

(2008) 01 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 6689 of 1998

Bharathiar University

APPELLANT

Vs

Bharathiar University Unit IV and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Land Acquisition Act, 1894 — Section 11, 12(2), 18, 18(3), 20

Citation : (2008) 01 MAD CK 0027

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : M. Sekar, for the Appellant; K. Govi Ganesan, 8 to 13, 15, 17 to 24, 26 to 32, 42 to 47, 50, 52 and 54 to 56 and P. Veeraraghavan, for Respondent 51, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The Bharathiar University represented by its Registrar is the writ petitioner. What is challenged in this writ petition is the

Judgment and Decree passed by the learned I Additional Sub Judge, Coimbatore dated 06.03.87 in L.A.O.P. No. 26/86. An extent of 43.63

acres situated in the village of Vadavalli in the registration district of Coimbatore bearing Survey Nos. 327, 328/1, 338/1, 328/2, 338/1A, 338/1B,

338/2, 339/2, 340/2, 341/2, 341/3, 342, 343, 344 etc. belonging to the respondents 3 to 57 were acquired by the Government of Tamil Nadu for

providing housing sites for the Professors and other employees of Bharathiar University on its requisition.

2. The Land Acquisition Officer after following the due procedure has passed an Award in Award No. 4 of 1984 dated 26.07.1984 by

considering the value of the land as on the date of Notification issued u/s 4(1)

which was on 09.01.1980. The Land Acquisition Officer had fixed the compensation to be payable to the owners at Rs. 5,000/- per acre. The respondents 3 to 57 had sought reference to the Civil Court u/s 18 of the Land Acquisition Act seeking enhancement. The said reference was numbered as L.A.O.P. No. 26/86 and ultimately the learned I Additional Sub Judge, Coimbatore by Judgment and Decree dated 06.03.97 has enhanced the compensation to Rs. 500 per cent apart from solatium at Rs. 30% with interest at Rs. 12% per annum from the date of Award viz. 26.07.84.

3. It is the case of the University, who is the writ petitioner, that the Award made has been enhanced by 10 times, while the Land Acquisition Officer has fixed Rs. 2,50,873/- and the same has been deposited by the University with the government. The grievance of the petitioner University is that while the amount of Award was enhanced, the petitioner being the requisitioning body was not given notice. The writ petitioner University is challenging the portion of the Award by which the amount of compensation was enhanced as stated above on the ground that by virtue of The Land Acquisition (Tamil Nadu Amendment) Act, 1989 (Tamil Nadu Act 14 of 1990). Section 20 of the Land Acquisition Act, 1894 has been included with a new Sub Section "d" as per the Tamil Nadu amendment stated above by which the Court while passing Award should consider the objection of not only the applicant and persons interested and in the event of acquisition is not made for the Government, the person or authority for whose benefit it is made are also to be heard. In view of the factual position when the Court while enhancing the Award by passing Judgment and Decree in L.A.O.P. has not given notice to the writ petitioner who is the requisitioning authority and therefore it violates the mandatory provisions u/s 20(d) of the Land Acquisition Act, as incorporated by the said Tamil Nadu Act 14 of 1990 and hence the Award has to be set aside.

4. As submitted by Mr. M. Sekar, learned Counsel appearing for the petitioner when by a subsequent amendment viz. The Land Acquisition (Tamil Nadu Amendment) Act, 1996 (Tamil Nadu Act 16 of 1997), to Section 18 of the Land Acquisition Act, a new Sub Section viz. 18(3) has been inserted making it clear that if the acquisition is not for the Government, the person or authority for whose benefit the acquisition is made must

be made a party in the reference u/s 18 of the Act. Therefore, according to the learned Counsel appearing for the petitioner, by virtue of the Tamil

Nadu Act 16 of 1997, the writ petitioner University who is the requisitioning body and for whose benefit the acquisition was made was not made a

party u/s 18, hence the reference as well as the subsequent order becomes void.

5. However, it is not in dispute as submitted by Mr. Govi Ganesan, learned Counsel appearing for some of the respondents that as against the

Award passed by the learned I Additional Sub Court, Coimbatore in L.A.O.P. No. 26/86 dated 06.03.97 enhancing the compensation, the

Governing being the land acquisition authority has filed an appeal u/s 54 of the Land Acquisition Act in this Court in A.S. No. 388 of 1998, which

is still pending.

6. It is contended by Mr. M. Sekar, learned Counsel appearing for the petitioner that in the first appeal the petitioner University is not a party and

therefore the petitioner who is the requisitioning body for whose benefit the lands are being acquired may be losing his valuable right in putting forth

its contentions against enhancement of the Award amount because ultimately the petitioner University which has to bear the amount which has been

enhanced. Therefore, he expressed fear that in the event of the petitioner University not being impleaded in the first appeal it will lose its valuable

right.

7. It is true that as per Section 20 of the Land Acquisition Act the Service of Notice is mandatory while the matter is pending for reference before

the Court and after the Tamil Nadu Act 14 of 1990 the new clause viz., "d" has been incorporated. After the said amendment Section 20 reads as

follows:

20. Service of notice: The Court shall, thereupon, cause a notice, specifying the day on which the Court will proceed to determine the objection,

and directing their appearance before the Court on that day, to be served on the following persons, namely:

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation

awarded;

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the collector; and

(d) if the acquisition is not made for the Government, the person or authority for whom it is made.

8. It is also true that u/s 18 which is regarding the reference to Court for compensation, a new sub-section has been incorporated by the Tamil

Nadu Act 16 of 1997 and after incorporation of the said Sub-section "3", Section 18 reads as follows:

18. Reference to Court: (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the

matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the

compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state:

(a) the grounds on which the objection to the award is taken; and

(b) if it relates to the enhancement of compensation, the exact amount required to be enhanced.

Provided that every such application shall be made:

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of

the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the

Collector's award, whichever period shall first expire.

(3) Notwithstanding anything contained in this Act or in the Code of Civil Procedure, 1908 (Central Act V of 1908), or in any other law for the

time being in force or in any contract, the application shall, if such application relates to the amount of compensation and if the acquisition is not

made for the Government, implead the person or authority, as the case may be, for whom the acquisition is made, as a party in such application.

9. Therefore, there is no difficulty to arrive at the conclusion that the petitioner being the requisitioning body is entitled for notice in the reference

before the Court and such notice has not been given to the petitioner. It is also true that the petitioner being the requisitioning body has the burden

of bearing the enhanced amount of compensation which will be ultimately decided by the Court. It is also made clear by the learned Counsel

appearing for the petitioner that the petitioner is not questioning the acquisition proceedings since it is for the benefit of the writ petitioner

University, the acquisition itself has been made by the Government. Therefore, the only question that is to be decided is as to whether the writ

petition can be entertained by this Court at this stage, especially when the Government being the acquisition authority has already approached this

Court by filing an appeal u/s 54 of the Land Acquisition Act challenging the enhancement of compensation made by the learned I Additional Sub

Judge, Coimbatore by its Judgment and Decree dated 06.03.87.

10. Mr. M. Sekar, learned Counsel appearing for the petitioner would submit that on similar circumstances exactly to that of the facts of the

present case, this Court in Neyveli Lignite Corporation Ltd. represented by the Secretary, Neyveli v. P.R. Govindarajulu and Ors. 1993 2 L.W.

37 wherein Mr. Justice A.R. Lakshmanan, as he then was, by relying upon Section 20(d) of the Land Acquisition Act, as stated above, has held

that the Award passed by the Court without giving notice to the person who is the requisitioning body is illegal and remitted the matter back to the

Court. However, as submitted by Mr. Govi Ganesan, learned Counsel appearing for some of the respondents the Hon"ble Apex Court after the

above said judgment referred to by the learned Counsel appearing for the petitioner, in M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar

(Land Acquisition), Neyvely and others, has held that the proper party in such circumstances has to be protected, the affected party has to be

impleaded before the Court either in reference provided u/s 18 or before the High Court in appeal u/s 54 of the Land Acquisition Act. The

operative portion of that order is as follows:

14. If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was

dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, who would be the affected person ? Is it not interested

to see that the appellate court would reassess the evidence and fix the proper and just compensation as per law ? For instance the reference court

determined market value at Rs. 1,00,000/- while the prevailing market value of

the land is only Rs. 10,000/-. Who is to bear the burden ?

Suppose State appeal was dismissed due to refusal to condone the delay, is it not an unjust and illegal award ? Many an instance can be multiplied.

But suffice it to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of

enquiry by the Collector and reference court u/s 18 or in an appeal u/s 54, it/ they would be interested to defend the award u/s 11 or Section 26 or

would file an appeal independently u/s 54 etc. against the enhanced compensation. As a necessary or proper party affected by the determination of

higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the reference court u/s 18 or in appeal

u/s 54 etc. Considered from this perspective we are of the considered view that the appellant-Company is an interested person within the meaning

of Section 3(b) of the Act and is also a proper party, if not a necessary party under Order 1 Rule 10 of the CPC. The High Court had committed

manifest error of law in holding that the appellant is not a person interested. The orders of the High Court are accordingly set aside.

15. Since the writ petitions filed by the appellants were dismissed, we set aside the orders and direct the High Court to treat them as appeals

properly filed u/s 54 of the Act and be dealt with along with the appeals filed by the State pending disposal in the High Court. In the pending

references u/s 18 , in the Court of the Subordinate Judge, Cuddalore, it is directed to order impleading the appellant as a party-respondent and

would give reasonable opportunity to cross-examine the witness examined by the claimants and to examine witnesses on its behalf to rebut the

evidence for higher compensation, the appellant is entitled to be heard in support of the determination of just and proper compensation. In this

view, the need to implead the appellant as a party-respondent in the pending appeals in the High Court does not arise.

11. Basing reliance on the said judgment of the Hon''ble Apex Court, the First Bench of this Court in The Chairman cum The Managing Director,

Tamil Nadu Water Supply and Drainage Board, Chepauk, Madras-5 v. The Land Acquisition Officer and The Revenue Divisional Officer,

Tirunelveli and Ors. 1995 WL.R. 593 has clearly held that under such circumstances the Award cannot be held as a nullity on the ground of not

giving an opportunity to the relevant party as per the provisions of the Land Acquisition Act and such a party can be directed to be impleaded in

the appeal pending before the High Court. The First Bench of this Court after reference to the above said Hon''ble Apex Court decision cited

supra has held in paragraph 4 as follows:

4. The learned single judge has rejected the prayer of the appellant to quash the award and to remit the matter to the civil court for deciding the

reference after affording an opportunity to the appellant to adduce evidence and also for personal hearing. However, the learned single judge has

made it clear, it is open to the appellant to get itself impleaded as party-respondent in the appeal, so that the requisite opportunity may be available

to it of being heard and also for producing evidence, if any. We do not, therefore, consider it necessary to decide the contention of Mr. N.R.

Chandran, learned senior counsel for the appellant that as the award of the civil court has been passed without affording an opportunity to the

appellant it is a nullity, and therefore, the award as passed has to be set aside and the Reference has to be remitted to the civil court, in view of the

very same decision of the Supreme Court in Neyveli Lignite Case, referred to above. In a similar situation, the Supreme Court in the aforesaid case

had directed the writ petitions to be treated as appeals properly filed u/s 54 of the Act, and directed to deal with the same as appeals along with

the appeals filed by the State, pending on the file of this High Court. With reference to the reference pending before the Subordinate Judge, the

Supreme Court has directed to implead the Neyveli Lignite Corporation as party respondents and to give reasonable opportunity to cross examine

the witnesses examined by the claimant and examine witness or witnesses on its side to rebut the evidence for higher compensation. The Supreme

Court has further observed that the Neyveli Lignite Corporation would be entitled to be heard in support of determination of just and proper

compensation. That being the position, we are of the view, that instead of making the appellant to file an application for impleading it as a party

respondent, in the light of the aforesaid judgment of the Supreme Court, the appellant herein can be directed to be impleaded as one of the

appellants in A.S. Nos. 657 to 659 of 1989, which are filed by the Land Acquisition Officer, as the interest of the Land Acquisition Officer and

that of the appellant do not conflict. Therefore, we direct that the appellant herein be impleaded as an appellant in the said pending appeals, so that

it can have requisite opportunity. We accordingly dispose of these Writ Appeals in the following terms.

12. In view of the above said legal position as laid down by the Hon''ble Supreme Court and as followed by the First Bench of this Court,

especially in the circumstances that appeal in A.S. No. 388 of 1998 filed by the Government being the acquisition authority is pending before this

Court, the proper remedy for the petitioner would be to get himself impleaded in the appeal. In fact, Mr. Govi Ganesan, learned Counsel

appearing for some of the respondents would fairly submit that if the petitioner University being the requisitioning body and which has vital interest

in the subject matter files such application for impleading, the said respondents being the claimants would have no objection.

13. In view of the above said legal position and the submission made by the learned Counsel appearing on either side, this Court is of the view that

the writ petition is not maintainable and has to be dismissed, however, with liberty to the petitioner to file petition for impleading in A.S. No. 388 of

1998 pending before this Court, in which event, the petitioner being the requisitioning authority who is certainly a proper and necessary party by

virtue of the amendments to Sections 18 and 20 of the Land Acquisition Act, shall be considered for impleading as a party. This writ petition is

dismissed with the above direction. No costs.