



2024:CGHC:28196-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPURWPC No. 3096 of 2021

1. Ishwar Prasad Rathore S/o Late Dev Narayan Rathore, Aged About 63 Years R/o Village Bhathoura, Tahsil Katghora, District : Korba, Chhattisgarh

---- Petitioner

versus

1. Union Of India Through Secretary, Ministry Of Coal, Shashtri Bhawan, New Delhi

2. Coal India Limited Through Chairman-Cum-Managing Director, Coal Bhawan, Premise No.04 MAR, Plot No. AF-III, Action Area-1A, New Town, Rajarhat, Kolkatta – 700156

3. South Eastern Coalfields Ltd. Through Its Chairman-Cum-Managing Director (Cmd), Secl, Seepat Road, Bilaspur (Chhattisgarh)

4. Director (Personnel) South Eastern Coalfields Ltd. Secl, Seepat Road, Bilaspur (Chhattisgarh)

5. Chief General Manager South Eastern Coalfields Ltd. Gavera Area (Gavera Open Cast Project), Korba, Distt. Korba (Chhattisgarh)

6. District Collector-Cum-Officiating Dy. Secretary Government Of Chhattisgarh, Collectorate, Korba, Distt. Korba (Chhattisgarh)

---- Respondents

WPC No. 4152 of 2021

1. Babulal Jaiswal S/o Late Gulab Aged About 54 Years Caste Kalar, R/o Village Khedapali, Tahsil Dharamjaigarh, District Raigarh Chhattisgarh.

----Petitioner

Versus

1. South Eastern Coalfields Ltd. Through Its Chairman Cum Managing Director (CMD) , SECL , Seepat Road, Bilaspur Chhattisgarh.

2. Director (Personnel) South Eastern Coalfields Ltd. SECL, Seepat Road, Bilaspur Chhattisgarh.

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3. Deputy General Manager (Mining) / Sub Area Manager, South Eastern Coalfields Ltd. Chhal Sub Area , Raigarh Area, At Post Chhal , District Raigarh Chhattisgarh.
4. Coal India Limited Through Chairman Cum Managing Director , Coal Bhawan, Premise No. 04 MAR, Plot No. AF III, Action Area 1A, New Town , Rajarhat, Kolkatta 700156.
5. Union Of India Through Secretary, Ministry Of Coal, Shastri Bhawan New Delhi .
6. District Collector Cum Officiatng Dy. Secretary Government Of Chhattisgarh, Collectorate , Raigarh , District Raigarh Chhattisgarh.
7. Sub Divisional Officer-Land Acquisition Officer Officiating as a Collector in the land acquisition matter, Dharamjaigarh, District Raigarh Chhattisgarh.
8. Nayab Tahsildar Tahsil Office (Chhal Area) Dharamjaigarh, District Raigarh Chhattisgarh.

---- Respondent

For Petitioners : Shri Sanjay Kumar Agrawal, Advocate

For Respondent/UOI : Ms Annapurna Tiwari & Shri Tushar Dhar Diwan, Adv. for the UOI

For Respondent/State Shri Rahul Tamaskar, Govt. Advocate

For Respondent/SECL Shri H.B. Agrawal, Sr. Advocate with Shri Sudhir Bajpai, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice Radhakishan Agrawal

Order on Board

Per Goutam Bhaduri, J.

31-7-2024

1. Both the writ petitions heard analogously and decided together by this common order because common facts and question of law has been raised and the grounds of challenge are overlapping with each other.
2. Challenge in these petitions is to declare Sections 4 to 13 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (henceforth 'the CBA Act, 1957') as *ultra vires*, illegal, inoperative and violative to the

provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (henceforth ‘the Land Acquisition Act, 2013’).

3. (i) The submission of the petitioner is that the CBA Act, 1957 which operates on a specific field was not included in the initial Land Acquisition Act, 2013 when it was incorporated for application and the CBA Act, 1957 was placed in Schedule IV which was initially excluded for operation of the Land Acquisition Act, 2013. Subsequently, the notification was published on 28-8-2015 wherein in exercise of power under Section 105 (3) of the Land Acquisition Act, 2013, the CBA Act, 1957 was excluded for the purpose of the Land Acquisition Act, 2013 for determination of compensation. Further submission is made that as per Section 3 of the CBA Act, 1957 the appointment of competent authority is within the domain of Central Government, who will determine the quantum of compensation from time to time whereas Section 26 of the Land Acquisition Act, 2013 purports that determination of market value of land is to be done by the Collector alone and different factors have been laid down.
- (ii) The further submission of the petitioner is that Section 25 of the Land Acquisition Act, 2013 specifically mandates that within a period of one year the entire compensation proceeding has to be completed from the date of publication of the declaration whereas the CBA Act, 1957 do not draw timeline, therefore, there is a conflict in interpretation of both the provisions. Consequently, by effect and operation of the notification dated 28-8-2015, the provisions of Sections 4 to 13 of the CBA Act, 1957 would be *ultra vires* to the main Act, as it cuts through the object, therefore, the

same be declared as *ultra vires*. In support of his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v Mahesh and Others***<sup>1</sup> wherein the Supreme Court has interpreted the Land Acquisition Act, 2013 is reflection of the legislative intent whereby the object is to grant compensation to the land oustees within a specified time the maximum determined value and this object of the Act is defeated by existence of Sections 4 to 13 of the CBA Act, 1957 and, as such, they are *ultra vires*.

4. Learned counsel appearing for the State, *per contra*, would submit that the applicability of the notification would apply in a limited sphere only for determination of compensation factor and the competent authority would be the same, therefore, it is an incorporation in the legislature from an existing Act. The CBA Act, 1957 bears a specific provision which has the applicability in its own, which cannot be said that it is *ultra vires* as limited application has been made only for determination of compensation. Consequently, no relief can be granted in favour of the petitioner.
5. Learned counsel appearing for the UOI & SECL, adopted the aforesaid arguments advanced by the learned counsel appearing for the State.
6. We have heard learned counsel appearing for the parties and perused the documents.
7. Section 3 of the CBA Act, 1957 provides for appointment of competent authority. The same reads as under :

**3. Appointment of competent authority.**—The Central Government may, by notification in the Official Gazette, appoint any person to be the competent authority for the purposes of this Act; and different persons may be appointed as competent authorities for different provisions of this Act and for different areas.

8. Reading of the aforesaid provision would show that it would be within the domain of Central Government to notify the appointment of competent authority in the official gazette.

9. Section 4 of the CBA Act, 1957 speaks about the preliminary notification respecting intention to prospect for coal in any area and powers of competent authorities thereupon, which allows the authority to delegate its officers to carry out the work.

10. Section 5 of the CBA Act, 1957 provides for effect of notification on prospecting licences and mining leases when is made under Section 4. Section 6 speaks about compensation for any necessary damage done under Section 4 and Section 7 is about power to acquire land or rights in or over land notified under Section 4. Section 8 is with regard to objections to acquisition. Declaration of acquisition envisaged under Section 9 of the CBA Act, 1957. It also contains Section 9A, which is special powers in case of urgency. Section 10 provides for vesting of land or rights in Central Government. Section 13 deals about compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, etc.

11. Section 14 of the CBA Act, 1957 provides for method of determining compensation, which reads as under :

**14. Method of determining compensation.**—(1) Where the amount of any compensation payable

under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a Judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall after hearing the dispute, make an award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to any proceedings under this section.

(8) The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (i) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document;

- (iii) reception of evidence on affidavits;
- (iv) requisitioning any public record from any court or office; and
- (v) issuing commissions for examination of witnesses.

12. Now coming back to Sections 25 & 26 of the Land Acquisition Act, 2013, Section 25 speaks about the period within which an award shall be made. It purport that the Collector shall make an award within a period of twelve months from the date of publication of the declaration which is made under Section 19 and for determination of market value different factors have been laid down in Section 26. In the fourth schedule at S.No.11 the applicability of the Land Acquisition Act, 2013 was excluded initially. Subsequently, in exercise of power under Section 105(3) of the Land Acquisition Act, 2013 the notification dated 28-8-2015 was carried out.

13. Sub-section (3) of Section 105 of the Land Acquisition Act, 2013 reads as under :

**105. Provisions of this Act not to apply in certain cases or to apply with certain modifications. ---**

- (1)           xxx   xxx   xxx
- (2)           xxx   xxx   xxx

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

- (4)           xxx   xxx   xxx

14. It would be apt to reproduce the notification which was published on 28-8-2015 whereby the application factor for determination of compensation was made :

**"MINISTRY OF RURAL DEVELOPMENT  
ORDER**

New Delhi, the 28th August, 2015

S.O. 2368(E).--Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of the RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby, inter-alia, amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act;

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015);

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was referred to the Joint Committee of the Houses for examination and report and the same is pending with the Joint Committee;

As whereas, as per the provisions of article 123 of the Constitution, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefits of enhanced compensation and rehabilitation

and resettlement to the cases of land acquisition under the 13 Acts specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance;

And whereas the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR ACT relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:--

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

[F. No. 13011/01/2014-LRD]

K. P. KRISHNAN, Addl. Secy.

15. Reading of the aforesaid notification too would show that it was confined to the fact relating to the determination of compensation, therefore, the factor which, *prima facie*, governs the Land Acquisition Act, 2013 to determine the factor of compensation encompassed the same. This

procedure which is adopted by notification of the Central Government, is covered under the factor of incorporation of an earlier Act into a later Act.

16. The well settled proposition of incorporation has been laid down by the celebrated book of Justice G.P. Singh namely; *Principles of Statutory Interpretation* (15<sup>th</sup> edition) wherein it has been observed that incorporation of an earlier Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. (See: *Mary Roy v State of Kerala*<sup>2</sup> and *Nagpur Improvement Trust v Amrik Singh*<sup>3</sup>). It is further observed that when an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been ‘bodily transposed into it’. (See: *Ramsarup v Munshi*<sup>4</sup>).
17. The effect of incorporation is admirably stated by Lord Esher MR:
 

If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it. (See: *Re. Wood's Estate, Ex parte, Works and Buildings Commrs.*<sup>5</sup>)
18. The result is to constitute the later Act along with the incorporated provisions of the earlier Act, an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. (*Narottamdas v State of Madhya Pradesh*<sup>6</sup>) As observed by Brett J:
 

Where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second (*Clarke v Bradlaugh*<sup>7</sup>),

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2 AIR 1986 SC 1011

3 AIR 2002 SC 3499

4 AIR 1963 SC 553

5 (1886) 36 Ch D 607

6 AIR 1964 SC 1667

7 (1881) 8 QBD 63

To the same effect is the statement by Sir George Lowndes:

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function, effectually without the addition. (*Secretary of State v Hindustan Co-o Insurance Society Ltd.*<sup>8</sup>)

19. Ordinarily if an Act is incorporated in a later Act, the intention is to incorporate the earlier Act, with all the amendments made in it up to the date of incorporation (*State of Maharashtra v Madhavrao Damodar Patil*<sup>9</sup>). The rule that the repeal or amendment of the Act which is incorporated by reference in a later Act is not applicable for purposes of the later Act is subject to qualifications and exceptions. A distinction is in this context drawn between incorporation and mere reference of an earlier Act into a later Act. Further, a distinction is also drawn when what is referred to is not an earlier Act or any provision from it but law on a subject in general. There is, however, no controversy on the point that when any Act or rules are adopted in any later Act or rules, such adoption normally whether by incorporation or mere reference takes in all the amendments in the earlier Act or rules till the date of adoption. (*Rajasthan State Road Transport Corp. Jaipur v Poonam Pahwa*<sup>10</sup>).
20. In the Calcutta Improvement Act, 1911 (Bengal Act 5 of 1911) the provisions of the Land Acquisition Act (Central Act 1 of 1894) with certain modifications were incorporated by reference for purposes of acquisitions under the Bengal Act. By Central Act 19 of 1921 the Land Acquisition Act was amended and provision was made in that Act for an appeal to the Privy Council. In these circumstances it was held by the Judicial Committee that

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8 AIR 1931 PC 149

9 AIR 1968 SC 1395

10 AIR 1997 SC 2951

this amendment had not the effect of modifying the incorporated provision of the Land Acquisition Act in the Bengal Act and that it did not confer a right of appeal in relation to an award of compensation under the Bengal Act. [***Hindustan Co-op Insurance Society Ltd.***(supra)].

21. Plain interpretation of the Act and the notification would show that the factor which determined the compensation or to evaluate the same was incorporated by reference as has been submitted by the learned counsel for the petitioner that competent authority is required to be replaced and there is a conflict, we are not in agreement with the same and it is the only factor which has a limited application to envelope a certain part of the Land Acquisition Act, 2013. Consequently, we do not find any illegality or infirmity in the legislation.
22. In the result, both the petitions, *sans substratum*, are liable to be and are hereby dismissed. There shall be no order as to cost(s).

Sd/-

Sd/-

(Goutam Bhaduri)  
Judge

(Radhakishan Agrawal)  
Judge

Gowri

Head Note

When an earlier Act or certain provisions are incorporated by reference into later Act, the provision so incorporated become part and parcel of the later if they had been “bodily transposed into it”.

पश्चातवर्ती अधिनियम में जब पूर्ववर्ती अधिनियम या उसके किन्हीं प्रावधानों को सन्दर्भ द्वारा सम्मिलित कर लिया जाता है, तो ऐसे सम्मिलित किये गये प्रावधान पश्चातवर्ती के भाग बन जाते हैं, जैसे कि उन्हे “उसमें पूर्णतः शामिल कर लिया गया हो”