

Assam Industrial Development Corporation Ltd. Vs. Gillapukri Tea Company Ltd. & Ors. Etc.

Civil Appeal No(s). 251-252 of 2021 arising out of S.L.P. (C) No. 14266-14267 of 2019
2021-01-01 | S. Abdul Nazeer, J.
Repository ID: F2J-C-1905

Full judgment text

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S. Abdul Nazeer, J.

1. Leave granted.

2. Assam Industrial Development Corporation Limited has filed these appeals challenging the judgment and order in Writ Appeal Nos. 219 & 220 of 2017 dated 14.03.2019 whereby the Division Bench of the High Court of Guwahati has dismissed the said appeals confirming the order of the Learned Single Judge in Review Petition Nos. 79 & 80 of 2016.

3. Brief facts necessary for disposal of these appeals are as under.

4. In order to set up a plastic park, the Government of Assam decided to acquire a portion of the land belonging to the first respondent situated at Gillapukri Tea Estate, Village Gillapukri, Tinsukia, Assam. The Government of Assam, in exercise of the power vested in it under Section 4 of the Land Acquisition Act, 1894 (for short 'L.A. Act') issued a notification dated 04.08.2008, which was published in the Assam Gazette on 08.08.2008, expressing its intention to acquire 1,166 biggas, 1 katha, 14 lessas of land of the aforesaid Gillapukri Tea Estate.

The proceedings being L.A Case No. 1 of 2008 were also initiated for the purpose of acquisition before the District Collector, Tinsukia and, for that purpose, declaration dated 17.06.2009 in terms of Section 6(1) of the L.A. Act was published in the Assam Gazette. The appellant was appointed as the nodal agency to deal with the acquisition proceedings vide appointment letter dated 24.06.2009.

5. The Deputy Commissioner and Collector, District Tinsukia, addressed a letter dated 30.01.2010 to the Principal Secretary to the Government of Assam, Revenue Department to seek approval of the award and the land acquisition estimate which were enclosed therewith in the prescribed Form No. 15 and Form No. 5 respectively. In response, the Commissioner and Secretary to the Government of Assam, Revenue Department, addressed a letter dated 05.03.2010 to the Deputy Commissioner whereby approval, as sought vide the aforesaid letter dated 30.01.2010, was granted. As will be seen in the following paragraphs, the controversy between the parties before us is whether this letter was approval of both the award and the estimate or only the estimate.

Thereafter, the owner of the land, i.e. the first respondent herein, addressed a letter dated 05.05.2010 to the Commissioner seeking reference of the matter to the District Judge, Tinsukia, under Section 18 of the L.A. Act for reassessment of the compensation awarded to it. It is contended that other similar applications were also received from different families at different levels.

It is further contended that in the letter dated 05.05.2010, the first respondent admitted that it had received a sum of Rs. 4.95 crores on 08.04.2010 by a crossed cheque immediately after the letter for approval dated 05.03.2010 was passed by the Commissioner. It is also contended that vide possession certificate dated 21.05.2010, possession was delivered to the Deputy Commissioner, and thereafter on 11.06.2010, possession of the land was handed over to the appellant by the Deputy Commissioner.

6. The first respondent has not disputed the issuance of the preliminary and final notification. However, it is contended that no award was approved pursuant to the letter dated 05.03.2010. It is the first respondent's case that vide this letter, only the land acquisition estimate was approved and not the award. This, in the first respondent's view, led to lapsing of the proceedings and initiation of fresh acquisition proceedings in 2012 which culminated in approval of the award for the first time on 04.01.2014.

For this purpose, a fresh notification under Section 4 of the L.A. Act was published on 07.08.2012 and a declaration was also issued on 20.11.2012. Thereafter, the Commissioner issued a notice purportedly under Section 9 of the L.A. Act to the persons interested in the land to submit their objections and claims. On 04.01.2014, a fresh award was passed and the Deputy Secretary, Government of Assam, Revenue Department addressed a letter dated 06.01.2014 to the Deputy Commissioner conveying approval of the said fresh award.

The first respondent contends that a comparison of this approval letter dated 06.01.2014 with the approval letter dated 05.03.2010 under the original acquisition proceedings would clearly indicate that under the letter dated 05.03.2010, only the estimate was approved and not the award.

Since the award under the fresh proceedings was approved and made after coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'), the first respondent approached the Deputy Commissioner to seek a fresh award by determining the compensation payable in terms of Section 24(1)(a) of the 2013 Act.

7. The first respondent has denied the claim of the appellant that an award had been approved on 05.03.2010 and has mainly rested its case on the letter dated 21.07.2012 addressed by the Deputy Secretary, Government of Assam, Revenue Department to the Deputy Commissioner wherein the Deputy Secretary admitted to not having drawn the award within two years from the date of publication of the declaration under the original acquisition proceedings. The first respondent has also relied upon the letter dated 06.01.2014 sent by the Deputy Secretary to the Government of Assam which, as per the first respondent, suggests that no award had been approved under the original acquisition proceedings.

8. On the contrary, the State Government has taken a stand that an award was approved by the State Government on 05.03.2010 and that the same had been made within two years of the declaration. It is also contended that pursuant to the award, possession of the land was taken from the first respondent by the acquiring authority and the land was then handed over to the appellant. It was also submitted that the entire compensation had been paid to the first respondent. The State Government contends that the need for an additional award arose only because some of the land owners of the land initially proposed to be acquired were left out in the original award that was approved on 05.03.2010.

9. Appearing for the appellant Shri Jayant Bhushan, learned senior counsel has submitted that the award had been passed in Form No. 15 of the Assam Land Acquisition Manual and was approved by the State on 05.03.2010. Possession of the land was also handed over by the first respondent to the acquiring authority on 21.05.2010 and was thereafter handed over to the appellant on 11.06.2010. Shri Bhushan submitted that the compensation was also received by the first respondent and, in fact, the first respondent had also sought enhancement of the compensation allowed under the said award.

It is Shri Bhushan's submission that once the land stood vested in the State, it could not have been acquired again. Therefore, any issuance of fresh notification under Section 4 and 6 or even preparing of a fresh award by the State Government in respect of the first respondent's land will be non est or infructuous. He further submits that the letters dated 21.07.2012 and 06.01.2014 relied upon by the High Court could not have had the effect of re-acquiring the land in question since it already stood vested in the State Government.

10. Learned counsel appearing for the State of Assam has supported the stand of the appellant.

11. However, Shri Senthil Jagadeesan, learned counsel for the first respondent submits that the aforesaid two letters would conclusively establish that no approval to an award was granted by the State Government under the original acquisition proceedings. It is his submission that the two aforesaid letters dated 21.07.2012 and 06.01.2014 which were relied upon by the Division Bench of the High Court would clearly establish the same. Therefore, he prays for dismissal of these appeals.

12. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. Having regard to the contentions urged, the crucial question for consideration is whether an award in respect of the first respondent's land was approved by the State Government on 05.03.2010. Needless to say, if the award was not approved on 05.03.2010, but rather on 06.01.2014 as contended by the first respondent, then the 2013 Act will be applicable and the first respondent will be eligible to receive compensation in accordance therewith.

13. To determine whether the award had indeed been approved on 05.03.2010, we first have to examine the letter dated 30.01.2010 through which the State Government's approval of the award was sought by the Deputy Commissioner. It is uncontested that vide this letter both the award and the land acquisition estimate were sent to the State Government for its approval. It is pertinent to note that the award was in the format of Form No. 15 which is the statutorily prescribed form for a land acquisition award under the Assam Land Acquisition Manual.

This is also true of the land acquisition estimate which was as per the prescribed format of Form No. 5. As such, the only further action required of the State Government was to approve the award which was already in the statutorily prescribed form. This is precisely what was done vide the letter dated 05.03.2010 issued by the Deputy Secretary to the Government of Assam, Revenue Department.

14. This letter dated 05.03.2010 was issued in response to the letter dated 30.01.2010, whereunder approval of the award and the land acquisition estimate was sought. While this letter only expressly mentions the land acquisition estimate and not the award, a combined reading of this letter with the preceding letter dated 30.01.2010 and the subsequent conduct of the parties, including the first respondent, make it evident that the award stood approved by this letter of 05.03.2010. It is noteworthy that copies of both the letters of 30.01.2010 and 05.03.2010 were also addressed to the Industries & Commerce Department of the Government of Assam.

Vide the initial letter of 30.01.2010, the said Department was requested to arrange balance funds for making payment to the land owners as per the award. In furtherance of this, vide the letter of 05.03.2010, the said Department was directed to place the balance estimated fund at the disposal of the Deputy Commissioner. We find strength in the appellant's submission that if the award which had been sent for approval alongwith the estimate had not been approved by the said letter dated 05.03.2010, this direction for making funds for payment to landowners available to the Deputy Commissioner would not have been called for. This view is fortified by the subsequent conduct of the parties, as particularly evinced by the below mentioned actions.

15. It is undisputed that the award amount was indeed made available to the Deputy Commissioner and the awarded sum was duly paid to and received by the first respondent. Not only did the first respondent receive compensation pursuant to the award, it in fact sought enhancement of the same vide its reassessment petition dated 05.05.2010 u/s 18 of the L.A. Act addressed to the Deputy Commissioner.

It is also not contested that vide possession certificate dated 21.05.2010, the first respondent handed over possession to the Deputy Commissioner and that on 11.06.2010 possession of the land was ultimately handed over to the appellant by the Deputy Commissioner. What clearly emerges from the above is that after the letter dated 05.03.2010, it was the common belief of the State Government, the appellant as well as the first respondent that the award had been approved and that now actions subsequent thereto viz. payment and receipt of compensation, handover of possession, seeking reassessment of the compensation were needed to be undertaken.

16. It is clear from the materials on record that the plastic project for which the subject Land Acquisition was initiated has already been developed on the acquired land including boundary wall, entrance gate, laying of roads, drains and electrical distribution networks, electrical substation, industrial sheds and warehouses.

17. In the above scenario, the arguments of the first respondent are untenable. Once the award has been approved, compensation has been paid thereunder and possession of the land has been handed over to the Government, acquisition proceedings could not have been reopened, including by way of re-notification of the already acquired land under Section 4 of the L.A. Act by the Government. Contrary to the first respondent's contention, the question of lapsing under Section 24 of the L.A. Act could not have arisen in this case once the award was approved on 05.03.2010.

18. So far as the second set of acquisition proceedings are concerned, without addressing the factual veracity of the State Government's contention that the second award was meant to be only in respect of landowners not covered by the original award, we are of the opinion that it would not have been possible for the State Government to initiate acquisition proceedings in respect of already acquired land such as that of the first respondent herein. This position has been affirmed by this Court in D. Hanumanth SA & Ors. v. State of Karnataka and Ors.1 in the following terms:

"17. Even otherwise, if land already stands acquired by the Government and if the same stands vested in the Government there is no question of acquisition of such a land by issuing a second notification for the Government cannot acquire its own land. The same is by now settled by various decision of this Court in a catena of cases.

18. In *State of Orissa v. Brundaban Sharma*,² this Court has held that the Land Acquisition Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition. This position was reiterated in a subsequent decision of this Court in *Meher Rusi Dalal v. Union of India*³ in paras 15 and 16 of the said judgment, this Court has held that the High Court clearly erred in setting aside the order of the Special Land Acquisition Officer declining a reference since it is settled law that in land acquisition proceedings the Government cannot and does not acquire its own interest. While laying down the aforesaid law, this Court has referred to its earlier decision in *Collector of Bombay v. Nusserwanji Rattanji Mistri*⁴

The recent decision of the Constitution Bench of this Court in *Indore Development Authority v. Manoharlal and Ors.*⁵ has also affirmed that once possession is taken by the State, the land vests absolutely with the State and the title of the landowner ceases. We find no reason to deviate from this settled position of law and thus are unable to agree with the High Court's reliance on the letters dated 21.07.2012 and 06.01.2014 to nullify the original award and allow fresh acquisition proceedings in respect of the first respondent's land which had already been acquired and has been under the possession of the appellant since 11.06.2010. 19.

Therefore, for the foregoing reasons, the appeals succeed and are accordingly allowed. The orders impugned herein are set aside. Pending applications, if any, shall stand disposed of. The parties shall bear their own costs.

1 (2010) 10 SCC 656.

2 1995 Supp (3) SCC 249.

3 (2004) 7 SCC 362.

4 AIR 1955 SC 298 : (1955) 1 SCR 1311.

5 (2020) 8 SCC 129.

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