

(2010) 06 CAL CK 0077

In the Calcutta High Court

Case No : Writ Petition No. 7104 (W) of 2010

Bharat Sanchar Nigam Ltd. and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-06-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 50(2), 6

Citation : (2011) 2 CALLT 437 : (2011) 5 CHN 346

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : P.K. Das and Ashok De and Dipak Das, for the Appellant; Samiran Giri, for Respondent No. 1, Tapas Chandra Ray, for the Respondent

Judgement

Indira Banerjee, J.—By a letter dated 9th July, 1973, the General Manager of Calcutta Telephones requested the 1st Land Acquisition Collector to initiate land acquisition proceedings for acquisition of land measuring about 3.5 acres, being Premises No. 154 and 154/1 Netaji Subhas Chandra Road (Regent Park), Calcutta for construction of a Telephone Exchange as well as quarters for employees of the Posts and Telegraphs Department.

2. Pursuant to the aforesaid request, the Land Acquisition Collector initiated land acquisition proceedings being L.A. Case No. I-D-2/1986-87. On 10th July, 1974 notification u/s 4 of the Land Acquisition Act, 1894 was published. Thereafter, declaration u/s 6 of the Land Acquisition Act was published by issuance of notification No. 13828-LA (2) dated 11.9.1976. The said notification was published in the Calcutta Gazette extraordinary on 13th August, 1976.

3. By a communication dated 14th April, 1986, the office of the 1st Land Acquisition Collector called upon the Divisional Engineer, Calcutta Telephones to place a sum of Rs. 76,75,407/- towards the estimated cost of acquisition.

4. According to the Petitioner, on or about 10th June, 1986 the aforesaid sum was placed with the 1st Land Acquisition Collector towards the cost of acquisition

of the land in question. On or about 29th October, 1986 possession of the plots was taken. On or about 26th September, 1986 the 1st Land Acquisition Collector made an award of compensation of Rs. 69,68,764.34.

5. The Respondent Nos. 2 and 3, being the owners of the land in question made a reference u/s 18 of the Land Acquisition Act, 1894.

6. On 4th December, 2000, the 4th Additional Special Land Acquisition Judge, Alipore passed a judgment and decree enhancing the compensation.

7. Against the judgment and decree of the learned 4th Additional Special Land Acquisition Judge, the State of West Bengal preferred an appeal in this Court, which was registered as FAT No. 3536 of 2003.

8. This Court directed the 4th Additional Special Land Acquisition Judge to deposit 50% of the decretal amount, in default whereof, the appeal would be dismissed.

9. Thereafter the 4th Additional Special Land Acquisition Judge requested the Petitioner, being the successor-in-interest of the Calcutta Telephones to deposit the requisite amount for compliance of the direction of this Court.

10. On 31st May, 2004, the appeal was dismissed since 50% of the decretal amount was not deposited. Significantly, the Petitioners had been impleaded as Respondents in the appeal.

11. The Respondent Nos. 3 and 4 initiated execution proceedings being L.A. Execution Case No. 34 of 2005 for execution of the judgment and decree of the 4th Additional Special Land Acquisition Judge, Alipore.

12. The Petitioners herein made an application, pursuant to which the Petitioners were added as Respondents in the said execution case. The order whereby the Petitioners were added as parties in the execution case was, however, set aside by this Court in an application under Article 227 of the Constitution of India being C.O. No. 1919 of 2008.

13. This Court, however, observed that the order of this Court, whereby this Court set aside the order of the 4th Additional Special Land Acquisition Judge, adding the Petitioners as Respondents in the land acquisition case would not preclude the requiring body from challenging the award passed by the 4th Additional Special Land Acquisition Judge.

14. Mr. P.K. Das appearing on behalf of the Petitioners submitted that the 4th Additional Special Land Acquisition Judge passed his judgment and decree enhancing the compensation amount, without notice to the requiring body, being the Petitioners.

15. In support of his arguments, Mr. Das cited U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., where the majority judges held that Section 50(2) of the Land Acquisition Act conferred on the local authority for

whom the land was being conferred, a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

The Supreme Court held as follows:

Sub-section (2) of Section 50 enables a local authority to appear in any acquisition proceeding at the stage of determination of compensation before the Collector or the reference Court and adduce evidence for the purpose of determining the amount of compensation. The object underlying the aforesaid provision appears to be to safeguard the interests of the local authority which would be required to pay the amount of compensation that would be determined by the Collector or by the reference Court by enabling it to adduce evidence having a bearing on the amount of compensation before the Collector or the Court and thereby assist them in making a fair determination. Such protection was necessary because in the matter of acquisition under the Land Acquisition Act a local authority for whom the land is acquired does not stand on the same footing as the Government. While making the award the Collector acts as an agent of the Government and functions under its administrative control....we are of the opinion that Sub-section (2) of Section 50 must be construed as conferring a right on the local authority for whom the land is being acquired to participate in the acquisition proceedings at the stage of determination of the amount of compensation before the Collector as well as the reference Court.

The said right can be effectively exercised by the local authority only if it has information of the proceedings which are pending before the Collector as well as the reference court. In other words the right conferred u/s 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority u/s 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference Court and has not suffered any prejudice on account of failure to give such notice.

Thus, on an interpretation of the provisions of Section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference Court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference court to give a notice to the local authority with regard to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question

whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference Court, can take recourse to any legal remedy. Before dealing with this question we would take note of the decisions of this Court having a bearing on the issue.

16. *M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others*, where the Supreme Court held that the beneficiary, that is, the local authority or company for whom land had been acquired, was a person interested in determination of just and proper compensation. If the compensation was enhanced, the beneficiary would be entitled to seek leave of the Court and file appeal against the enhanced award and decree of the Civil Court or to file a writ petition under Article 226 assailing the legality or correctness of the enhancement.

17. *Mr. Das next cited Agra Development Authority v. Special Land Acquisition Officer and Ors.* reported in (2001) 2 SCC 646 where the Supreme Court held as follows:

It is next urged that the Appellants were not given any opportunity to adduce evidence in the proceedings before the Collector for fixation of the cost of acquisition. It was fairly admitted that the Appellants were aware of the proceedings. However, no notice had been issued to them and they had not been given any opportunity to adduce evidence for purposes of determining the amount of compensation.

To this submission no adequate answer could be given by the Respondents. All that was submitted was that the Appellants were aware of the proceedings and had held meetings with the Government and the Collector. In our view, this is not sufficient. What is required by Section 50 of the Land Acquisition Act is that the body for whom the property is being acquired is given an opportunity to appear and adduce evidence for the purposes of determining the amount of compensation. Nothing could be shown to us that this had been done. On this point the matter requires to be sent back to the Special Land Acquisition Officer for refixing compensation payable.

18. *Abdul Rasak and Others Vs. Kerala Water Authority and Others*, where the Supreme Court following its earlier judgment and order in *U.P. Awas Evam Vikas Parishad v. Gyan Devi (supra)* held that the body for whose benefit the land had been acquired was also entitled to appear and adduce evidence for the purpose of determining compensation.

19. The Supreme Court upheld the order of the High Court remanding the case to the reference Court for fresh adjudication after affording the requiring party opportunity of participation.

20. *Smt. Kanak and Another Vs. U.P. Awas Evam Vikas Parishad and Others*, where Supreme Court held that the High Court had not committed any illegality in allowing a writ petition challenging an award of the Reference Court. The

Supreme Court, however, held that the case should be remitted to the Reference Court.

21. Mr. Das next cited a Division Bench judgment of this Court in Calcutta Metropolitan Development Authority Vs. State of West Bengal and Others, . The Division Bench held that where lands were acquired by the State Government for the benefit of the CMDA and admittedly no notice was served on CMDA, the requiring body, the award on reference was liable to be set aside.

22. The West Bengal Housing Board and Another Vs. The State of West Bengal and Others, where a learned Single Bench of this Court held that an award made by the reference Court in an application u/s 18 could be challenged by filing a writ application under Article 226 of the Constitution of India.

23. Mr. Tapas Roy, Senior Advocate, appearing on behalf of the Respondent Nos. 2 and 3 argued that the writ petition was hopelessly barred by delay. Mr. Roy submitted that acquisition proceedings had been initiated way back in 1973.

24. Mr. Roy argued that State of West Bengal had preferred the appeal being FAT No. 3536 of 2003 in this Court on 12th December, 2003. Before filing the appeal, a Memo No. 1542 (2)/ 1(2)-LA dated 10th September, 2003 was issued requesting the General Manager (i.e.) Calcutta Telephones to file a separate appeal against the judgment and decree of the land acquisition judge.

25. Mr. Roy argued that the Petitioner has impugned the judgment and decree on the ground that the same was passed without notice to the Petitioner being the requiring authority.

26. Mr. Roy argued and rightly that the Petitioner was well-aware of the judgment and decree dated 4th December, 2000. In any case, by letter dated 24th July, 2000 the State Government informed the Petitioner of the decree and asked the Petitioner to make payment of the decretal dues to the Collector.

27. Mr. Roy further pointed out that as early as on 10th December, 2003, the State Government requested the Petitioner to get itself added as party to the appeal filed by the State, against the judgment and decree of the reference Court and to contest the same.

28. Mr. Roy submitted that from the facts disclosed in the Affidavit-in-Opposition, it was clear that the Petitioner all along had notice of the proceedings including the reference proceedings and the judgment and decree.

29. Mr. Roy argued that even if no formal notice of the reference had been issued, the writ Petitioners had notice of the proceedings before the reference Court as well as the appeal in this Court.

30. Mr. Roy argued that in U.P. Awas Evam Vikas Parishad (supra) the Supreme Court held that failure to give notice would result in denial of right of hearing, unless it could be shown that the local authority had knowledge of the pendency of the acquisition proceedings before the Collector or the reference Court.

31. It is a matter of record that the Petitioner was put to notice of the judgment and decree of the reference Court by the Memo dated 20th September, 2003. The Petitioner was also aware of the appeal in this Court.

32. The Petitioner, however, did not challenge the judgment and decree by preferring an independent appeal. Nor did the Petitioner get itself added as party to the appeal. The Petitioner did not deposit the requisite amount as a result of which the appeal stood dismissed.

33. There can be no doubt that the requiring body is entitled to opportunity of hearing on the issue of enhancement of compensation. The land acquisition court or the reference court could not have shut out the requiring body.

34. The question is whether the judgment and decree is rendered invalid and/or ineffective by reason of non-service of notice on the Petitioner.

35. As held in *U.P. Awas Evam Vikas Parishad (supra)* the object of notice was to inform the requiring body of the proceedings to enable the requiring body to participate in the same.

36. Failure to give notice to the requiring body would result in denial of the right of the local authority of participation unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings.

37. In this case, as observed above, the requiring body had notice of the proceedings, at least on 10th September, 2002. If the Petitioner chose not to exercise its right to intervene and participate, the Petitioner waived its right to do so.

38. There can be no doubt that the requiring authority has a right to participate in the compensation proceedings, the reference proceedings as also any appeal therefrom. However, mere omission to issue notice would not render a judgment and decree of a reference court invalid where the requiring body had knowledge of the proceedings.

39. Delay alone may not be a ground for denying relief where a very good case for relief is made out. However, in the facts and circumstances of the instant case, where the Petitioner chose not to assert its right to participate for so many years, the writ petition is liable to be rejected on the ground of delay.

40. For the reasons discussed above, the writ petition is dismissed.

41. Prayer for stay of operation of the operative part of this judgment and order is considered and refused.

Urgent certified photostat copy of this judgment/order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.