

IN THE HIGH COURT OF ORISSA, CUTTACK

L.A.A No.41 of 2021

In the matter of an application under section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Sujata Senapati

.....

Appellant

-Versus-

Land Acquisition Zone Officer,
Khurda Road, Boudh

.....

Respondent

For Appellant : Mr. M.K. Mohapatra, Advocate

For Respondent : Mr. G. Rout, A.S.C.

CORAM: JUSTICE SANJAY KUMAR MISHRA

JUDGMENT
13.12.2022

S.K. MISHRA,J.

1. This Appeal has been preferred against the judgment dated 24.08.2021, passed by the Presiding Officer LAR & R Authority, Berhampur, in LAR & R Case No. 86 of 2020 vide which the reference Petition under Section-64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, shortly, (RFCTLAR & R) Act, 2013, was dismissed solely on the

ground that the present Appellant received the awarded compensation amount without any protest.

2. Mr. Mohapatra, learned Counsel for the Appellant submits that the referral court has mis-directed himself in dismissing the reference petition on the ground that the Claimant/Appellant has never raised any objection in writing to the award at any point of time, which is contrary to the written objection filed by the Respondent under Annexure-2, wherein the Respondent admitted that the Appellant/Petitioner has received the compensation under protest. Further, he submits that there is no express provision under the RFCTLAR & R Act, 2013 to raise objections after passing of award by the Collector under Section-37 of the Act, 2013 except filing of reference Petition under Section-64 of the Act.

3. He submits that though the Appellant filed an Application under Section-64 of the Act, 2013 within 42 days of the receipt of the award stating therein that the award has been passed behind the back of the Appellant and subsequent thereafter, she has been noticed by the Respondent to receive the compensation amount, which compelled her to receive the same under protest and claimed for higher compensation by filing the Petition to refer the matter to the Authority for determination of the actual amount and additional amount of compensation for the acquired land, the Respondent, while denying the aforesaid pleadings in his objection, vide which it was admitted that the present Appellant/Petitioner has received the compensation under protest,

erroneously dismissed the application filed under Section-64 of the RFCTLAR & R Act, 2013.

4. Learned Counsel for the Petitioner submits that even if for the sake of argument, it is accepted that the Appellant/Petitioner has received the compensation without any protest, in view of the settled position of law, the very fact of filing an application for reference by the interested person (present Appellant) within the stipulated period of limitation will leave to an inference of fact that she never accepted the compensation without protest and the protest is very much inherent. To substantiate his argument Mr. Mohapatra relied on the judgments of the Apex Court in case of **Ajit Singh and Others v. State of Punjab and Others** reported in (1994) 4 SCC 67, **Chandra Bhan (Dead) v. Ghaziabad Development Authority** reported in (2015) 15 SCC 343, so also judgment passed by coordinate bench in case of **Bulani Swain v. Special Land Acquisition Officer M.C.I.I. Project and another** reported in (2007) SCC Online Orissa 167 : (2007) 104 CLT 460.

5. Learned Counsel for the State submits that the said judgments are not applicable, so far as the present Appeal is concerned as those judgments have been passed refereeing to the provisions enshrined under Section-18 of the Land Acquisition Act, 1894, shortly, L.A Act, 1894, whereas the impugned Order of rejection/judgment passed by the Court below is in terms of Section-64 of the RFCTLAR & R Act, 2013. Hence, the ratio resided by the apex Court, so also coordinate Bench are not applicable to the present proceeding.

6. For better appreciation, it is apt to reproduce below the Section-18(1) of the L.A. Act, 1894, so also Section-64(1) of the RFCTLAR & R Act, 2013 to demonstrate that the said provisions are almost similar to each other.

“18. Reference to Court. - (1) ***Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable,*** or the apportionment of the compensation among the persons interested.

64. Reference to Authority.-(1) ***Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable,*** the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(Emphasis supplied)

7. That apart, on bare perusal of RFCTLAR & R Act, 2013 *vis-a-vis* L.A. Act, 1894, it is crystal clear that there is no such specific

procedure or form provided under the said acts for recording the protest and the very fact of filing an application for reference by interested person within the stipulated period of limitation, will lead to an inference of fact that the interested person never accepted the compensation without protest and the protest is very much inherent. The right to file a petition for proper assessment of the market value of the land acquired is inherent in the right of ownership of a person to the property that is sought to be acquired by the State, which is the only protection granted to the owner of the land.

On a hyper-technical ground that express protest was not made, on the said basis State cannot deny the land owner, the right to seek reference to the Civil Court for a reasonable compensation. Fair administration of the State demands that they bestow objective approach to such a situation and citizens are not deprived of their property just for hyper-technical reason.

8. Further, the provisions do not prescribe any particular mode of protest. It is also nowhere postulate that the protest must be in writing. Hence, the referral Court should bear in mind the purport and purpose in reference. As the award of the Collector is nothing but an offer on behalf of the Government, the amount of compensation payable to a person, who is deprived of his property in a Welfare State under the State's right of eminent domain, a person so deprived of his property is entitled to have fair and reasonable amount of compensation with

reference to the true market value of the land as on the date of issuance of notification and the same should not be denied on mere technical plea.

9. In case of **Ajit Singh and Others** (*supra*), the apex Court held as follows:

5. Having regard to the contiguity of these lands the High Court is correct in its valuation. Besides, the date of notification, issued under Section 4 of the Act, is October 4, 1978 while Exh. R-6 is nearer to it, namely, August 16, 1978, in comparison to Exh. A-6 dated January 14, 1977. Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants.

Similarly, in case of **Chandra Bhan (Dead)** (*supra*), referring to the judgment in **Ajit Singh and Others** (*supra*), it was held as follows:

“The principal contention urged by the learned counsel for GDA was that since the compensation was accepted by the claimants without any protest, the reference was not maintainable. In our opinion, this contention is without any substance for several reasons. In *Ajit Singh v. State of Punjab*² it was held that since the appellants therein had filed an application for reference under Section-18 of the Act, it manifested their intention. Consequently, the protest against the award of the Collector was implied notwithstanding the acceptance of compensation.”

A coordinate Bench in case of **Bulani Swain** (*supra*), referring to the judgment of the apex Court in **Ajit Singh and Others** (*supra*), held as follows:

“5. The learned Counsel for the Petitioner submitted that the Petitioner filed an application for reference under Section 18 of the Act immediately after receiving the compensation amount and considering the said application the Land Acquisition Officer passed the order without giving her an opportunity of hearing. If any such opportunity would have been given to the petitioner, she would have explained that she has protested at the time of receiving compensation. The very fact that she had filed an application for reference immediately after receiving the compensation clearly shows her intention to protest was implied against the award of the Land Acquisition Officer notwithstanding acceptance of compensation. Law is well settled that at the time of deciding the question as to whether a reference can be made or not principle of natural justice should be followed. (See (1994) 4 SCC 67 , *Ajit Singh v. State of Punjab*).

6. The right to seek a reference under Section 18 of the Act is valuable right of the person whose land has been acquired and in the process of deciding an application seeking a reference to the Civil Court, the basic principles of natural justice are to be observed. As the petitioner has filed an application for reference under Section 18 of the Act that will manifest that intention. xxx”

10. In addition to the settled position of law, the objection filed by the Land Acquisition Zonal Officer, as at Annexure-2, clearly demonstrates that the Appellant received the awarded compensation amount under protest. In view of the said admitted facts on record, so also the judgments of the apex Court as well as this Court as detailed

above, the impugned judgment dated 24.08.2021, passed in LAR & R Case No.86 of 2020, is hereby set aside and the matter is remanded back to the Court below for re-adjudication of the said case in accordance with law giving opportunity to the parties.

11. As the referral case is of the year 2020, the referral Court is directed to conclude the proceeding in LAR & R Case No.86 of 2020 at the earliest, preferably within a period of six months from the date of communication of the certified copy of the Judgment.

12. Accordingly, the Appeal stands disposed of.

Orissa High Court, Cuttack
The 13th December, 2022/Banita

Sd/-

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S.K. MISHRA, J.

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Junior Stenographer