2022 INSC 1074

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 6778 - 6780 OF 2022

Bharat Petroleum Corporation Ltd. (BPCL) & Ors. ...Appellant(s)

Versus

Nisar Ahmed Ganai & Ors. ...Respondent(s)

With

CIVIL APPEAL NOS. 6781 - 6783 OF 2022

J U D G M E N T

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 06.10.2021 passed by the High Court of Jammu & Kashmir and Ladakh, at Jammu in respective writ petitions preferred by the private respondents herein – original petitioners whereby the appellants herein – original respondents have been directed to determine the compensation of the acquired lands in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act, 2013"), the appellants herein –

original respondents have preferred present appeals.

2. The facts leading to the present appeals in a nut-shell are as under:

2.1 That, the lands in question were sought to be acquired under the provisions of the State Land Acquisition Act, 1990 (hereinafter referred to as "State Act of 1990"). The notification under Section 4 of the State Act of 1990 was issued on 15.11.2016. The lands in question were sought to be acquired for the appellants – beneficiary. That thereafter declaration under Section 6 of the State Act of 1990 was issued on 12.11.2018. The land owners – original petitioners filed the respective petitions before the High Court challenging the proceedings initiated under the J&K Land Acquisition Act SVT 1990 with the following prayers: -

A. CERTIORARI; so as to quash the proceedings initiated by respondents u/s 4,6,9 & 9-A and Section 17 of J & K Land Acquisition Act, SVT 1990 for the acquisition of land for relocation of petroleum Depots from Channi Himmat near Railway Station to Villages Pargalta and Khana Chargal, Tehsil and District Jammu.

B. MANDAMUS; so as to command and direct the

respondents to de-notify the land sought to be acquired in villages Pargalta and Kanna Chargal, Tehsil and District Jammu for re-location of Petroleum Depots.

C. PROHIBITION; so as to restrain the respondents from taking the possession of land falling under various Khasra numbers of aforesaid villages u/s 17 of J&K Land Acquisition Act.

2.2 That, during the pendency of the writ petitions before the High Court, the State Act of 1990 came to be repealed. When the aforesaid writ petitions came up for hearing before the High Court, the learned Counsel appearing on behalf of the original writ petitioners submitted that the petitioners would be satisfied, if instead of quashing the land acquisition proceeding, determination of compensation is made in accordance with the provisions of Section 24 of the Act, 2013.

2.3 It was the case on behalf of the original writ petitioners before the High Court that as neither the possession of the lands in question have been taken over nor the award has been declared even under the State Act of 1990, the original

writ petitioners shall be entitled to compensation of acquired land in accordance with the provisions of Section 24(1) of the Act, 2013.

2.4 The aforesaid prayer was opposed by the appellants on the ground that as the acquisition proceedings have been initiated under the State Act of 1990, Section 24(1) of the Act, 2013 shall not be applicable at all. It was submitted on behalf of the appellants that in view of Section 6 of the General Clauses Act, 1897 read with sub-clause (13) of Clause 2 of the Jammu & Kashmir Reorganization (Removal of Difficulties) Order, 2019 issued vide S.O. No.3912(E) of 2019 dated 30.10.2019 of the Ministry of Home Affairs (Department of J & K Affairs) the repeal of the Act shall not affect the rights, privileges, obligations or liabilities acquired, accrued or incurred under any law so repealed and that any investigation, legal proceeding or remedy may be instituted, continued and enforced as if Jammu & Kashmir Reorganization Act, 2019 has not been passed. Therefore, it was submitted on behalf of the appellants that award in respect of the acquisition in question has to be made in accordance with the provisions of the State Act of 1990 and Section 24 of the Act, 2013 would not be applicable.

2.5 By the impugned judgment and order the Division Bench of the High Court has allowed the said writ petitions and has directed the appellants – original respondents to determine the compensation of the acquired lands in accordance with the provisions of the Act, 2013.

2.6 Feeling aggrieved and dissatisfied with the common judgment and order passed by the High Court directing the appellants to determine and pay the compensation of the acquired lands in accordance with the provisions of the Act, 2013, the original respondents – appellants herein, for whose benefit the lands have been acquired, have preferred the present appeals.

3. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case, the High Court has erred in directing the appellants to determine and pay the compensation under the provisions of Section 24 of the Act, 2013.

3.1 It is further submitted that in view of Clause 2(13) of the Order, 2019 read with Section 6 of the General Clauses Act,

the rights, liabilities, and obligations acquired, accrued or incurred under the Repeal Law vis. State Act of 1990 stands saved and would continue under the said Act.

3.2 It is further submitted by Shri Mehta, learned Solicitor General appearing on behalf of the appellants that even otherwise considering Section 24(1) of the Act, 2013, with respect to the acquisition under the State Act of 1990, Act, 2013 shall not be applicable at all. It is submitted that Section 24 of the Act, 2013 shall be applicable only in a case where the acquisition under the provisions of Land Acquisition Act, 1894 have been initiated. Heavy reliance is placed on the decision of this Court in the case of **Bangalore Development Authority & Anr. vs. The State of Karnataka & Ors.** rendered in M.A. No.1614-1616 of 2019 in M.A. No.1346-1348 of 2019 in Civil Appeal Nos.7661-7663 of 2018.

3.3 It is further submitted by Shri Mehta, learned Solicitor General appearing on behalf of the appellants that even otherwise the High Court has erred in holding that as the award was not declared and the possession was not taken over, Section 24 of the Act, 2013 shall be applicable.

3.4 It is further submitted that the High Court has failed to appreciate that the award could not be passed on account of stay order granted by the High Court. It is submitted that therefore non-passing of the award which was due to the stay granted by the High Court cannot be a ground to apply Section 24 of the Act, 2013.

Making the above submissions it is prayed to allow the present appeals.

4. Present appeals are vehemently opposed by learned Counsel Sunil Fernandes appearing on behalf of the respondents herein – original writ petitioners.

4.1 It is submitted that in the present case, as neither the possession of the lands in question have been taken over nor the compensation has been paid as the award was not declared, no error has been committed by the High Court in directing to pay the compensation under the Act, 2013.

4.2 It is further submitted by the learned Counsel appearing on behalf of the original writ petitioners that in the present case neither Clause 2(13) of the Jammu & Kashmir

Reorganization (Removal of Difficulties) Order, 2019 nor section 6 of the General Clauses Act, 1897 shall be applicable.

4.3 It is submitted that reliance placed by the appellants on the decision of this Court in the case of Bangalore Development Authority & Anr. (Supra) is wholly misconceived, as the same shall not apply to the facts of the instant case. It is submitted that in the said judgment it was held that the repeal of the Land Acquisition Act, 1894 would not affect / lapse the land acquisition proceedings initiated under the Bangalore Development Act, 1976, inasmuch as the provisions of the former Act had been 'incorporated' into the latter Act and therefore, had independent existence. It is submitted that in the said decision the view taken by this Court was on the premise that since the governing statute, i.e., the Bangalore Development Act, 1976 had not been repealed, there was no occasion of applicability of the Act, 2013. It is submitted that in the present case, J & K Act which was *pari materia* to the Land Acquisition Act, 1894 stands repealed and Act, 2013 has come into force with respect to the J & K with effect from 31.10.2019 on enactment of the Jammu & Kashmir Reorganization Act,

2019.

4.4 It is further submitted that in view of the plain language implied in Section 24 of the Act, 2013 i.e., if at the time of commencement of the Act, 2013, no award has been made under the old Act, then all provisions under the new Act (Act, 2013) relating to determination of compensation shall apply. It is submitted that therefore the intention of the legislature to ensure that the proceedings under the old Act did not lapse merely due to the coming into force of the new Act. However, at the same time, the intention is to give benefit of the liberal provisions of the Act, 2013 to the land owners as well. It is submitted that therefore the High Court has rightly held that in case an award has been made under the J&K Act before its repeal, then the right of compensation of the land owners would certainly have been determined in accordance with the J & K Act only. However, where no award has been passed under the J & K Act before its repeal and consequently no right to compensation had been matured, neither clause 2(13) of the Jammu and Kashmir Reorganization (Removal of Difficulties) Order, 2019 nor Section 6 of the General Clauses Act shall be employed to nullify the express provision contained in Section 24(1) of

the Act, 2013 insofar as it provides that where no award is passed under the old / repealed Act, the provisions of enhanced compensation under the Act, 2013 would apply while not affecting the land acquisition proceedings under the old / repealed law as such.

4.5 Now, so far as non-passing of the award on account of the stay order dated 14.12.2018 is concerned, it is submitted that as such the order dated 14.12.2018 was only directing the parties to maintain status quo with regard to the possession and the High Court did not pass any interim order restraining the authorities from declaring the award. It is submitted that even the order of status quo was in some of the writ petitions and did not extend to other lands. It is submitted that despite the same, no award was passed.

4.6 In the alternative it is submitted by the learned Counsel appearing on behalf of the original writ petitioners that before the High Court the land acquisition proceedings were challenged on number of grounds and to pay the enhanced amount of compensation under Section 24(1)(a) of the Act, 2013 was an alternative prayer due to non-declaration of the award under Section 11 of the State Act of 1990. It is

submitted that in view of the alternative relief prayed for by the original writ petitioners, the High Court did not go into the merits of the submissions of the original writ petitioners with respect to quashing of the land acquisition proceedings and therefore, to that extent the issue is yet to be considered. It is submitted that in case this Court takes the view that the provisions of the Act, 2013 shall not be applicable and that the original land owners are not entitled to enhanced compensation under Section 24(1)(a) of the Act, 2013, in that case, the matters may be remanded to the High Court to decide the writ petitions on other grounds.

5. We have heard Shri Tushar Mehta, learned Solicitor General appearing on behalf of the appellants and Shri Sunil Fernandes, learned Counsel appearing on behalf of the respondents herein – original writ petitioners.

5.1 Having gone through the impugned common judgment and order passed by the High Court, the High Court has directed the appellants herein to determine and pay to the original owners the compensation under the Act, 2013 on the ground that no award under the State Act of 1990 has been published and/or declared. While passing the impugned

common judgment and order, the High Court has relied upon Section 24(1)(a) of the Act, 2013. Section 24(1)(a) of the Act, 2013 reads as under:

> *"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,-*
> *(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."*

On fair reading of Section 24(1)(a) of the Act, 2013, it provides that notwithstanding anything contained in Act, 2013, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of Act, 2013 relating to the determination of the compensation shall apply. Section 24(1)

of the Act, 2013 speaks about the land acquisition proceedings initiated under the Land Acquisition Act, 1894. In the present case, the lands in question have been acquired under the provisions of the State Land Acquisition Act, 1990. Therefore, the acquisition of the lands in question is not under the Land Acquisition Act, 1894. It cannot be disputed that prior to the enactment of the Jammu & Kashmir Reorganization Act, 2019 and promulgation of the Jammu & Kashmir (Removal of Difficulties) Order, 2019, the Land Acquisition Act, 1894 was not applicable at all so as far as the State of Jammu & Kashmir is concerned. It is only on the enactment of the Jammu & Kashmir Reorganization Act, 2019, Act, 2013 shall be made applicable. It is the case on behalf of the original writ petitioners that as the provisions of the State Act of 1990 are *pari materia* to the Land Acquisition Act, 1894 and therefore, Section 24(1)(a) of the Act, 2013 shall be applicable. The aforesaid cannot be accepted. The language of Section 24(1)(a) of the Act, 2013 is very clear and unambiguous. It talks about the land acquisition under the provisions of the Land Acquisition Act, 1894 only and it does not speak about any other *pari materia* provision of different statutes.

5.2 At this stage the decision of this Court in the case of Bangalore Development Authority & Anr. (Supra) is required to be referred to. In the said decision it is specifically observed and held that the Act, 2013 repeals only the Land Acquisition Act, 1894 and not any other Central or State enactment dealing with the acquisition and therefore, what is sought to be saved under the Act, 2013 is only acquisitions which have been initiated under the Land Acquisition Act, 1894 and not those acquisitions which have been initiated under any other Central or State enactment. In paragraphs 19 and 23, this Court had observed and held as under:

> *"19. The 2013 Act repeals only the LA Act and not any other Central or State enactment dealing with acquisition. Therefore, what is sought to be saved under Section 24 of the 2013 Act is only acquisitions which had been initiated under the LA Act and 13 not those acquisitions which had been initiated under any other Central or State enactment. The expression contained in Section 24 of the LA Act cannot be given extensive interpretation by adding words into the provision, in the absence of the provision itself giving rise to any such implication. We are of the view that 2013*

Act would not regulate the acquisition proceedings made under the BDA Act.

23. In view of the above, the Learned Judge of the High Court in Sri Sudhakar Hegde (supra) was not justified in holding that the provisions of LA Act that are made applicable to the BDA Act are in the nature of legislation by reference. The learned Judge has also erred in holding that in view of the repeal of LA Act by coming into force of 2013 Act, the corresponding provisions of 2013 Act would regulate acquisition proceedings under the BDA Act and that this would include determination of compensation in accordance with 2013 Act. It is hereby clarified that since LA Act has been incorporated into the BDA Act so far as they are applicable, the provisions of 15 2013 Act are not applicable for the acquisitions made under the BDA Act. Therefore, the judgment of the learned Single Judge of the High Court in Sri Sudhakar Hegde (supra) and other connected matters is hereby overruled."

In view of the above binding decision of this Court, we are of the firm view that the provisions of the Act, 2013 shall not be applicable with respect to the acquisition under the J & K Act, 1990.

5.3 Even otherwise considering clause 2(13) of the Order, 2019 read with Section 6 of the General Clauses Act under which the rights, liabilities, privileges, obligations acquired, accrued, or incurred under the repealed laws stands saved and would be continued under those Acts (in the present case the Act, 1990), it is to be noted that Order, 2019 is subsequent to the Act, 2013. Therefore, it is to be presumed that while enacting the Order, 2019 and providing Clause 2(13) of the Order, 2019, the legislature was conscious of the provisions of the earlier Act (Act, 2013). Under the circumstances also, with respect to the lands acquired under the State Act of 1990, Section 24(1)(a) of the Act, 2013 shall not be applicable at all.

5.4 Even otherwise, it is required to be noted that in some of the writ petitions there was an order of *status quo* may be with respect to the possession. It is to be noted that the notification under Section 4 and declaration under Section 6 of the State Act of 1990 was a common notification / declaration. Therefore, there was impediment on the part of the authority in declaring the award. The original writ petitioners cannot be permitted to take benefit of the order of *status quo* obtained by some of the original writ petitioners

and thereafter to contend that as the award has not been declared they shall be entitled to the enhanced amount of compensation under the provisions of the Act, 2013. In the case of ***Indore Development Authority Vs. Manoharlal and Ors.; (2020) 8 SCC 129***, it is observed and held by this Court that: -

(i) Lapse of acquisition takes place only in case of default by the authorities acquiring the land, not caused by any other reason or order of the court;

(ii) If it was not possible for the acquiring authorities, for any reason not attributable to them or the Government, to take requisite steps, the period has to be excluded;

(iii) In case the authorities are prevented by the court's order, obviously, as per the interpretation of the provisions such period has to be excluded;

(iv) The intent of the Act, 2013 is not to benefit landowners only. The provisions of Section 24 by itself do not intend to confer benefits on litigating parties as such, while as per Section 114 of the Act, 2013 and Section 6 of the General Clauses Act the case has to be litigated as per the provisions of the Act, 1894;

(v) It is not the intendment of the Act, 2013 that those who have assailed the acquisition process should get benefits of higher compensation as contemplated under Section 24;

(vi) It is not intended by the provisions that in case, the persons, who have litigated and have obtained interim orders from the Civil Courts by filing suits or from the High Court under Article 226 of the Constitution should have the benefits of the provisions of the Act, 2013 except to the extent specifically provided under the Act, 2013;

(vii) In cases where some landowners have chosen to take recourse to litigation and have obtained interim orders restraining taking of possession or orders of status quo, as a matter of practical reality it is not possible for the

authorities or the Government to take possession or to make payment of compensation to the landowners. In several instances, such interim orders also have impeded the making of an award;

(viii) The litigation initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants in a straightjacket manner. In case there is no interim order, they can get the benefits they are entitled to, not otherwise. Delays and dilatory tactics and sometimes wholly frivolous pleas cannot result in benefitting the landowners under sub-section (1) of Section 24 of the Act, 2013;

(ix) Any type of order passed by this Court would inhibit action on the part of the authorities to proceed further, when a challenge to acquisition is pending;

(x) Interim order of stay granted in one of the matters of the landowners would cause a complete restraint on the authorities to proceed further to issue declaration;

(xi) When the authorities are disabled from performing duties due to impossibility, it would be a sufficient excuse for them to save them from rigour of provisions of Section 24. A litigant may have a good or a bad cause, be right or wrong. But he cannot be permitted to take advantage of a situation created by him by way of an interim order passed in his favour by the Court at his instance. Although provision of Section 24 does not discriminate between landowners, who are litigants or non-litigants and treat them differently with respect to the same acquisition, it is necessary to view all of them from the stand point of the intention of the Parliament. Otherwise, anomalous results may occur and provisions may become discriminatory in itself;

(xii) The law does not expect the performance of the impossible;

(xiii) An act of the court shall prejudice no man;

(xiv) When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse;

(xv) The Court can under its inherent jurisdiction *ex debito justitiae* has a duty to mitigate the damage suffered by the

defendants by the act of the Court;

(xvi) No person can suffer from the act of Court and an unfair advantage of the interim order must be neutralised;

(xvii) No party can be permitted to take shelter under the cover of Court's order to put the other party in a disadvantageous position;

(xviii) If one has enjoyed under the Court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24 as the State authorities would have acted and passed an award determining compensation but for the Court's order.

Therefore also, the original writ petitioners – land owners shall not be entitled to enhanced amount of compensation under Section 24(1)(a) of the Act, 2013 on the ground that as the award has not been declared they shall be entitled to compensation under the Act, 2013.

6. In view of the above and for the reasons stated above and our specific finding that with respect to the lands acquired under the provisions of the J & K Act, 1990 Section 24(1)(a) of the Act, 2013 shall not be applicable and even otherwise as observed hereinabove on merits also as the award could not be declared due to the pendency of the writ petitions before the High Court and the order of *status quo*, the High Court has committed a serious error in directing the appellants to pay the amount of compensation under the

Act, 2013. To that extent the impugned common judgment and order passed by the High Court is unsustainable, both on facts as well as on law.

6.1 However, at the same time, as it is reported that the acquisition proceedings were challenged on other grounds also and the prayer to pay the compensation under the Act, 2013 was an alternative prayer, which has been granted by the High Court and therefore, the High Court did not go into the merits of the submissions made on behalf of the original land owners with respect to the quashing of the land acquisition proceedings on other grounds, the matters are to be remanded to the High Court to decide the writ petitions afresh in accordance with law and on its own merits on the other grounds if any, challenging the land acquisition proceedings under the State Act of 1990.

7. In view of the above and for the reasons stated above, all these appeals succeed. The impugned common judgment and order dated 06.10.2021 passed by the High Court allowing the writ petitions and directing the appellants to pay to the original writ petitioners / original land owners the compensation as per the Act, 2013 is hereby quashed and

set aside. As the High Court has not decided the writ petitions on merits on other grounds with respect to quashing of the land acquisition proceedings, all the writ petitions are remitted back to the High Court to decide and dispose of the said writ petitions afresh in accordance with law and on its own merits so far as other grounds with respect to the quashing of the land acquisition proceedings, which shall be dealt with by the High Court in accordance with law and on its own merits. However, the issue with respect to the applicability of the Act, 2013 is concluded and shall not be reopened by the High Court and it is observed and clarified that the High Court shall consider on merits other submissions, if any raised in the writ petitions, with respect to quashing of the land acquisition proceedings only.

Present appeals are allowed accordingly to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

………………………………….J.
[M.R. SHAH]

………………………………….J.
[KRISHNA MURARI]

NEW DELHI;
OCTOBER 12, 2022