
(2004) 03 BOM CK 0015
In the Bombay High Court
Case No : First Appeal No. 515 of 2003

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Bhayyasaheb and Others

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2004) 5 BomCR 115 : (2005) 1 MhLj 471

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : R.S. Sundaram, for the Appellant; A.V. Bhide, for Respondent Nos. 1 and 2 and K.S. Dhote, for the Respondent

Judgement

D.D. Sinha, J.—Admit. Heard finally by consent of the parties.

2. First Appeal is directed against the Judgment and Order, dated 3rd May, 2003, passed in Land Acquisition Case No. 16 of 1998 by Civil Judge (Senior Division), Yavatmal, whereby the compensation in respect of the land in question was enhanced from Rs. 3,41,214-00 to Rs. 29,22,820-00.

3. Mr. Sundaram, learned Counsel for the Appellant states that the land acquisition proceedings were initiated by the Land Acquisition Officer, Darwha, for acquiring the land of respondent Nos. 1 and 2 admeasuring 41 Ares for the Appellant. The Land Acquisition Officer passed an Award of Rs. 3,41,214-00 on 21st October, 1997. It is contended that the respondent Nos. 1 and 2 made an application for Reference u/s 18 of the Land Acquisition Act on 11th December, 1997 before the Civil Court. Mr. Sundaram, learned Counsel, states that on 12th December, 2000, respondent Nos. 1 and 2 submitted an application (Exh.16) before the Civil Court for giving a notice to the Union of India, through Chief Secretary and to Telecom District Engineer, Yavatmal, for adding them as respondents in the Reference Case. It is submitted that the Civil Court on 12th December, 2000 itself passed the following order :-

"Issue notice to the acquiring body r/o next day on payment of P.F."

Pursuant to the said Order, a Junior Engineer of Telecom Department appeared before the Civil Court on 29th September, 2001 and also filed an application (Exh.17) before the Court for seeking permission to file Written Statement in the matter. It is contended that the Civil Court did not pass any order on Exh.17 and there was no communication thereafter to the Appellant from the Civil Court.

4. Mr. Sundaram, learned Counsel for the Appellant, states that Exh.19 is the Written Statement which is alleged to have been filed on behalf of Non- Applicant No. 3 in the Reference proceedings, the respondent Nos. 1 and 2 are alleging that the Non-Applicant No. 3 is the Acquiring Body. It is contended that there is no order on record to show that the Appellant is impleaded as Party- respondent in the Reference Proceeding and in absence thereof, it cannot be presumed that the Non-Applicant No. 3 in the Reference Proceeding was the Acquiring Body and the Written Statement (Exh.19) is filed on its behalf. On the other hand, entire record of the Civil Court would show that except on 21st September, 2001, appearance is made by Junior Engineer before the Reference Court. Nobody from the Acquiring Body either appeared before the Civil Court, nor the interest of the Acquiring Body was taken care till the Judgment is delivered by the Civil Court on 3rd May, 2003. Mr. Sundaram, learned Counsel, further contended that the so called Written Statement (Exh.19), which is on record, is signed only by the Government Pleader and the same is without verification, and in absence of verification, the pleadings therein have no authenticity and cannot be relied on. It is contended that in view of the facts and circumstances of the present case, the Appellant-Acquiring Body was not a party before the Civil Court and in absence thereof could not defend itself which has resulted in miscarriage of justice, particularly keeping in view the enhancement of compensation made by the Civil Court and, therefore, the impugned Judgment, dated 3rd May, 2003, passed by the Civil Court in Reference Case is invalid in law in view of the law laid down by the Apex Court in case of Abdul Rasak and Others Vs. Kerala Water Authority and Others, .

5. Mr. Bhide, learned Counsel for respondent Nos. 1 and 2, on the other hand, contended that this is not the case where the Appellant-Acquiring Body was not aware about the Reference proceedings before the Civil Court. It is contended that the respondent Nos. 1 and 2 submitted a specific application Exh.16 before the Civil Court as referred to hereinabove and the Court was also pleased to issue notice to the Acquiring Body. Not only that, pursuant to the said notice, the Junior Engineer of Telecom Department also appeared before the Civil Court on 20th September, 2001. It is, therefore, contended that in the present case, though an opportunity was given to the Acquiring Body to put in its appearance and defend its claim, it failed to avail the said opportunity and, therefore, it is estopped now from agitating the said grievance in this regard before this Court.

6. Mr. Bhide, learned Counsel for respondent Nos. 1 and 2, further contended that in the instant case, it is not that Appellant was only aware of the

proceedings in view of the above referred application and Order passed by the Civil Court, but the Acquiring Body also filed Written Statement (Exh.19) on record and the Memo of Appearance on its behalf was also filed by the Government Pleader. It is, therefore, submitted that in the facts of the present case, it is evident that the Acquiring Body was very much before the Reference Court and, therefore, the law laid down by the Apex Court in Abdul Rasak's case (supra) is not attracted in the present case.

7. We have considered the contentions canvassed by the respective counsel and perused the Judgment of the Apex Court in Abdul Rasak's case.

8. It is, no doubt, true that in the instant case, it appears that Exh.16 is the application moved by respondents 1 and 2 for impleading the Union of India as party to the proceedings and Civil Court also issued a notice to the Acquiring Body vide Order, dated 12th December, 2000. However, thereafter, there is nothing on record to show that the Acquiring Body was factually made a party-respondent to the Reference Proceedings and in absence thereof, it will be difficult for us to treat the Acquiring Body as Party-respondent merely on the ground of order of Civil Court, dated 12th December, 2000, whereby notice was issued to the Acquiring Body and it will also not be possible for us to hold that the Acquiring Body had an adequate opportunity to put forth its case.

9. It is, no doubt, true that from the facts and circumstances of the present case though it is evident that the Acquiring Body was aware of the Reference Proceedings pending before the Civil Court, however, that, by itself, does not take away the right of the Acquiring Body to be party-respondent to the Reference Proceeding. In this regard, relevant observations of the Apex Court in Paragraph 8 of its Judgment in Abdul Rasak's case based on its Judgment reported in 2001 (2) SCC 646 are important, which read thus :-

"8. Learned counsel for the claimant-appellants also submitted that Superintending Engineer of the K.W.A. had appeared as a witness in the proceeding before the Civil Court and, therefore, it can be inferred that the Authority was aware of the proceedings and if it did not promptly take steps for impleadment, it should not have been heard to complain before the High Court that it did not have notice of the proceedings and, that it was denied participation in the proceedings before the Civil Court. It has been held by this Court in *Agra Development Authority v. Special Land Acquisition Officer and others* 2001(2) SCC 646 that where land was acquired at the cost of local Development Authority, a notice to it was mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matters as to compensation were discussed, was not a sufficient compliance with Section 50 of the Land Acquisition Act."

The Apex Court in Abdul Rasak's case finally concluded the issue in Paragraph 9 thus :-

"9. In our opinion, the High Court has not erred in taking the view which it has

taken and directing the reference cases to be remitted to the Civil Court consistently with the law laid down by the Constitution Bench, as K.W.A. shall have to be impleaded as party to the proceedings before Civil Court from very beginning a retrial becomes unavoidable."

10. In view of the above referred specific observations of the Apex Court, it is evident that a mere knowledge of Reference is not enough to hold that the Acquiring Body was given adequate opportunity unless it is factually impleaded as party to the Reference Proceedings and only thereafter it will be proper to hold that it has been given an opportunity to participate in the proceedings. In the instant case, we have already observed hereinabove that there is nothing to show on record that the Acquiring Body was made a party to the Reference Proceedings and, therefore, the impugned Order cannot be sustained in law.

11. Before we part with the Judgment, we feel that in the instant case, because of the inaction on the part of Appellant to pursue the proceedings vigilantly, it is, to some extent, responsible for creating the present situation when there is no fault of respondent Nos. 1 and 2 and, therefore, we award cost of Rs. 5000-00 (Rupees five thousand only) to be paid to respondent Nos. 1 and 2.

For the reasons stated hereinabove, we quash and set aside the impugned Order, dated 3rd May, 2003, passed by Civil Judge (Senior Division), Yavatmal, in Land Acquisition Case No. 16 of 1998 and remand the matter to the Civil Court with the following directions :--

1. The Appellant-B.S.N.L. shall be deemed to have been brought on record in the Reference Case as Defendant. The cause title of the Reference Case shall be amended accordingly. The B.S.N.L., may file its Written Statement to the Claim Petition filed by the Claimants;

2. The statements of witnesses already recorded on behalf of the Claimants need not be recorded afresh;

3. The B.S.N.L., shall be allowed an opportunity of cross-examining the witnesses, who have already been cross-examined. However, such of the witnesses as are not available, and, therefore, cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in evidence.

4. The claimants may adduce such other evidence as they may propose to do and both the State as well as B.S.N.L., shall have the liberty of cross-examining such witnesses who are now examined by the claimants.

5. The Appellant - B.S.N.L., shall have the liberty of adducing such evidence as it may propose to do.

6. The B.S.N.L., shall not be entitled to a separate notice of the proceedings. All the parties present in this Court are directed to appear before the Court on 26th April, 2004. Record and proceedings be remitted back to the Civil Court forthwith.

Appeal is allowed in above terms.