri Rupnarayan, aged about 59 years, R/o. Village Navagaon, post Sarhar, via Baradwar, Tahsil Champa, district Janjgir-Champa, Chhattisgarh at present R/o Ward No. 16, near Railway Line, Champa, District Janjgir-Champa, Chhattisgarh.
2. Krishna Kumar Rathore S/o Medani Prasad Rathore, aged about 32 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, District Janjgir Champa, Chhattisgarh.
3. Santosh Kumar Rathore S/o Medani Prasad Rathore, aged about 36 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, Distt. Janjgir Champa, Chhattisgarh.
4. Banshi Lal Yadav S/o Late Battulal, aged about 65 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, Distt. Janjgir Champa, Chhattisgarh.
5. Ramadhar Yadav S/o Lt. Shri Kedar Nath, aged about 59 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, Distt. Janjgir Champa, Chhattisgarh. At Present R/o Railway Qtr. No. 764/a, Construction Colony, Bilaspur, Chhattisgarh.
6. Narayan Prasad Yadav S/o Late Shanti Lal Yadav, aged about 65 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, Distt. Janjgir Champa, Chhattisgarh. At Present R/o Railway Qtr. No. 764/a, Construction Colony, Bilaspur, Chhattisgarh.
7. Jagdish Prasad Yadav S/o Late Natthu Lal Yadav, aged about 62 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, District Janjgir Champa, Chhattisgarh.
8. Natthu Lal Yadav S/o Late Fatal Ram Yadav, aged about 80 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, District Janjgir Champa, Chhattisgarh.
9. Gore Lal Yadav S/o Late Natthu Lal Yadav, aged about 40 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, District Janjgir Champa, Chhattisgarh.

10. Manmohan Lal Yadav S/o Late Natthu Lal Yadav, aged about 35 years, R/o Vill. Navagaon, Post Sarhar, Via Baradwar, Tah Champa, Distt. Janjgir Champa, Chhattisgarh.
11. Satish Chandra Rathore S/o Netram Rathore, aged about 35 years, R/o Village Navagaon, Post Sarhar, Via Baradwar, Tahsil Champa, District Janjgir Champa, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh through the Secretary, Revenue Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Collector District Janjgir Champa, Chhattisgarh.
3. Sub Divisional Officer/Land Acquisition Officer, District Janjgir Champa, Chhattisgarh.
4. General Manger District Business And Industry Center, Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondents

For the Petitioners	:	Shri R.S. Patel, Advocate.
For the Respondent/ State	:	Shri O.P. Sahu, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

1. The petitioners have challenged the legality and validity of the impugned notices dated 25.9.2010, 3.3.2011 and 15.3.2011 issued by respondents No.2 and 3 for acquisition of land in favour of respondent No.4 and have prayed for the following reliefs:

'1. That this Hon'ble Court may kindly be pleased to issue appropriate writ and quash the impugned Notification/ Notice dated 25.9.2010, 3.3.2011 and 15.3.2011 (Anx. P/1)

2. That this Hon'ble Court may kindly be pleased to issue a writ of mandamus to the respondents and direct they may not acquire the questioned agricultural land.

3. This Hon'ble Court may further be pleased to pass an appropriate order or issue writ as deemed fit under the facts and circumstances of the case.'

2. The facts in brief are that the petitioners are agricultural land owners of district Janjgir-Champa and their agricultural lands are situated in Village Risda, Champa, District Janjgir-Champa, Chhattisgarh. On 25.9.2010, the Collector, Janjgir-Champa published a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Old Act') for acquisition of 37.255 hectares of land from Khasra No. 126, the details of the land are mentioned in the notifications dated 3.3.2011 and 15.3.2011 under Section 6 of the Old Act. Respondent No.3 issued notice to the petitioners inviting objections and for holding public hearing on 13.10.2011. The objections were submitted by the petitioners on 3.11.2010 which were not considered and the notifications dated 3.3.2011 and 15.3.2011 were issued by the Land Acquisition Officer cum Sub-Divisional Officer declaring that the agricultural land as notified has been acquired for establishment of power plant. Repeat objections were filed by the petitioners with a proposal to acquire the adjoining government land of area 38.66 hectares nearby. It is alleged that respondent No.4 has not obtained any clearance from the environment department. Thus, the declaration under Section 6 of the Old Act is in clear violation of the provisions of the Act and principles of natural justice. The petitioners are cultivators of the land from the time of their forefathers and entirely depend on their land for their livelihood. Hence, the petitioners pray for the reliefs as aforementioned.

3. The respondents in reply have submitted that the provisions of Land Acquisition Act, 1894 has been strictly complied with in the proceedings of the acquisition. The law in this regard is well settled by Hon'ble Supreme Court in the case of **Swaika Properties Private Limited and Another vs. State of Rajasthan and Others** reported in **2008(10) SCC 786** that such a

writ petition is not maintainable once the award is passed. Reliance has also been placed on the judgment of this court in **Smt. Shraddha Thakur vs. State of Chhattisgarh** reported in **2009 Law suit (Chh) 164** in this regard. The fullest opportunity was afforded to the petitioners to raise the objections which have been given due consideration. The acquisition intended is for the benefit of respondent No.4 which is a government agency and as per the industrial policy of the State for expansion and enhancement of the production of power. Thus, the acquisition is for the public purpose and the policy decision is under the domain of the government in which the scope of judicial review is very narrow. It is also submitted that the subject lands were un-irrigated and single crop yielding lands. There is no question of acquiring government land and for this purpose, the adjoining private lands have also been acquired as per the requirement. Denying all the allegations in the petition, it is submitted that the petitioners are not entitled to any relief.

4. It is submitted by counsel for the petitioners that the award dated 1.7.2011 has been passed consequent to the acquisition process. All the petitioners have not received the compensation as awarded. As claimed by the State, the possession of the acquired lands has not been taken by the government agencies. Hence, the possession of government is shown only on papers whereas physical possession of acquired lands is still with the petitioners.

5. At the time of argument, the petitioners have given up their claim for reliefs as prayed in the petition and instead a prayer has been made that the acquisition of land was done under the Land Acquisition Act, 1894, however,

in the meanwhile, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the New Act') has come into force and the respondents may be directed to initiate the proceedings *de novo* for the acquisition of lands belonging to all the petitioners under the provisions of the New Act.

6. Section 24(2) of the New Act reads as under:

'24(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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.'

The award under Section 11 of the Old Act has been passed within five years of the commencement of this Act and neither physical possession of the land has been taken nor the compensation has been paid to the persons concerned. Hence, in view of the aforesaid provision the earlier proceedings of the acquisition has lapsed in this situation. The proceedings for acquisition of the land in question should be initiated afresh in accordance

with the provisions of this Act. Further, it is also explained in the proviso that when the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the notification for acquisition under Section 4 of the Land Acquisition Act, 1894 shall be entitled to compensation in accordance with the provisions of this Act. On these grounds, it is prayed that the respondents be directed to initiate the proceedings of the acquisition under the provisions of New Act of 2013.

7. On behalf of the respondents, it is objected that after passing of the award on 1.7.2011 such petition cannot be entertained. Further, it is submitted that out of 50 petitioners, 7 petitioners have received compensation for their lands. Rest of the petitioners have avoided the proceedings of payment of compensation so far. Further, it is submitted that the land in-question has been taken in possession on 13.5.2015. Some papers have been submitted by the respondents in which it is informed that the date i.e 13.5.2015 was fixed for handing over possession to respondent No.4. Further, the possession letter has been given by Tehsildar, Champa in favour of respondent No.4 on 13.5.2015. These documents submitted do not disclose that the possession was handed over by the petitioners in person to respondent No.4. The statement made on behalf of the petitioners is that they are still in possession of land in question so far.

8. As per the submissions made from both the sides, it is clear that out of 50 petitioners, only 7 petitioners have received the compensation as per the award so far. Considering the provisions of sub-section 2 of Section 24 of LARR Act, 2013, it is clear that the award was passed on **1.7.2011** under

Section 11 of the Old Act whereas the New Act has come into force on 27.9.2013 when it was published in the gazette of India after receiving assent from President of India on 26.9.2013. Thus, the earlier award was passed within five years commencement of this Act. Secondly, as per the facts of this case, the physical possession of the subject land is still with the petitioners so far. Thirdly, out of 50 petitioners whose land was subject to acquisition, only 7 have received compensation and remaining petitioners have not received the compensation so far. In accordance with the proviso to this section, when the compensation awarded with respect to a majority of land holdings has not been deposited in the account of beneficiaries then all the beneficiaries specified in the notification for acquisition under Section 4 of the Old Act shall be entitled for compensation in accordance with the provisions of this Act. Thus, provision itself declares the entitlement of the petitioners in accordance with the provisions of this Act.

9. After the change in circumstances, the petitioners have themselves proposed to submit to the proceeding of acquisition as per the provisions of New Act, 2013. Section 24(2) of the Act, 2013 itself declares that under the circumstances mentioned in the provision the proceedings drawn under the Old Act shall be deemed to have lapsed and the appropriate government, if so desires, can initiate the proceeding of the acquisition afresh in accordance with the provisions of New Act. On the basis of these findings and the reasons aforementioned, there is no need to pass any order on the reliefs claimed in the petition. However, the petition is disposed of with following directions:

- '1. The proceedings of acquisition of land started against the petitioners by the notification dated 25.9.2010 ending in the award dated 1.7.2011 are deemed to have been lapsed in

accordance with the provisions under Section 24(2) of the LARR Act, 2013.

2. Respondents, if so desire, may initiate the proceedings *de novo* for the acquisition of lands belonging to all the petitioners under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.'

Sd/-

(Rajendra Chandra Singh Samant)
Judge