

Court No. - 21

Case :- WRIT - C No. - 18397 of 2018

Petitioner :- Chandrabhan Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Jitendra Nath Sharma, Indresh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Kshitij Shailendra, J.

1. The instant petition is directed against the order dated 08.07.2018 passed by respondent No. 2, i.e., Collector/District Magistrate, Sant Kabir Nagar rejecting the application of the petitioner dated 15.09.2017 for referring the dispute relating to enhancement of compensation to the Authority in terms of Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The petitioner has also challenged the award of the Collector dated 26.12.2014.

2. The facts which are not in dispute are that the subject land of the petitioner bearing plot No. 530 situated at Village-Khalilabad, District-Sant Kabir Nagar was acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894"). The possession of the land was taken on 06.06.2012 followed by award dated 26.12.2014. The petitioner challenged the award in Writ - C No. 7555 of 2016 on the ground that while making the award, the principles contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013") had not been followed. The said contention was not accepted as the award did make reference to the provisions of the Act of 2013, however, it was left open to the petitioner to seek reference under Section 64 of the Act of 2013. The petitioner, therefore, by means of application dated 15.09.2017, applied for the enhancement as per provisions of Section 64 of the Act of 2013. The said application has been rejected by the impugned order.

3. Indisputably, after the filing of the said application by the petitioner, a report was submitted by A.D.M. Finance and Revenue dated 16.12.2017 that at the relevant time, the Authority was not in existence, having not been constituted as per provisions of the Act. Therefore, it would not be possible to make the reference. It is evident from the said report that the State-respondents, at the relevant time, had no objection in referring the dispute to the Authority, but for the fact that it had not been constituted by that time.

4. However, by the impugned order, the District Magistrate has rejected the

application observing that possession of the subject land was taken on 06.06.2012 and award was made on 26.12.2014. As possession was taken under the Act of 1894 and when the Act of 2013 was not applicable, therefore, the application for redetermining the compensation on the basis of new Act of 2013 is without any merits.

5. Learned counsel for the petitioner submitted that the impugned order suffers from manifest error of law inasmuch as the provisions of the Act of 2013 were fully applicable regard being had to the fact that no award was made until 01.01.2014. He further submits that even as per the observations made by this Court while deciding the previous writ petition of the petitioner, the respondents were under obligation to refer the dispute to the Authority as per Section 64 of the Act of 2013. It is also urged that the Collector wrongly treated the application filed by the petitioner as an application to redetermine the compensation, although, it was for making reference to the Authority as per provisions of Section 64 of the Act of 2013.

6. Learned counsel for the petitioner has placed reliance on a Division Bench judgment of this Court in **Sabita Sharma vs. State of U.P.**, 2023 (3) AWC 3062, wherein it is held that even in case of acquisition under the Act of 1894, in case award has not been made under Section 11 of the Act of 2013, then all the provisions of the Act of 2013 relating to determination of the compensation would become applicable. He submits that it is also the mandate of Section 24(1)(a) of the Act of 2013.

7. Learned Standing Counsel appearing on behalf of the State-respondents submits that for the acquisition in question, the estimated amount of compensation was duly deposited by the Government much before the award was made. He submits that a notice was given to the petitioner to withdraw the said amount and all other affected persons, therefore, the provisions of the new Act would not apply.

8. Section 24(1) of the new Act stipulates as follows:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."

9. Clause (a) of Sub-section (1) of Section 24 clearly mandates that where no award under Section 11 of the Act of 1894 has been made, then, all provisions of the new

Act of 2013 relating to determination of compensation would apply. The applicability of the said provision is not dependent upon the fact as to whether possession has been taken or not under the provisions of the old Act. The new Act became effective from 01.01.2014. In the instant case, the award having been made on 26.12.2014, i.e., after the new Act of 2013 came into force, the provisions of Section 24(1)(a) would be applicable and the respondents were to make the award as per the principles relating to award of compensation contained in the Act of 2013.

10. Additionally, while disposing of the previous writ petition of the petitioner, this Court permitted the petitioner to seek reference under Section 64 of the Act of 2013. The previous order of the Writ Court has attained finality and, therefore, it is not open to the State respondents to contend that the reference under Section 64 of the Act of 2013 is not maintainable.

11. As far as the contention of learned State counsel that 80% of the estimated amount of compensation was deposited by the Government and the affected persons were given notices to withdraw the said amount, the same, in our opinion, will be of no consequence in so far as the right of the petitioner to seek reference is concerned. In the instant case, the respondents while issuing notification under Section 6 of the Act also invoked the power under Section 17 (1) of the Act, 1984 entitling them to take possession even before award is made. It is in view thereof that possession was taken on 6.6.2012 even before making of the award. In such an eventuality, Section 17 (3A) makes it imperative that 80% of the estimated amount of compensation is tendered to the persons interested. The said amount is taken into account while determining the amount of compensation required to be tendered under Section 31 in pursuance of the award made under Section 11 of the Act of 1894. Therefore, even if the State had deposited/tendered 80% of the estimated amount of compensation as per provisions of old Act, it would have no effect on the right of the petitioner to seek reference under Section 64 of the Act of 2013.

12. Consequently, the impugned order declining to refer the application of the petitioner relating to enhancement of compensation to the Authority on the ground that possession had been taken under the old Act is not sustainable and is hereby quashed. The Collector, i.e., respondent No. 2 is directed to refer the dispute to the Authority within three weeks from the date of communication of the instant order. The Authority will proceed to decide the reference, in accordance with law, as expeditiously as possible.

13. In the result, the petition stands allowed to the extent indicated above.

(Kshitij Shailendra, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 10.1.2024/Mukesh Pal