JAIPUR DEVELOPMENT AUTHORITY

v.

RADHEY SHYAM AND ORS.

FEBRUARY 17, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Land Acquisition Act, 1894: Sections 11, 18, 31(3) and (4):

Land Acquisition Officer/Collector—Power to allot land in lieu of compensation for acquired land—Held Collector has no power to allot land under acquisition in lieu of compensation—Award granting land in lieu of compensation held nullity—Objection to such an award could be raised at execution stage.

The Government of Rajasthan issued a Notification dated June 9, 1960 under section 4(1) of the Rajasthan Land Acquisition Act, 1953 acquiring 552 Bighas and 8 Biswas of land for planned development of Jaipur city. Later by an award dated January 9, 1961 land belonging to one C was excluded. The respondents purchased part of the land from C. Subsequntly, the Land Acquisition Officer made an award on January 21, 1974 deducting the value of Rs. 2131.68 towards the value of land allotted to each of the respondents in lieu of compensation awarded to them. In the reference made under Section 18 of the Land Acquisition Act, 1894, the Civil Court confirmed the award of the Land Acquisition Officer but corrected certain double deduction of certain amounts made therein. Thereafter, some persons filed writ petitions for grant of land in lieu of compensation and the respondents filed an execution to enforce the award of the Civil Court. The appellant-Development Authority raised objection as to the executability of the award for allotment of the sites made in lieu of compensation. The Execution Court partly upheld that objection but, on revision by Respondents the Division Bench of the High Court held that it was not permissible for the appellants to raise the objection execution of the award.

In appeals to this Court it was contended on behalf of the appellant-Development Authority that the Land Acquisition Officer had no jurisdiction to allot part of the acquired land, in lieu of compensation and that, therefore, the award to that extent was a nullity; objection to which could

A be raised at any stage including execution of that award.

For the respondents it was contended that (i) under Section 31(4) of the Land Acquisition Act, the Land Acquisition Officer had power to enter into an arrangement with the land owners which power is without any limitation though similar limitation was found in sub-Section (3) of Section 31. Therefore, the award directing allotment of the land in lieu of compensation was perfectly legal; and (ii) having allowed the award to become final, it was not open to the appellants to raise the contention of lack of jurisdiction or nullity of the award of the Collector on the execution side.

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Allowing the appeals, the Court

HELD : 1. In the scheme of the Act, the Land Acquisition Officer has no power to create an encumbrance or right in the erstwhile owner to claim possession of a part of the acquired land in lieu of compensation. Such power of the Land Acquisition Officer if is exercised would be self defeating and subversive to public purpose. [7-D]

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2. A reading of sub-section (4) of Section 31 indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation it does not empower him to give any land in lieu of compensation. Sub-section (3) expressly gives power "only to allot any other land in exchange". In other words, the land under acquisition is not liable to be allotted in lieu of compensation except under Section 31(3), that too only to a person having limited interest. [6-G, H]

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2.1. It is not correct to say that while awarding compensation the Collector has a higher power than the limited power given under sub-section (3) of Section 31 because it would run counter to the scheme envisaged thereunder and would result in defeating the public purpose. [7-A]

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3. Section 11 excludes by implication any power other than that given to the Collector by Section 11. [5-E]

4. What is executable is only an award under Section 26(2) namely, the amount awarded or the claims of the interests determined of the respective persons in the acquired lands. Therefore, the decree cannot

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incorporate any matter other than the matters determined under Section 11 or those referred to and determined under Section 18 and no other. Since the Land Acquisition Officer has no power or jurisdiction to allot land in lieu of compensation, the decree even, if any, under Section 18 to the extent of any recognition of the directions in the award for the allotment of the land given under Section 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly, the execution proceeding directing delivery of possession of the land as contained in the award is, invalid, void and inexecutable. It is set aside. [7-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4209 and 4210 of 1992.

From the Judgment and Order dated 20.12.91 of the Rajasthan High Court in S.B.C.R. Nos. 646/90 & 591 of 1991.

Aruneshwar Gupta for the Appellant.

H.N. Salve, Atul Y. Chitale, Ravikesh Sinha, J.R. Grover, Ashok Sharma and Mrs. Suchitra A. Chitale for the Respondents.

The following Order of the Court was delivered :

These appeals arise from the order of the High Court of Rajasthan at Jaipur Bench dated December 20, 1991 made in Civil Revision Petition Nos. 591/91 and 646/90. The facts lie in a short compass. The Government of Rajasthan exercising the power under Sec. 4(i) of the Rajasthan Land Acquisition Act, 1953 for short 'the Act' published on June 9, 1960 to acquire 552 Bighas and 8 Biswas of land at village Bhojpura Chak Sudershanpura, which is now part of Jaipur city, for planned development of that city. An award made on January 9, 1961 excluded 4 bighas, 1 biswas of land belonging to one Chotelal. Subsequently the Land Acquisition Officer made an award on January 21, 1974 after respondents Radhey Shyam, Naval Kishore and Shyam Sunder had purchased a part of the land from Chotelal by registered sale deed. In that award the Land Acquisition Officer deducted the value of Rs. 2131.68 towards the value of 266.6 sq. yards of land allotted to each of the Respondents in lieu of compensation awardable to them. The possession of the acquired land was taken on December 2, 1980 and it was handed over to the appellant - Jaipur

A Development Authority. In the reference made under Sec. 18, the Civil Court confirmed the award of the Land Acquisition Officer but corrected certain double deduction of certain amounts made therein. Thereafter some persons filed writ petitions for grant of land in lieu of compensation and the respondents filed an execution to enforce the award passed by the B Civil Court on the reference under Sec. 18. The appellant raised an objection as to the executability of the award for allotment of the sites made in lieu of compensation. The Executing Court partly upheld that objection but on revision by Respondents the Division Bench held that it was not permissible for the appellants to raise the objection in execution of the award and accordingly allowed the revision. Thus these appeals by C Special leave.

The contention of the appellants is that the Land Acquisition Officer had no jurisdiction to allot part of the acquired land, in lieu of compensation and that, therefore, the award to that extent was a nullity, which D objection could be raised at any stage including in execution of that award as upheld by the Civil Court.

Shri Harish Salve, learned senior counsel appearing for the respondents contended that under Sec. 31(4) of the Act, the Land Acquisition Officer had power to enter into an arrangement with the land owners which E power is without any limitation, though similar limitation was found in Sub-s. (3) of Sec. 31. Therefore, the award directing allotment of the land in lieu of compensation was perfectly legal. Having allowed the award to become final, it is no longer open to the appellant to raise the contention of lack of jurisdiction or nullity of the award of the Collector as affirmed F by Reference Court, on the execution side. He further contended that it was the policy of the Government to allot the plots in lieu of compensation and it was allowed in respect of others. The respondents having foregone the right to receive compensation in respect of those lands, it is no longer open to the appellant to contend that the Land Acquisition Officer had no power to allot lands in lieu of compensation.

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Having considered and given our anxious consideration to the contentions of learned counsel on either side, the question which emerges is, whether the Collector had power under any provision of the Act to award land in lieu of compensation from the acquired lands or any other lands. H His power is traceable to Section 11 of the Land Acquisition Act. He is

required to enquire into matters mentioned therein to determine the market value thereof and to make the award. Section 11 postulates that the Collector shall proceed to enquire into the objection which any person interested in the land may make to (I) the measurement of the land acquired or (II) respective interests of the persons claiming the compensation and he shall make the award as to :

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or on whose claims, he has information whether or not they have respectively appeared before him.

Therefore, the power expressly given to the Land Acquisition Officer is only in respect of enquiry into the true area of the land acquired and determination of the compensation which in his opinion should be allowed to the acquired land and to apportionment of the compensation among the claimants who appeared before him or persons known or believed to be interested in the land whether appeared or not. It excludes by implication any power other than that given to the Collector by Section 11. The award is only an offer of the above matters. On making an award under section 12(2), the Collector shall give a notice of his award to the persons interested who are not personally present or represented through their counsel at the time of making the award. Under Section 18 any person interested an who had not accepted the award may, by written application to the Collector, require him to make a reference with respect to (I) the measurement of the land or (II) the amount of compensation, (III) the person to whom it is payable or (IV) the apportionment of the compensation among the persons interested. On reference so made the Civil Court is enjoined to enquire, as court of Original Jurisdiction, into the questions so referred. The claimants, the Collector and the person interested are entitled to adduce evidence in proof or disproof of the referred questions and the civil court needs to decide those questions and no more. On reference and determination made under sub-s.(1) of Sec. 23 of the amounts awardable thereunder or any other amount awarded under any or all other clauses thereunder including sub-s.(2), an award shall be made by

A Court. Such award by operation of sub-s(2) of Section 26 shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Sec. 2 clause (2) and Sec. 2 clause (9) respectively of the Code of Civil Procedure.

B After making the award under Section 11 the Collector shall tender payment of the compensation awarded by him to the persons interested and entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in sub-s. (2) and the proviso with which we are not concerned. Sub-s. (3) gives an indication of the powers of the Collector in awarding any other land in C exchange and in lieu of the payment of compensation, namely, notwithstanding anything in Sec. 31 the Collector may, with the sanction of the appropriate Government, instead of awarding a money compensation in respect of any land, he may made any arrangement with any person "*having a limited interest in such land*", either by grant of other land in exchange, D the remission of the land-revenue, or other such lands held under the same title, or in such other way having regard to the interest of the parties concerned. Sub-s. (3) lifts the rigour of payment under sub-s. (1) and (2) of Sec. 31 and gives power to the Collector, that too, with the prior sanction of the appropriate Government, that instead of awarding moeny compensation in respect of the acquired land, he could make any arrangement with E the person who is having only a limited interest in the land under acquisition and grant him either any other land in exchange to the land acquired or remittence of the land revenue on other lands held by the land owner or in some other way as may be equitable, having regard to the interest held by the limited owner. Sub-s. (4) provides that nothing in this last F sub-section *i.e.* sub-s. (3) shall be construed as interfering with or limiting the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

A reading of sub-section (4) of Section 31, in our considered view, G indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation, it does not empower him to give any land in lieu of compensation. Sub-s.(3) expressly gives power "only to allot any other land in exchange". In other words the land under acquisition is not liable to be H allotted in lieu of compensation except under section 31(3), that too only

to a person having limited interest. If the contention of the learned counsel for the respondents, that while awarding compensation the Collector (Land Acquisition Officer) has a higher power than the limited power given under sub-section (3) of Section 31, it would run counter to the scheme envisaged thereunder and would result in defeating the public purpose. The problem could be looked at from a different angle. Under section 4(1), the appropriate government notifies a particular land needed for public purpose. On publication of the declaration under section 6, the extent of the land with specified demarcation gets crystalised as the land needed for a public purpose. If the enquiry under section 5A was dispensed with, exercising the power under section 17(i), the Collector on issuance of notice under sections 17, 9 and 10 is entitled to take possession of the acquired land for use of public purpose. Even otherwise on making the award and offerring to pay compensation he is empowered under section 16, to take possession of the land. Such land vests in the Government free from all encumprances. The only power for the Government under section 48 is to denotify the lands before possession is taken. Thus, in the scheme of the Act, the Land Acquisition Officer has no power to create an encumbrance or right in the erstwhile owner to claim possession of a part of the acquired land in lieu of compensation. Such power of the Land Acquisition Officer if is exercised would be self-defeating and subversive to public purpose.

The question then is, whether it is open to the appellant to raise the objections on the execution side as to allotment of acquired land under the award. We have already said that what is executable is only an award under Sec. 26(2), namely, the amount awarded or the claims of the interests determined of the respective persons in the acquired lands. Therefore, the decree cannot incorporate any matter other than the matters determined under Section 11 or those referred to and determined under Section 18 and no other. Since we have already held that the Land Acquisition Officer has no power or jurisdiction to allot land in lieu of compensation, the decree even, if any, under section 18 to the extent of any recognition of the directions in the award for the allotment of the land given under Section 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly we hold that the execution proceedings directing delivery of possession of the land as contained in the award is, invalid, void and inexecutable. Accordingly it is set aside.

A It is stated that Government has formulated a policy to allot any other suitable site to the displaced persons and a request is made to give suitable directions. No such policy has been brought to our notice. Therefore, we cannot give any such specific directions. It is also stated that some other properties were allotted to others, in pursuance of the directions B issued by the Collector in the award dated January 9, 1994. It is stated by the learned counsel for the appellant that appeals have been filed in this court and all the matters are pending and no one is allowed to have the benefit under the awards. In view of such statement we cannot give any specific direction for allotment of sites.

C Appeals are accordingly allowed but the parties are directed to bear their own costs.

T.N.A.

Appeals allowed.