

JAYAMMA & ORS.

v

THE DEPUTY COMMISSIONER, HASSAN DIST., HASSAN
AND ORS.

(Civil Appeal Nos. 4345-4429 of 2013)

MAY 6, 2013.

[G.S. SINGHVI AND KURIAN JOSEPH, JJ.]

Constitution of India, 1950:

Arts. 226 and 142 – Writ petition seeking direction to Land Acquisition Collector to complete acquisition proceedings – Held: Whether to acquire a particular property or not is for the Government to decide — Court cannot compel Land Acquisition Collector to pass awards in respect of land acquisition proceedings which had already lapsed – In the instant case, since owners have suffered damages, they are entitled to compensation – In order to do complete justice, it is ordered that each of the petitioners shall be paid a lump sum amount of Re.1 lakh towards damages for the hardships they have undergone on account of seepage resulting in dampness and cracks to their residential buildings – Land Acquisition Act, 1894 – ss. 4(1), 6, 48 and 36.

Art. 226 – Writ petition seeking direction to Land Acquisition Collector to act in terms of letter issued by Secretary to Government – Held: Is wholly misconceived — If a subordinate authority in Government does not act in terms of direction or instruction issued by superior authority, it is not for court to order compliance, if it is not otherwise governed by a statutory procedure.

Agricultural land of the appellants had been acquired for an irrigation canal. Their houses came within the seepage affected area of the canal. Proceedings to acquire the property were initiated, but were not

- A completed. The High Court in writ petitions directed the Land Acquisition Collector to pass awards. In writ appeals the stand of the State authorities was that the hardship of the writ petitioners was being resolved and for that purpose acquisition was not necessary. The
 B Division Bench of the High Court disposed of the appeals accordingly.

Dismissing the appeals, the Court

- C HELD: 1.1. Whether to acquire a particular property or not is for the Government to decide. It is not within the jurisdiction of the court to compel the Government to acquire any property, otherwise than as per the Land Acquisition Act. Court cannot compel the Land Acquisition Collector to pass awards in respect of the
 D land acquisition proceedings which had already lapsed. In the instant case, the declaration u/s 6 had already lapsed by the time the writ petitioners approached the High Court. This crucial factual position has not been taken note of by the High Court. [para 8-9] [250-F-H; 251-
 E F-G]

- F 1.2. Besides, under the scheme of the Land Acquisition Act, the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken, at any stage prior to the passing of the award. In case the owner, in consequence of such withdrawal, has suffered any damages, he is entitled to compensation in that regard u/s 48 of the Act. In the case on hand, there is no question of any such Notification on withdrawal since the proceedings had already lapsed.
 G Admittedly, no possession had been taken. Therefore, s. 36 does not apply. [para 8-9] [250-G-H; 251-A-F]

- H 1.3. Even otherwise, the writ petition was wholly misconceived. The prayer is for direction to the Land Acquisition Collector to act in terms of letter issued to

him by the Secretary to the Government. If a subordinate authority in the Government does not act in terms of the direction or instruction issued by the superior authority, it is not for the Court to compel that subordinate authority to comply with such instruction or direction, if it is not otherwise governed by a statutory procedure. [para 10] [252-C-E]

1.4. However, the fact remains that the residential houses of the appellants are in the seepage affected area coming under the Canal. It has to be noted that the agricultural land of the petitioners had already been acquired and what remained was only the residential part. Petitioners had the grievance that on account of the seepage, there was dampness resulting also in cracks on the building. In view of the miseries suffered by these poor persons, it will not be just and fair to relegate them to workout their remedies before civil court for damages, at this distance of time. Therefore, in the interests of justice and in order to do complete justice, it is ordered that each of the appellants shall be paid a lump sum amount of Re.1 lakh. However, it is made clear that the respondents are at liberty, if so required or warranted in public interest, to acquire the said properties. [para 11] [252-F-H; 253-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4345-4429 of 2013.

From the Judgment and Order dated 09.12.2011 of the Division Bench of High Court of Karnataka at Bangalore in Writ Appeal No. 16390 of 2011 & Writ Appeal Nos. 16601-684 of 2011.

Shantha Kumar Mahale for the Appellants.

V.N. Raghupathy, Naveen R. Nath, Lalit Mohini Bhat, Darpan K.M., for the Respondents.

The Judgment of the Court was delivered by

A **KURIAN, J.1.** Leave granted.

B 2. Whether the High Court, under Article 226 of the Constitution of India, can compel the State to complete the acquisition proceedings initiated under Section 4(1) of the Land Acquisition Act (for short 'the Act'), is one of the short questions arising for consideration in these cases. Another short question is – Whether writ can be issued compelling the Land Acquisition Collector/Officer to implement the instruction issued to him by the Government otherwise than under the procedure under the Act?

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SHORT FACTS

D 3. The writ petitioners/appellants herein having their property in Mukundur village, Hassan Taluk in Karnataka State approached the High Court for following directions:

E “Issue Writ of Mandamus directing Deputy Commissioner and Land Acquisition Officer to pass the award as per the directions of the Principal Secretary, Revenue Department, Government of Karnataka and the decision of State Government dated 19.11.2009.”

4. The letter dated 19.11.2009 from the Principal Secretary to Government, Revenue Department, addressed to the Deputy Commissioner, Hasan District, reads as under:

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“Sir,

G Sub:-Framing award in respect of Mukundooru, Gaddebindenahalli and Chikkagondanahalli villages which are acquired as seepage affected villages at Hassan District - Reg.

Ref:- Your Letter No. BhuSwaSa-150:2008-09 dated 11.09.2009.

H With regard to the above subject, your attention is

attracted towards your letter. As it is already decided in the order No. RD 120 REH 1992 dated 15.04.1999 to shift these villages with regard to seepage, due to Hemavathi Irrigation canal project, it was already informed in the earlier letter dated 16.03.1999 that, there is no necessity to submit the same afresh before high level committee presided by the Regional Commissioner and further to frame award in respect of these villages.

In furtherance, it is clearly ordered by the Hon'ble Chief Minister to frame award with regard to Mukundooru village and disburse compensation amount, it is already informed in the letter dated 30.07.2009 bearing No. RD 113 BhuSwaHa 2009 to initiate action as per the said order. Wherefore, I am directed to inform you to initiate action as already directed by the Governor (*sic* Government)."

5. The petitioners' case was that on account of the seepage from the distributory canal of the reservoir, they had suffered serious damage to their houses and, on their representations, the Government had already taken a decision to acquire the property. The land acquisition officer, according to the petitioners, had on 15.04.1999, initiated proceedings under Section 4 of the Land Acquisition Act and, thereafter, Section 6 Declaration was issued. However, the proceedings got lapsed since no award was passed within the period prescribed under Section 11A of the Act.

6. It is seen as per Annexure-P2 – Notification dated 27.10.2007, that the Land Acquisition Collector had initiated proceedings under Section 4(1) of the Act for acquiring the lands of the petitioners and it was followed by Section 6 declaration dated 15.10.2008 published on 23.10.2008. Since, no serious steps were taken to complete the acquisition by passing the awards, it appears, the petitioners approached the High Court under Article 226 of the Constitution of India in 2011 for a direction to compel the land acquisition collector to act

A as per the instruction issued by the Government and to
 complete the acquisition proceedings. The learned Single
 Judge, by order dated 07.03.2011 disposed of the writ petitions
 directing the land acquisition collector and the State to pass
 awards in the case of the petitioners and a few others within
 B four weeks from the receipt of the Order. There was also a
 further direction that the petitioners should vacate the property
 if they were still in possession and that they should handover
 possession prior to the receipt of the compensation.

C 7. Aggrieved, land acquisition collector, State and others
 filed Writ Appeals leading to the impugned Judgment dated
 09.12.2011. It was contended that the hardships on account
 of seepage could be resolved by constructing 'a drainage
 canal' and acquisition for that reason was not necessary and
 not in contemplation also. The Judgment of the Single Judge
 D was set aside and the Appeals were disposed of with the
 direction to complete the canal project within three months. It
 was also clarified that the petitioners were free to initiate
 appropriate legal action in case there was still seepage. Thus,
 aggrieved, the writ petitioners filed the Special Leave Petitions.

E 8. Under Section 11A of the Land Acquisition Act, the
 Collector is to pass the award under Section 11 within a period
 of two years from the date of the publication of the declaration
 and, in case no award is made within that period, the entire
 proceedings for acquisition of the land would lapse. In the
 F instant case, the declaration under Section 6 dated 15.10.2008
 published on 23.10.2008 had already lapsed by the time the
 writ petitioners had approached the High Court. This crucial
 factual position, unfortunately, has not been taken note of by the
 G High Court. The Court cannot compel the land acquisition
 collector to pass awards in respect of the land acquisition
 proceedings which had already lapsed. That apart, under the
 scheme of the Land Acquisition Act, the Government is at liberty
 to withdraw from the acquisition of any land of which
 H possession has not been taken at any stage prior to the

passing of the award. In case the owner, in consequence of such withdrawal, has suffered any damages, he is entitled to compensation in that regard, under Section 48 of the Act, which reads as follows:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

9. In the case on hand, there is no question of any such Notification on withdrawal since the proceedings had already lapsed. Admittedly, no possession had been taken. Therefore, Section 36 does not apply. Whether to acquire a particular property or not is for the Government to decide. It is not within the jurisdiction of the Court to compel the Government to acquire any property, otherwise than as per the Land Acquisition Act. No doubt, the High Court exercises judicial review of administrative action or inaction. But having regard to the various facts and circumstances or factors, it is for the Government to consider at the permissible stage as to whether a particular property is to be acquired or whether an Award is to be passed pursuant to proceedings already initiated under

A Section 4(1) of the Act. The Act is a complete code as far as such decisions are concerned and Government is well within their jurisdiction to act as per the scheme provided under the Act. Merely because proceedings under Section 4 of the Land Acquisition Act has been initiated, it is not required under law to acquire the land. It is not within the jurisdiction of the Court to compel the Government to pass an Award pursuant to Notification issued under Section 4(1) of the Act even when it is followed by the declaration.

C 10. Even otherwise, the writ petition was wholly misconceived. The prayer is for direction to the land acquisition collector to act in terms of letter issued to the land acquisition collector by the secretary to the Government. If a subordinate authority in the Government does not act in terms of the direction or instruction issued by the superior authority, it is not for the Court to compel that subordinate authority to comply with the instruction or direction issued by the superior authority, if it is not otherwise governed by a statutory procedure. Court is not the executing forum of the instruction issued by the Government to its subordinates. That jurisdiction lies elsewhere under the scheme of the Constitution. Therefore, on that count also, the writ petition was liable to be dismissed.

F 11. Yet with all these, the fact remains that the residential houses of the petitioners are in the seepage affected area in Mukundur village coming under 6th District Minor Hemavathi Left Bank Canal. Despite decades long efforts made by the petitioners, it appears even the cement concrete lining to the canal has been done only recently and that too in order to avoid the acquisition for which twice notifications had already been issued. It has to be noted that the agricultural land of the petitioners had already been acquired and what remained was only the residential part. Petitioners had the grievance that on account of the seepage, there was dampness resulting also in cracks on the building. In view of the miseries suffered by these poor persons, we are of the view that it will not be just and fair

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to relegate them to workout their remedies before the civil court for damages, at this instance of time. Therefore, in the interests of justice and in order to do complete justice, we order that each of the petitioners shall be paid a lump sum amount of Re.1 lakh each towards damages for the hardships they have already undergone on account of seepage resulting in dampness and cracks to their residential buildings. The respondents 7/8 shall see that the amount as above is deposited in the bank account of the respective petitioner within three months. We, however, make it clear that this Judgment shall not stand in the way of the respondents, if so required or warranted in public interest, acquiring the disputed lands.

12. Subject to the above, the appeals are dismissed. No costs.

R.P.

Appeals dismissed.