

Supreme Court of India

Collector Of Land Acquisition & ... vs M/S Andaman Timber Industries ... on 22 February, 2016

Author: V G Gowda

Bench: V. Gopala Gowda, C. Nagappan

|Non-Reportable |

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (C) NO. 888 OF 2015
IN
CIVIL APPEAL NO. 1810 OF 2009

COLLECTOR OF LAND ACQUISITION & ORS. ...APPELLANTS
Vs.

M/S ANDAMAN TIMBER INDUSTRIES & ORS.RESPONDENTS

WITH

REVIEW PETITION (C) NO. 890 OF 2015
IN

I.A. NO. 7 OF 2014
IN

CIVIL APPEAL NO. 1810 OF 2009

AND

REVIEW PETITION (C)..... D. NO.1093 OF 2015
IN

I.A. NO. 7 OF 2014

IN

CIVIL APPEAL NO.1810 OF 2009

J U D G M E N T

V. GOPALA GOWDA, J.

Review Petition (C) No. 888 of 2015:

Delay condoned in filing the Review Petition.

2. This Review Petition is filed seeking review of the impugned judgment and order dated 28.11.2013 passed by this Court in Civil Appeal No. 1810 of 2009, whereby the said appeal was dismissed with a direction to the Review Petitioners- Appellants to make and publish an award in respect of the remaining suit land within four months from the date of the impugned judgment and pay compensation to Respondent No.1. herein. I.A. No. 7 of 2014 was filed by the Review Petitioners-Appellants praying that the order dated 28.11.2013 be modified and suitable direction be given to the appellants with regard to the remaining extent of 5.33 hectares of land regarding which no acquisition proceeding was considered necessary by the Andaman and Nicobar Administration. The I.A. was disposed of by this Court vide order dated 11.12.2014, wherein liberty was granted to the Review Petitioners-Appellants to file Review Petition before this Court within six weeks, with further direction that the same would be heard in open court and decided on merits of the case.

3. As the facts of the case are already stated in the decision in Civil Appeal No. 1810 of 2009 and I.A. 7 of 2014, for the sake of brevity, the same need not be reiterated herein. The following contentions were advanced by the learned senior counsel appearing on behalf of the parties in support of their case:

4. Mr. Mukul Rohatgi, the learned Attorney General, appearing on behalf of the Review Petitioners-Appellants urged this Court to consider reviewing the impugned judgment by placing strong reliance upon the lease deed dated 01.09.1960, executed in respect of the property covered in the acquisition notifications between Krishi Gopalan Silpa Sikshalaya and M/S Andaman Timber Industries Ltd. (the first respondent herein). The learned Attorney General also placed reliance upon the license deed dated 02.01.1990 executed in Form AG-3 under Sections 146 (ii) and 164 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 (hereinafter referred to as the "Regulation, 1966"), by way of which licensing rights were granted to Respondent No.1 in respect of Survey Nos. 22/3 and 23 measuring 8.86 hectares for commercial purposes, subject to the general provisions of the Regulation, 1966 and the Rules made thereunder. The learned Attorney General submits that it is a privilege conferred upon Respondent no.1, and no absolute interest in the land is created by virtue of the said license. The license period was for an initial period of 30 years, with the option of a further renewal for a maximum period of 60 years. Further, the said license could be terminated at the will of the Review Petitioners- Appellants.

5. The learned Attorney General further places strong reliance upon the notifications under Sections 4(1) and 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "L.A. Act") issued by the Union Territory of Andaman and Nicobar Administration dated 23.07.2002 and 24.07.2002 respectively, to show that the building structures, trees and crops standing on the suit land as described in the Schedule to the said notifications are required for the public purpose of development of port related facilities.

6. The learned Attorney General further contends that the Award No. 5- 39/LA/ADM/2002, passed by the Land Acquisition Collector on 26.09.2002 was infact contrary to the aforementioned acquisition notifications. The notifications classify the building structures, trees and crops standing

on the land mentioned in the Schedule including Survey Nos. 22/3 and 23 as commercial properties. Further, the Land Acquisition Collector erred in not noticing the fact that the acquisition notifications specifically mention that Respondent No.1 is a licensee and not the owner of the land, and thus erred in determining the market value of the land as the same is not legally permissible in law for the reason that the land in question belongs to the government, on which the licensing rights have been granted in respect of the land in question for the purpose of establishing timber industry, therefore, no interest upon the said land has been created in favour of Respondent No.1. The learned Attorney General contends that the determination of market value by the Land Acquisition Collector in respect of the land in question should not have been done and is a mistake of fact. It is on the basis of this determination of market value that the Writ Petition No. 197 of 2004 was filed by Respondent No. 1 before the Calcutta High Court, Circuit Bench at Port Blair, claiming compensation in respect of the remaining land which was covered under the acquisition notifications referred to supra. The determination of market value of land which belongs to the government was erroneous on the part of the Land Acquisition Collector. The acquisition of land which belongs to the government is impermissible in law, as has been held by this Court in a catena of cases, including *The Collector of Bombay v. Nusserwanji Rattanji Mistri & Ors.*[1], *Special Land Acquisition v. M.S. Seshagiri Rao & Anr.*[2] and *Meher Rusi Dalal v. Union of India & Ors.*[3]. The learned Attorney General contends that not bringing this particular factual aspect of the matter to the notice of the High Court and this Court at the time of examination of the claim made by Respondent No.1 in the writ proceedings and the Civil Appeal has resulted in a serious error in law. Hence, this Court can review its impugned judgment passed in the Civil Appeal.

7. On the other hand, Mr. C.A. Sundaram, learned senior counsel appearing on behalf of Respondent No.1, M/S Andaman Timber Industries Ltd. contends that the impugned judgment does not suffer from any infirmity, as the same is based upon the acquisition notifications and the Award of the Land Acquisition Collector. The acquisition notifications issued under Sections 4(1) and 17(1) of the L.A. Act, expressly mention that the total extent of the land along with the building structures, the trees and crops, if any standing thereon, described in the schedule is 8.86 hectares. The learned senior counsel contends that the aforementioned notifications prove that Respondent No.1 has an interest in the land which has been acquired in the instant proceedings. Therefore, Respondent No.1 is entitled for grant of compensation in respect of the land, which claim has rightly been accepted by the High Court and affirmed by this Court in the impugned judgment.

8. The learned senior counsel draws our attention to Section 38 of the Regulation, 1966, which provides that all the lands in the Union Territory of the Andaman and Nicobar Islands are vested absolutely in the Government and save as provided by or under this Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner whatsoever except by a conveyance executed by, or under the authority of the Government. Section 141 of the Regulation, 1966 classifies tenants into four categories, namely (i) occupancy tenants (ii) non-occupancy tenants

(iii) grantees and (iv) licensees. Sections 142 to 146 of the Regulation, 1966 further define all the four categories of tenants. Section 146 of the Regulation confers upon the Chief Commissioner the power to grant licenses. The learned senior counsel contends that the license granted by the Chief

Commissioner in favour of Respondent No.1 to establish timber industry is a perpetual license, otherwise called as the Lease and Conveyance Deed as per 'Exh. P-2', dated 02.01.1990 executed by the Review Petitioners-Appellants in favour of Respondent No.1. The learned senior counsel further contends that a careful reading of Section 162 of the Regulation, 1966 makes it abundantly clear that the interest of a tenant in his holding or any part thereof shall be extinguished only in the situations as enumerated under Clauses (a) to (g) of Section 162.

Clause (d) of the said Section reads as under:

“(d) when the land comprised in the holding has been acquired under any law for the time being in force, relating to acquisition of land.”

9. The learned senior counsel submits that licensing rights have been granted in favour of Respondent No.1, is entitled to use the same for maximum period of 60 years for commercial purpose. The learned senior counsel further places strong reliance on the various Forms prescribed under the Regulation, 1966, namely Form AG 1, - for Licence to occupy land for house site, Form AF for Deed of Grant of Land for Cultivation of Long Lived Crops, Form AG-2 for License to occupy Agricultural Land, Form AG-3 for License to occupy Land for Non-Agricultural Purpose. Since the said Forms do not prescribe the period of licensing right after expiry of the period stipulated in the license deed in the prescribed form, it clearly support the contention advanced on behalf of Respondent No.1 that since the license is perpetual in nature, Respondent No.1 has acquired an interest upon the land in question.

10. With reference to the said rival legal contentions advanced on behalf of both the parties, we have examined the case of the Review Petitioners- Appellants to assess whether the impugned judgment is required to be reviewed.

11. Under the Regulation, 1966, the ownership of the land vests absolutely in the Government, except by a conveyance executed by the Chief Commissioner. In the instant case, it is an undisputed fact that the license has been granted under Section 146 (ii) of Regulation, 1966 under Form AG3. The said prescribed Form does not stipulate the period of licensing right. In the absence of stipulation of period, the contention urged on behalf of Respondent No.1 that it is a perpetual license in respect of the acquired land is a tenable contention, particularly having regard to the classes of tenants defined under Section 141 of the Regulation, 1966 extracted supra. Respondent No.1 has acquired interest in the land in dispute, in terms of the notifications under Sections 4(1), 4(2) read with Section 17(1) of the L.A. Act, wherein the plots and parcels of land along with building structures, the trees and crops have been clearly mentioned. Such an interest could only be extinguished in terms of Section 162 of the Regulation, 1966. That is to say that the right of Respondent No.1 could be extinguished only in terms of a notification to acquire the land. That was done by the Lieutenant Governor of Andaman and Nicobar Islands, who issued notifications to acquire the land, building structures including the standing trees and crops. The Award has been passed on a part of this land. The Award on the remaining 6 hectares of land was not passed by the Land Acquisition Collector, even though the entire land including the building structures, the trees and crops had been acquired for the aforesaid purpose of establishing industry. Not awarding

compensation as provided under Section 11 of the L.A. Act amounts to deliberate omission in discharge of statutory duty by the Collector, despite the statutory right vesting in Respondent No.1 for award of compensation in lieu of losing the holding rights over the land on account of acquisition of the same by the Government. Therefore, Respondent No.1 rightly approached the High Court praying that the Writ of Mandamus be issued to the Review Petitioners-Appellants to pass an Award of compensation in its favour in respect of the remaining land. The High Court granted the same after consideration of all the relevant facts, documents and the rival legal contentions urged on behalf of the parties. The Review Petitioners-Appellants, aggrieved of the impugned judgment and order granting relief in favour of Respondent No.1, challenged the correctness of the same before this Court in Civil Appeal. This Court rightly dismissed the Civil Appeal, affirming the impugned judgment therein after considering the undisputed fact that the interest upon the land in question has been acquired by the Lieutenant Governor of Andaman and Nicobar Islands for the purpose of establishment of industry.

12. The contention urged on behalf of the Review Petitioners-Appellants that the Respondent No.1 did not acquire interest in the land in respect of which licensing right given for establishing timber industry and Section 146 of Regulation, 1966 is a privilege traceable to Section 52 of the Indian Easement Act, 1882 is misplaced for the reason that Sections 38, 141, 145 and 146 read with Section 162 of the Regulation, 1966 and the prescribed Forms for different purposes, clearly show that the licensees are also tenure holders as per the classification under Section 141 of the Regulation, 1966, as has been rightly contended by Mr. C.A. Sundaram, the learned senior counsel appearing on behalf of M/S Andaman Timber Industries Ltd.

13. The contention urged by the learned Attorney General that the license is a privilege, granted in favour of Respondent No.1 to utilise the land for construction of building and establishing timber industry is wholly untenable in law for the reason that licensee is one of the classes of tenants as specified under Section 161 of the Regulation, 1966. The same is perpetual in nature and hence the contention urged on behalf of the Review Petitioners-Appellants that since no interest in favour of Respondent No.1 has been created upon the land in question vests in the Government is wholly untenable in law. The learned Attorney General placed reliance upon the judgment in *Saraswati Devi v. Delhi Development Authority & Ors.*[4] wherein the four Judge Bench judgment of this Court in the case of *Nusserwanji Rattanji Mistri* (supra) has been adverted to and distinguished, and adverted to *Delhi Administration v. Madan Lal Nangia*[5] wherein this Court held that merely because the properties vest in the Custodian as an evacuee property, it does not mean that the same cannot be acquired for some other purposes. In the case of *Saraswati Devi* (supra), this Court observed that at the time of acquisition of evacuee property under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, if a private person has an interest in such property, then the interest of the private person can be acquired under the L.A. Act even though the land is owned by the Government.

14. In view of the aforesaid statements of law laid down by this Court in *Saraswati Devi* (supra) after adverting to the four Judge Bench judgment in *Nusserwanji Rattanji Mistri* case (supra), holding that even if the land absolutely vests with the State, interest of private individuals can certainly be created on the same by executing conveyance in their favour. The said interest of the Respondent

No.1 has rightly been recognised by the Collector of Land Acquisition after issuing notifications which is traceable to Section 3(b) of the L.A. Act which states as hereunder :- “3(b). The expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

15. Further, the learned Attorney General in support of his submissions places reliance upon the Division Bench judgment of the Mysore High Court in the case of M.S. Seshagiri Rao & Anr v. Special Land Acquisition & Rehabilitation Officer, Sagar[6], which judgment has been affirmed by this Court in the case of Special Land Acquisition & Rehabilitation Officer, Sagar v. M.S. Seshagiri Rao & Anr.[7], wherein it was held as under :

“3. The Government of Mysore did not purport to exercise the power reserved by the terms of the grant, and adopted the procedure prescribed by the Land Acquisition Act. The High Court observed, relying upon the decision of the House of Lords in Attorney-General v. De Kayser's Royal Hotel Ltd.(1) that the Government could not, after adopting the procedure prescribed by the Land Acquisition Act, seek to resort to the conditions of the grant and claim that no compensation for acquisition of the land was payable. It is true that after obtaining possession of the land in pursuance of statutory authority under Section 17, the Government of Mysore could not seek to exercise the option conferred by the terms of the grant. But on that account in assessing compensation payable to the grantees, existence of the condition which severely restricted their right could not be ignored. The grantees were entitled to compensation for the, land of which the ownership was vested in them. The measure of that compensation is the market value of the land at the date of the notification, and the measure of that market value is what a willing purchaser may at the date of the notification under S.4 pay for the right to the land subject to the option vested in the Government.

4. The High Court also placed reliance upon the judgment of the Madras High Court in The State of Madras v. A.Y.S. Parisutha Nadar. In that case the main question decided was whether it was open to a claimant to compensation for land under acquisition to assert title to the land notified for acquisition as against the State Government when the land had become vested in the Government by the operation of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. On behalf of the State it was contended that once an estate is taken over by the State in exercise of its powers under the Estates Abolition Act, the entire land in the estate so taken over vested in the State 'in absolute ownership, and that no other claim of ownership in respect of any parcel of the land in the estate could be put forward by any other person as against the State Government without obtaining a ryotwari patta under the machinery of the Act. The High Court rejected that contention observing that the Government availing itself of the machinery under the Land Acquisition Act for compulsory acquisition and treating the subject-matter of the acquisition as not belonging to itself but to others, is under an obligation to pay compensation as provided in the Act, and that the Government was incompetent in the proceeding under the Land Acquisition. Act to put forward its own title to the property sought to be acquired so as to defeat the rights of persons entitled to the compensation. The propositions so broadly stated are, in our judgment, not accurate. The Act contemplates acquisition of land for a public purpose. By acquisition of land is intended the

purchase of such interest outstanding in others as clog the right of the Government to use the land for the public purpose. Where the land is owned by a single person, the entire market value payable for deprivation of the ownership is payable to that person: if the interest is divided, for instance, where it belongs to several persons, or where there is a mortgage or a lease outstanding on the land, or the land belongs to one and a house thereon to another, or limited interests in the land are vested in different persons, apportionment of the compensation is contemplated. The Act is, it is true, silent as to the acquisition of partial interests in the land, but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When land is notified for acquisition for a public purpose and the State has no interest therein, market value of the land must be determined and apportioned among the persons entitled to the land. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest, subject to the clog.

5. We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the ownership of the land is subject to a restrictive covenant in favour of the State, the State is estopped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of that interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restrictive interest.”

16. The aforesaid judgments have no application to the fact situation and the reliance placed upon the same by the learned Attorney General is misplaced. For the reasons stated supra, no case is made out in this Review Petition for review of the impugned judgment passed in Civil Appeal No. 1810 of 2009 by this Court as the same does not suffer from any error of law which requires interference by this Court. Hence, the review petition must fail and is accordingly dismissed.

Review Petition (C) No. 890 of 2015 in I.A. No. 7 of 2014 in C.A. No. 1810 of 2009

17. In view of dismissal of Review Petition (C) No. 888 of 2015, this review petition is disposed of.

Review Petition (C).....D. No. 1093 of 2015 in I.A. No. 7 of 2014 in C.A. No. 1810 of 2009

18. Permission to file Review Petition is granted.

19. We have heard Mr. Ashok K. Parija, the learned senior counsel appearing on behalf of the ATI Union Non Political Labour Union, who adopts the submissions advanced by Mr. C.A. Sundaram, the learned senior counsel appearing on behalf of M/s Andaman Timber Industries Ltd. in Review Petition (C) No.888 of 2009. Mr. Ashok K. Parija further submits that the respondent Company be directed that the amount of compensation which will be received by it must be paid to the workmen towards the arrears of their wages and terminal benefits etc., as the same amounts to first charge on the property acquired under Section 549A of the Companies Act, 1956. Accordingly, his submissions

are taken on record and it is open for the ATI Union to work-out the workmen's right to get the arrears including terminal benefits out of the compensation amount that will be determined by the Collector in respect of the acquired property. The Review Petition is accordingly disposed of.

All pending applications in the Review Petitions are disposed of.

.....J .

[V. GOPALA GOWDA]

.....J .

[C. NAGAPPAN]

New Delhi,
February 22, 2016

[1]

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| [2] | 1955 SCR (1) 1311 | |
| | | [3] |
| [4] | 1968 SCR (2) 892 | |
| | | [5] |
| [6] | (2004) 7 SCC 362 | |
| | | [7] |
| [8] | (2013) 3 SCC 571 | |
| | | [9] |
| [10] | (2003) 10 SCC 321 | |
| | | [11] |
| [12] | AIR 1965 Mysore 222 | |
| | | [13] |
| [14] | AIR 1968 SC 1045 | |