

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3708 of 2010

1. Omkar Singh Virdi S/o Jeewan Singh, aged about 70 years, R/o Near Lal Tanki, Bohidar Para, Raigarh, Distt. Raigarh (CG)
2. Shrawan Singh Virdi, S/o Jeewan Singh, aged about 68 years, R/o Near Lal Tanki, Bohidar Para, Raigarh District-Raigarh (CG)
3. Jujhjar Singh Virdi (wrongly mentioned as Jakara Singh in the Award), S/o Jeewan Singh, aged about 54 years, In-charge Sub -Divisional Officer, Kelo Subdivision, Raigarh, R/o Near Lal Tanki, Bohidar Para Raigarh District- Raigarh (CG)
4. Geeta Devi, W/o Late Shri Pramod Kumar, aged about 51 years, R/o Near Jute Mill, Raigarh, District- Raigarh (CG)
5. Shanti Bai, W/o Late Ratanlal Agrawal, aged about 78 years, R/o Near Gandhi Pratima, Raigarh (CG)
6. Rakesh Kumar Agrawal (wrongly mentioned as Rajesh Kumar Agrawal in the award), S/o Late Shri Pramod Kumar Agrawal, aged about 30 years, R/o Near Jute Mill Raigarh (CG)

---- Petitioners

Versus

1. State Of Chhattisgarh through the Secretary Department of Revenue DKS Bhawan, Mantralaya , Raipur (CG)
2. Commissioner (Revenue) Bilaspur Division,Bilaspur (CG)
3. Collector, Raigarh (CG)
4. Sub-Divisional Officer and Land Acquisition Officer, Gharghoda, District-Raigarh (CG)

---- Respondents

For Petitioners	:	Shri Aniket Verma, Advocate
For Respondents-State	:	Shri Alok Bakshi, Addl. Advocate General

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/03/2020

1. Sole ground of challenge to Award dated 29.5.2010 is that the Award is antedated.
2. For construction of dam under irrigation project known as 'Kelo Project', proceedings for acquisition of land situated in Village- Ujjwalpur, Revenue Circle- Tamnar, District- Raigarh were initiated by issuing Notification under Section 4 (1) of the Land Acquisition Act, 1894. According to the petitioners, after Notification was issued, objections

were filed. Proceedings were drawn and a declaration under Section 6 of the Land Acquisition Act, 1894 was issued on 13.5.2008 which was published in official Gazette on 30.5.2008 and also public proclamation (*munadi*) done on that date. On 31.5.2010, petitioners No.1 & 2 moved an application to the Collector, Raigarh stating that as the statutory time limit of two years, prescribed for passing Award, having lapsed, no Award could be passed. In that letter, it was alleged that steps are being taken to prepare antedated Award. Another application was jointly moved before the Collector on 1.6.2010 requesting him not to pass any award. Further case of the petitioners is that when petitioner No.3 who was working as In-charge, Sub Divisional Officer in Kelo Subdivision, Raigarh was present in the office of Commissioner, Bilaspur in connection with some official work on 1.6.2010, one employee of the office of SDO and Land Acquisition Officer, Gharghoda had come to the office of the Commissioner and upon inquiry, it was revealed that he had brought the relevant file relating to acquisition of petitioners' land and that file was actually received in the office of Commissioner only on 1.6.2010. The petitioner No.2 again moved an application on 4.6.2010 before the Commissioner, Bilaspur that, as the statutory period of passing award has expired, no Award should be made. Upon inquiry on 8.6.2010, in the office of respondent No.4/SDO as to what decision was taken on petitioners' application dated 31.5.2010 and 1.6.2010, it was informed by respondent No.4 that an Award has already been passed on 29.5.2010. The petitioners then filed this petition challenging the Award raising serious allegation that till 29.5.2010, no Award was actually passed, but, after obtaining approval of the Commissioner, after 29.5.2010, an antedated Award has been prepared by the Sub Divisional Officer- cum- Land Acquisition Officer, Gharghoda.

3. Learned counsel for the petitioners contended that as the sequence of events are reflected from various official records, it was practically impossible that on one day, the records could be transmitted from the office of SDO, Gharghoda to the office of Collector, Raigarh which is 45 k.m. away, came back to his office and then again go back to office of Collector, followed by proposal prepared by the Collector on that very date, sent to the office of Commissioner, Bilaspur which is 180 k.m. away, record again received back in the office of the Collector on that very day traveling another 180 k.m. and then Collector, upon his approval, forwarded the records to SDO, Gharghoda, 45 k.m. ahead on

that very day, followed by passing of Award on that very date. He further submits that though, there is an entry in the outward register of the office of the Collector filed as Annexure P-18, the records of the land acquisition proceedings case were sent to the office of SDO, Gharghoda on that very day at 1:30 p.m., there are no entries to prove that those records came back to the office of the Collector. In this manner, a complete antedating has been done in the matter of passing of Award as stipulated period of two years was going to expire on 29.5.2010. Therefore, all the note-sheets and Award are antedated and therefore, the entire proceedings are fraud on power being void ab initio. It is prayed that the petitioners had received compensation, though, under protest, therefore, in these circumstances, either his land may be returned, for which he is prepared to return the entire amount of compensation received by him or if, return of land is not possible for the reason that the land is submerged/utilized in construction of dam, appropriate proceedings of acquisition be drawn and compensation be paid to the petitioners.

4. Learned Additional Advocate General appearing for the State, referring to averments made in the reply would submit that the petitioners' allegation that Award was antedated, is not based on any credible information or records. He would submit that movement of file from one office to other office and from one city to other city, though, may require extraordinary effort to be made, it cannot be said to be altogether impossible. He would submit that there is always presumption regarding official act done in accordance with law. He would submit that the records clearly stated that the movement of file had taken place from the office of Sub Divisional Officer-cum- Land Acquisition Officer, Ghardhoda, Collector Raigarh and Commissioner Bilaspur on 29.5.2010 itself. The proposal, after due correction, were forwarded to the Commissioner and upon due approval of the Commissioner, the records of acquisition proceedings were remitted back to the office of SDO, Ghardhoda who promptly has passed Award on 29.5.2010 itself.
5. I have heard learned counsel for the parties and perused the records.
6. In the present case, while hearing the matter, particularly taking into consideration that the reply of the State was as evasive as it could be, lacking in material disclosure, this Court directed production of relevant records from the office of Collector and Commissioner, Bilaspur to verify

the allegation leveled by the petitioners which indeed is very serious one that the Award is antedated. Records relating to inwards and outwards register from the office of Collector, Raigarh and that of in the office of Commissioner, Bilaspur were produced under sealed cover before this Court which was perused while hearing learned counsel for both the parties.

7. In the petition, the petitioners have seriously alleged that the Award was antedated. Relevant pleadings in this regard have been made in para 8.9 to para 8.13. They contained averment of fact in support of petitioners' claim that the Award was antedated. It has been stated that on 31.5.2010, an application was submitted by petitioners No. 1 & 2 in the office of Collector stating that no Award could be passed within the stipulated period of two years, therefore, land acquisition proceeding have lapsed. A perusal of this letter (Annexure P-13) would show that petitioners, at that very stage, expressed serious apprehension that attempts are being made to prepare an antedated Award. It has also been stated on the affidavit in the writ petition that a copy of that application dated 31.5.2010 was also submitted in the office of Commissioner on 1.6.2010. According to the petitioner's affidavit, when petitioner No.3 was present in the office of Commissioner on 1.6.2010, he himself being SDO in Kelo Sub-Division, Raigarh, he met with an employee who informed him that he had brought relevant file relating to acquisition of land situated in Village-Ujjwalpur. In support of this, a photocopy of acknowledgment has also been filed. This document is, however, a photocopy. Further case is that on 4.6.2010, petitioner No.2 again moved application before the Commissioner, Bilaspur. Contents of this letter (Annexure P-17) shows that it was stated that as statutory period of passing Award expired, therefore, no award could be made.
8. Specific averment of fact made on affidavit by the petitioners in the petition have also been met with by respondent-State by filing specific return. In the return of the State, it has been stated in para-4 that the Land Acquisition Officer passed award on 29.5.2010. However, in the entire return, contained in six paragraphs, no specific averment have been made to rebut the specific facts stated on affidavit in the writ petition. Submission of representation dated 31.5.2010 in the office of the Collector, Raigarh on that very date and copy thereof in the Office of Commissioner on 1.6.2010 has not been denied. Further averment of

fact made that when petitioner No.3 went to office of Commissioner, Bilaspur on 1.6.2010, records pertaining to acquisition of land situated in village Ujjwalpur were brought to the office of Commissioner on that date has also not been specifically denied. Submission of representation dated 4.6.2010 by petitioner No.2 in the office of Commissioner, Bilaspur have not been disputed. In the applications (Annexures P- 14, P-15 & P-17) serious apprehension has been raised that the attempts are being made to prepare an antedated Award. Further more, respondent could not place before this Court any material to hold that the date on which, petitioner submitted application, earliest being 31.5.2010, he was either supplied or allowed to inspect Award dated 29.5.2010. If Award was already passed, there was no difficulty on the part of Land Acquisition Officer to supply copy of Award or at least Collector or SDO allowing the petitioners to inspect original records containing copy of Award said to be passed on 29.5.2010.

9. The respondent- State was obliged under the law to place before the Court complete material to satisfy that the Award was actually passed on 29.5.2010 after obtaining approval from different Headquarters. Indeed, the petitioners have brought to the notice of this Court following startling facts :

“8.12....

(1) The Collector, Raigarh on getting the file from the Deputy Registrar ordered that the file may be sent to the Sub-Divisional Officer, Gharghoda (respondent No.4) at about 1:30 p.m.

[Distance 35 Kms]

(2) The Sub-Divisional Officer (Revenue), Gharghoda on the same day has corrected the mistakes and has sent back the file to the Collector, Raigarh.

[Distance 35 Kms]

(3) The Collector, Raigarh on the same day has verified the award report and has sent the file to the Commissioner, Bilaspur (CG)

[Distance 180 Kms]

(4) The Commissioner, Bilaspur sitting at

Bilaspur has received the file on the same day and has verified and approved the Award on the same day. The file was then sent back to the Collector-Raigarh.

[Distance 180 Kms]

(5) Collector, Raigarh has sent the file to SDO, Gharghoda on the same day. The file has been sent to Gharghoda.

[Distance 35 Kms]

(6) The respondent No.4 has received the file on the same day and has passed the award on the same day.”

10. The order sheets dated 29.5.2010 are also collectively annexed as Annexure P-18. This Court has also noted that order sheet as well as Award both contained certain correction by use of whitener.
11. If the respondent's case were to be believed, events and movements of file as stated above at Sr. No. 1 to 6 happened on 29.5.2010 itself. According to order sheet dated 29.5.2010, the Collector forwarded the records to SDO (R) Gharghoda to carry out necessary correction and sent the record back. Next order sheet dated 29.5.2010 of the SDO is that after carrying out correction, an Award was prepared and submitted for approval before the Collector. The order in order sheet dated 29.5.2010 of the office of the Collector is a detailed one containing specific details of the property, trees, compensation and other details said to be passed by the Collector himself on that very day i.e. 29.5.2010. The last part of that order records that the case be forwarded to the Commissioner, Bilaspur for necessary approval of the Award. Another order sheet dated 29.5.2010, further records under signature of SDO, Gharghoda that the case was received from the office of Commissioner, Bilaspur upon approval and then Award has been passed on that day itself i.e. 29.5.2010.
12. This Court is at complete loss and it appears to be a completely fabricated proceedings drawn by the SDO. As to how on 29.5.2010 itself, the movement of file from one office to other, from different stations involving three different stations i.e. Gharghoda, Raigarh and

Bilaspur could take place. Firstly from office of Collector, Raigarh to Gharghoda . This first movement of the file is said to have taken place at 1:30 pm on 29.5.2010, which is clear from copy of outward register filed as Annexure P-19. It has not been disputed by the respondent and this Court has also verified from the original outward register maintained in the office of Collector which has been summoned by this Court. That means, the movement of the file and records relating to land acquisition case began at 1:30 p.m. on 29.5.2010 in the office of Collector and sent to the office of SDO, Gharghoda which is 45 km away to Raigarh. Thereafter, file is said to have been moved back to office of the Collector on that very date. The Collector then prepared detailed proposal. Not only this, the order sheet shows movement of file not only within the same station or nearby station but to the divisional Headquarters at Bilaspur which is 180 km. away from Raigarh. Each and every fact which has been stated in petition with regard to the location and distance has not been disputed. There is absolutely no material placed by the respondents as to how this file was moved from Raigarh to Bilaspur. Since the case of the respondents is that on that day itself, the file came back to the office of Collector, again traveling 180 km, respondents were obliged to place satisfactory material to convince the Court that such movement had actually taken place. Not only this, respondents have gone a step further that after receipt of record back in the office of Collector, Raigarh, the file was again sent to the office of SDO Gharghoda and then on that very date, SDO passed Award.

13. Even though, the return of the respondents is blissfully vague and incapable of disclosing any material, to prove an important event to happen on one day, taking into consideration the seriousness of the allegation, this Court had directed production of original records being 'inward' and 'outward' register from the office of Collector and Commissioner both. After meticulous examination of entries made in those records, this Court could not find any entry of following natures:

- A. Any entry, regarding receipt of land acquisition records from the office of SDO, Gharghoda to the office of Collector on 29.5.2010. It is relevant because in the outward register kept in the office of Collector shows entry made at Sr. No.255 on 29.5.2010 that records is being sent to the office of SDO Gharghoda for disposal of objection. The time when it was sent to the office of SDO is recorded as 1:30 pm. However, there is no

entry as to when those records came back in the office of Collector.

B. There is no entry made in the outward register maintained in the office of Collector, Raigarh that the records of land acquisition case were forwarded to the Commissioner, Bilaspur on that very date.

C. There is no entry in the 'inward register' of the office of Commissioner that any such records of land acquisition was received in the office of Commissioner on 29.5.2010.

D. There is no entry found in the outward register maintained in the office of Commissioner, Bilaspur that records were transmitted back to the office of Collector, Raigarh.

There is hardly any averment nor anything recorded in the records that such records were being moved with lightening speed through any messenger on wheels carrying records from one place to the other. None of the official records say this. There is not even affidavit filed by any of the officer/employee of the office of SDO, Gharghoda, Collector, Raigarh or Commissioner, Bilaspur regarding movement of files.

14. Learned State counsel sought to justify the action by referring to another register relating to land acquisition case, separately maintained in the office of Commissioner, Bilaspur. Referring to an entry made in column-13, he would submit that the entry shown on page No.10 & 11, itself establish that the records of the case were actually received in the office of Commissioner Bilaspur. According to him, it was received on 29.5.2010. He would submit that entry made in one of the column records the date as 29.5.2010, meaning thereby that it was received in the office of Commissioner on 29.5.2010. Upon due consideration and perusal of the said original register, the contention of learned State counsel is liable to be rejected. This register in original, produced before this Court does not show what these columns stands for. At least in two columns, dates have been mentioned as 29.5.2010. Further, in the first column at Sr.No.13, no date has been mentioned whereas invariably in all the entries made before and after, a date has been mentioned. Further, the entries made therein did not contain any recital with regard to date on which the land acquisition records were received in the office of Commissioner, Bilaspur and the date on which, records were personally handed over to any particular officer. In the last column,

signature of one A.K. Vishwakarma has been mentioned. These entries taken together, at the most, may only lead to inference that these records were received in the office of Commissioner. In fact the petitioners do not dispute that these records were received in the office of Commissioner. His case is founded on a plea that these records were brought in the office of Commissioner as late as on 1.6.2010.

15. The specific pleading made by the petitioners in para 8.10 of the petition have remained uncontroverted. It has to be treated as admitted position that records were received in the office of Commissioner only on 1.6.2010 and not before that and even in respect of that, no entries were made in the office and the petitioners' case has to be believed in view of uncontroverted statement on affidavit made in para-8.10 in the writ petition supported by acknowledgement (Ex.P-16).
16. In view of aforesaid consideration, this Court reaches to a definite conclusion that it was neither final nor the award was approved by the Commission on 29.5.2010. Apparently, the recital contained in the Award that the Award was approved by the Commissioner is antedated and it could not have been passed on 29.5.2010. This inescapable conclusion must result in holding that Award being antedated was void.
17. It is indeed a case of fraud on power by different officials which is a serious matter. This Court is at pain to observe that in this exercise of antedating, three important office in the hierarchy of administration including the office of the SDO, Gharghoda, office of the Collector, Raigarh and office of Commissioner, Bilaspur were involved. Antedating was done only to save from the consequence as provided under Section 11-A of the Land Acquisition Act under which, if Award is not passed within two years from the date of publication of the declaration, the entire proceedings for acquisition of land shall lapse. This alone may be said to be the oblique purpose of antedating, by coming out with improbable story of so many offices involved, proposal made, approval made by different offices situated at different places, in one day.
18. The question now which arises for consideration is as to what relief can be granted to the petitioners. It is clear that the compensation amount was taken by the petitioners, though, under protest. Since the exercise of statutory power of passing Award is infected with fraud on such power, the proceedings and consequence Award are void ab initio. The

petitioners' land could not be taken away except in the manner prescribed by the law in view of Article 300-A of the Constitution of India. The provisions of Land Acquisition Act were given complete go-bye and antedated award was passed. The respondents- authority is, therefore, obliged to initiate the proceeding of land acquisition afresh. Considering that the land of petitioners has already been used in an irrigation project by the State and it is not possible to return the land, all that can be ordered is that upon drawl of appropriate proceedings according to law of the land, as in force today, compensation in accordance with law shall be assessed and payable to each of the petitioners.

Whatever amount as has already been paid to shall be obviously is labile to be adjusted. The proceedings are required to be completed expeditiously and in any case within an outer limit of six months.

19. The petitioners are also entitled to appropriate costs as they have been found to be deprived of their property by a fraudulent act. Each of the petitioners would be entitled to cost of Rs.50,000/- payable by respondent-State.
20. Present is a fit case where this Court should order taking appropriate disciplinary proceedings against the concerned SDO, Collector and Commissioner posted and working in the said office as on 29.5.2010. In case, these officers have retired from service, appropriate proceedings may be drawn in such manner, if at all they are permissible under the law. It would be open for the State to recover cost from the erring officials who were posted in the office of SDO, Collector and Commissioner as on 29.5.2010.
21. Five registers, issued from the office of Commissioner and two from the office of Collector, Raigarh which were produced before the Court in sealed cover be re-sealed and handed over to the learned Additional Advocate General after obtaining receipt for being forwarded to their respective offices.
22. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge