

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2165 of 2011

Jagannath @ Khubchand Kewat S/o Late Sri Tijram Kewat Aged about 34 years R/o village Nariyara, Thana- Pamgarh, Tahsil Akalatara, Distt. Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh Through-Secretary, Department of Industries, D.K.S. Bhawan, Raipur (C.G.)
2. Director, Directorate of Industries, Second floor, Life Indurance Corporation, Commercial premises, Raipur (C.G.)
3. Collector, Janjgir, Distt. Janjgir-Champa (C.G.)
4. Land Acquisition officer (Sub Divisional Officer, Korba, Distt. Korba (C.G.)
5. General Manager, District Industry and trader centre, Janjgir, Distt. Janjgir Champa (C.G.)
6. M/s Wardha Power Plant Ltd Akalatara, A Joint Venture Of M/s K.S.K. Energy Ventures Private Ltd. 431/A, Road No. 22, Jubilee Hills, Hyderabad (Andhra Pradesh)

--- Respondents

For petitioner – Shri Rishi Rahul Soni, Advocate.

For State- Shri Kunal Das, PL.

For respondent No.6- Shri Ashish Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

13/08/2019

Heard.

1. In the present petition challenge is to the notification dated 25/08/2010 (Annexure P-2) wherein notification under sub section 1 of the Section 4 of the Land Acquisition Act, 1894 was made. Challenge is also to the notification dated 13/10/2010 (Annexure P-5) under Section 6 of the Land Acquisition Act, 1894 and eventual award passed on 23/12/2010 is under challenge.
2. In the instant petition the following relief has been claimed:-
 - (i) It is therefore prayed that this Hon'ble Court may kindly be pleased to call for the entire record with regard to the proceedings of the land acquisition case no. village-Amora/01/a-82/09-10.

(ii) It is therefore prayed that this Hon'ble Court may kindly be pleased to quash the notification under section 4 Land Acquisition Act dated 25/08/2010 and section 6 of the land acquisition act dated 13/10/2010 in the proceeding of land acquisition case no. village Amora/01/a-82/09-10.

(iii) It is therefore prayed that this Hon'ble Court may kindly be pleased to quash the entire land acquisition proceeding of land acquisition case no.Village Amora/01/a-82/09-10.

(iv) Any other relief which this Hon'ble Court may deem fit.”

3. Perusal of the record would show that possession of the land has been taken over by Annexure R-6/3 on 18/02/2011 and this instant petition has been filed on 21/04/2011. When the award has been passed and possession has been taken, then in such case issue would be governed by the law laid down in case of **Swaika Properties (P) LTD & Anr. Vs. State of Rajasthan & ors.** reported in **(2008) 4 SCC 695**. For the sake of relevance para 16 to 19 are reproduced hereunder:-

“16. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In [Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. & Ors.](#) (1996) 11 SCC 501 where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held :

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under [Article 226](#) of the Constitution to quash the notification under [Section 4\(1\)](#) and declaration under [Section 6](#). But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under [Article 226](#). The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

In the concurring judgment, S.B. Majmudar, J. held as under : (Industrial Development Investment case (1996) 11 SCC 501 SCC pp.522-23, para 35)

"35..... Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by [Section 16](#) of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches."

17. Similarly, in the case of [State of Rajasthan & Ors. v. D.R. Laxmi & Ors.](#) (1996) 6 SCC 445 following the decision of this Court in the case of Municipal Corporation of Greater Bombay (1996) 11 SCC 501 it was held : (D.R. Laxmi Case (1996) 6 SCC 445, SCC p. 452, para 9)

"9.... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under [Article 226](#). The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

18. To the similar effect is the judgment of this Court in [Municipal Council, Ahmednagar & Anr. v. Shah Hyder Beig & Ors.](#) (2000) 2 SCC 48 this Court, following the decision of this Court in the case of [C. Padma v. Dy. Secy. to the Govt. of T.N.](#) (1997) 2 SCC 627 held : (Shah Hyder case (2000) 2 SCC 48, SCC p.55, para 17)

"17 In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases ([C. Padma v. Dy. Secy. to the Govt. of T.N.](#)(1997) 2 SCC 627)"

19. In the present case also, the writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly, the order of the learned Single Judge and that of the Division Bench are affirmed to the extent of dismissal of the writ petition and the special appeal without going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs."

4. In view of the settled proposition, issue raised by the petitioner no

more remains res-integra as since award has already been passed as per Annexure R-6/1 on 23/12/2010 and by Annexure R-6/3 subsequent possession has already been handed over on 18/02/2011 this court cannot go back to the notification under Section 4 and 6 of the Land Acquisition Act, 1894 and no relief can be granted to the petitioner. The petitioner if so advised may seek appropriate remedy as may be available under the Land Acquisition Act, 1894 and the appropriate authority in such case may consider the pendency of this petition before this court.

5. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE