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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1783 of 2005

1. Ashok Kumar Sahu, aged 54 years, S/o Late Shiv Das Sahu.
2. Sunil Kumar Sahu, aged 32 years, S/o Ashok Kumar Sahu.

Both of them are resident of Village Belgahna, Tahsil Kota, District Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through Collector cum Deputy Secretary, Revenue Department, Chhattisgarh Government, Bilaspur (C.G.)
2. Sub Divisional Officer (Revenue) cum Land Acquisition Officer, Kota, District Bilaspur (C.G.)
3. Shri Adile, Land Acquisition Officer, Bilaspur (C.G.)
4. Executive Engineer, Public Works Department, Pendra Road, District Bilaspur (C.G.)

---- Respondents

For Petitioners: Mr. P.P. Sahu, Advocate.

For Respondents No.1, 2 and 4/State: -

Mr. Dheeraj Kumar Wankhede, Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/01/2017

1. The petitioners are land owners. Their lands have been subjected to acquisition by the Land Acquisition Officer, Bilaspur and the award passed by the Land Acquisition Officer on 19-4-2005 has been approved by the Collector on 7-5-2005 under the first proviso to Section 11 of the Land

Acquisition Act, 1894 (for short 'the Act of 1894').

2. The petitioners have filed this writ petition stating inter alia that the Sub Divisional Officer / Land Acquisition Officer has passed an award on 21-12-2004 holding that the petitioners are entitled for compensation to the extent of ₹ 12,88,488/- which is apparent from the letter dated 23-3-2005 and the Sub Divisional Officer/Land Acquisition Officer directed the Executive Engineer, Public Works Department to deposit the amount of ₹ 12,88,488/- and thereafter, the award has been modified by the Sub Divisional Officer/Land Acquisition Officer and a modified award has been passed on 19-4-2005 and amount of compensation has been reduced to ₹ 2,70,316/-. Such an award cannot be modified without notice and without hearing the petitioners and such an award amounts to review by the Land Acquisition Officer, who is a quasi judicial authority, which is impermissible in law. Therefore, the impugned award is liable to be set aside.
3. The State Government has filed its return stating inter alia that the award was passed on 21-12-2004 by the Sub Divisional Officer under Section 11(1) of the Act of 1894 which was not approved by the Collector in exercise of power conferred under the first proviso to Section 11 (1) of the Act of 1894 and ultimately that modified award was passed by the Land Acquisition Officer on 19-4-2005 and it

was approved on 7-5-2005 by the Collector and the compensation which the petitioners are entitled is only ₹ 2,70,316/- and therefore the petitioners are not entitled for any relief. It is further pleaded that power of the State Government as specified in the first proviso to Section 11 (1) of the Act of 1894 has been conferred to the Collector by the State Government by notification dated 3-9-2003 and therefore unless the award is approved by the Collector, the award passed by the Sub Divisional Officer is not a valid award. It has further been submitted that the award passed is final only when once the award passed is filed in the office of the Collector and notice is issued to the persons interested under Section 12(2) of the Act of 1894 and as such, the writ petition deserves to be dismissed.

4. Mr. P.P. Sahu, learned counsel appearing for the petitioners, would submit that once the award is passed by the Land Acquisition Officer in exercise of power under Section 11 of the Act of 1894 that cannot be modified unless the person in whose favour the award has been passed is noticed and heard and minimal opportunity of hearing is afforded to him. Therefore, non-giving of opportunity of hearing has caused serious prejudice to the petitioners as the amount of compensation has considerably been reduced in the modified award and as such, review of award by the Land Acquisition Officer is not permissible in law, and

the impugned award is liable to be set aside.

5. Mr. Dheeraj Kumar Wankhede, learned Govt. Advocate appearing on behalf of the State/respondents No.1, 2 and 4, would submit that the Collector / Land Acquisition Officer to whom the power of Collector has been conferred, cannot pass award under Section 11 of the Act of 1894 without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf. In this case, earlier, the award dated 21-12-2004 was not approved by the Collector as provided in the first proviso to Section 11 of the Act of 1894. He would further submit that subsequently, modified award dated 19-4-2005 has been approved by the Collector under the first proviso to Section 11(1) of the Act of 1894 on 7-5-2005 and therefore that is a valid award and as such, the award passed by the Collector / Land Acquisition Officer is strictly in accordance with law. He would also submit that power of the appropriate Government under the first proviso to Section 11(1) of the Act of 1894 has now been conferred to the Collector and modified award has been passed on 19-4-2005 which has been approved by the Collector and notice of award has been issued to the persons interested under Section 12(2) of the Act of 1894 and that has binding force therefore, the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties and considered

the rival submissions made therein and also gone through the record with utmost circumspection.

7. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 11(1) of the Act of 1894, which provides as under: -

"11. Enquiry and award by Collector.-(1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf."

8. Under Section 11(1) of the Act of 1894, the award has to be

passed by the Collector after examining the objections of any of the persons interested pursuant to the notice given under Section 9. This power of the Collector under Section 11(1) of the Act of 1894, it is informed, has been conferred to the Sub Divisional Officer / Land Acquisition Officer. First proviso to Section 11(1) of the Act of 1894 further provides that no award shall be made by the Collector under Section 11(1) without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf. It has been brought on record that the power of the State Government under first proviso to Section 11(1) has been conferred to the Collector of district by notification dated 3-9-2003. Therefore, the Collector is the only authority to grant previous approval of the award as provided under first proviso to Section 11(1) of the Act of 1894.

9. Section 12 of the Act of 1894 provides, when the award of the Collector to be final and states as under: -

"12. Award of Collector when to be final.-(1)

Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by

their representatives when the award is made."

10.A Division Bench of the M.P. High Court in the matter of

Chhaganlal v. Land Acquisition Officer, Mahasamund¹

while considering Section 12 of the Act of 1894 has held that under Section 12 of the Act, the award made under Section 11 becomes final even if it is not filed in the Collector's office or notice of the award is not given to the persons interested under sub-section (2) of Section 12. It was further held that the expression "shall be filed in the Collector's office" in Section 12 of the Act of 1894 connotes the idea of permanent preservation as a public record. The filing of an award in the Collector's office consists in the physical act of receiving the award in the Collector's office so that it may be deposited in the custody and among the records of the Collector's office. It was finally held that the Land Acquisition Officer is not a court and cannot therefore under Section 53 of the Act of 1894, review an order awarding compensation.

11.It is now well settled law that a quasi judicial authority

cannot review its own order, unless the power of review is expressly conferred on it by the State under which it derives its jurisdiction. (See **Dr. (Smt.) Kuntesh Gupta v.**

Management of Hindu Kanya Mahavidyalaya, Sitapur

(U.P.) and others² and **Kapra Mazdoor Ekta Union v.**

1 1964 J LJ 730

2 (1987) 4 SCC 525

Birla Cotton Spinning and Weaving Mills Ltd. and another³.)

12. After having noticed the statutory provisions, if the facts of the present case are examined, it would appear that the first award was passed by the Sub Divisional Officer / Land Acquisition Officer under Section 11(1) of the Act of 1894 on 21-12-2004 which was placed before the Collector for approval but it was not approved. With certain suggested modifications, it was returned and ultimately, the Land Acquisition Officer passed an award on 19-4-2005 which was approved by the Collector in exercise of power conferred under the first proviso to Section 11(1) on 7-5-2005, however, the amount of compensation was reduced to ₹ 2,70,316/-. This is the only award and it has been claimed that such an award passed on 7-5-2005 has been filed in the Office of the Collector and on such basis, compensation has been determined. Thereafter, the matter has been sent to the Sub Divisional Officer, Kota for proceeding in accordance with law. Therefore, only the award passed is on 7-5-2005 with the approval of the Collector as provided under first proviso to Section 11(1) of the Act of 1894. In the circumstances, the petitioners' first contention that the first award dated 21-12-2004 has been modified by the Land Acquisition Officer without hearing and

without affording opportunity to the petitioners, is not correct. The award in accordance with Section 11(1) of the Act of 1894 has been passed only on 7-5-2005 by the Collector and therefore further proceeding has been initiated. This writ petition was filed on 25-4-2005 and thereafter only, the valid award was passed on 7-5-2005 which has not been challenged by the petitioners in this writ petition and writ has been sought for quashing the award dated 19-4-2005. Since the award passed on 19-4-2005 duly approved by the Collector on 7-5-2005 is in accordance with law, the award dated 19-4-2005 / 7-5-2005 cannot be quashed.

13.It is well settled that the State Government or any other officer authorised under first proviso to Section 11(1) of the Act while granting approval to the proposal of the Land Acquisition Collector regarding the award of compensation to the claimants can reduce the suggested amount for different categories of lands sought to be acquired. (See **State of Bihar and others v. D.N. Singh (dead) by L.Rs. and others**⁴.)

14.It is stated at the Bar that possession has already been taken from the petitioners. Therefore, once possession has been taken from the petitioners and land has been vested in the State Government, the petitioners cannot maintain writ

4 AIR 1998 SC 322

petition challenging the award as held by the Supreme Court in the matter of **Swaika Properties (P) Ltd. and another v. State of Rajasthan and others**⁵.

15. In view of the foregoing analysis, I do not find any good ground to quash the award passed by the competent officer under Section 11(1) of the Act of 1894. However, the petitioners are at liberty to move an application under Section 18 of the Act of 1894 to the Collector for enhancement of compensation. If such a reference is made, the Land Acquisition Officer shall consider the application for delay considering the plea that writ petition remained pending before this Court from 25-4-2005, sympathetically. If the petitioners prefer application under Section 18 of the Act of 1894 within 30 days from today before the Collector, the Collector shall refer the dispute to the District Court for enhancement of the amount of compensation within 60 days from the date of receipt of the dispute before it.

16. With the aforesaid observation and direction, the writ petition stands disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

⁵ (2008) 4 SCC 695