

(1994) 09 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 35048 and 34352 of 1993

Cement Corporation of India Ltd.

APPELLANT

Vs

Additional Civil Judge

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18

Citation : (1995) ILR (Kar) 291 : (1995) 5 KarLJ 84

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; Venkatachala, for G.S. Visweswara, for R-3 to R-7 and Bharathi Nagesh, HCGP for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J

1. Smt Bharathi Nagesh, learned High Court Government Pleader is directed to take notice.

2. These Writ Petitions involve the same question of law and fact. Writ Petition No. 35048 of 1993 relates to the land acquired bearing Sy.No. 65 of Inepalli village, Sedam Taluk, Gulbarga District while in the other Writ petition No. 34352/93 the land acquired bears Sy.No. 66 of Inepalli village, Sedam Taluk, Gulbarga District. As in both the Petitions the point involved as well as the facts are same, the Writ Petition No. 35048/93 is taken as leading case and both are disposed of by one Common Order.

3. These Writ Petitions are directed against Judgment and decree dated 22.1.1993 passed in Land Acquisition case No. 94/85 and 93/85 passed by the Additional Civil Judge, Gulbarga, whereby the Civil Judge has fully accepted and allowed the Reference and has held while proposing to raise the compensation to rate of Rs. 8,000/- per acre in respect of the land bearing Sy.No. 65 of 10 acres

and 7 guntas of Inepalli village, Sedam Taluk, Gulbarga District, the Civil Judge has also ordered that the claimant will be entitled to the solatium to the tune of 30% on the Market value of the land as well as they are also entitled for additional Market value of 12% p.a. on the Market value of the land from the date of 4(1) Notification till the date of taking possession. The Civil Judge has also awarded an interest at the rate of 9% p.a. for a period of one year from the date of dispossession, if the amount is paid in the Court within one year and further enhanced interest at the rate of 15% p.a. after the expiry of the period of one year till the date of payment of the amount and has directed that the payment already made to the claimants shall be deducted. On the basis of it respondent No. 2 has issued a statement showing the details of enhanced compensation payable to the land owner as per decree passed by the Additional Civil Judge. In accordance with it after the deduction having been made in respect of the amount already paid to the tune of Rs. 51,552-90, it is shown a sum of Rs. 3,12,444-40 ps. has got to be paid further.

4. Feeling aggrieved from this order the petitioner has filed these Petitions and the main contentions of the petitioner is that the LAO has awarded the compensation at the rate of Rs. 3707/- per acre as compensation vide award dated 10-1-1983. It is also mentioned in paragraph 2 that after the award the petitioner Company has deposited the necessary compensation in terms of the award passed by the LAO. The petitioner's case is that when Reference has been made the notice ought to have been issued to the petitioner by the learned Civil Judge u/s 20 of the Act, but no notice has been issued to the petitioner and petitioner was not aware of the proceedings that had been taken before the Civil Judge u/s 18 of the Land Acquisition Act. As such the petitioner's case is that the order passed in Reference u/s 18 is violative of the provisions of Section 20 of the L.A. Act as amended would be applicable in the State of Karnataka. Learned Counsel for the petitioner further submitted that it is settled principles of law that if any order has got civil consequences and is likely to affect the legal interest or rights of some person then the person who is going to be affected by orders should also be given opportunity of hearing and show cause before it is passed or issued. On behalf of the respondent it has been submitted that the Land Acquisition Officer when he determined the rate of compensation to be Rs. 3,707/- per acre the petitioner had the opportunity of having its say and when the owners of the land felt aggrieved they being entitled under law to move for Reference u/s 18 of the Act, the owner of the land did make an application for Reference. He submitted that the amount awarded by the Land Acquisition Officer has not been deposited. He further submitted that in view of Section 50 Sub-section (2) of the Land Acquisition Act, present Petition is not maintainable and should be dismissed.

5. I have given due consideration to the submissions made by the learned Counsel for the petitioner, namely Sri R. Gururajan as well as of Sri Venkatachala brief holder of G.S. Visweswara, Counsel for respondents 3 to 7. As regard the objections raised by the opposite party regarding maintainability of the Writ, that

the petitioner has not made deposit of the amount fixed by the Land Acquisition Officer as compensation, it appears from a perusal of the Writ Petition as per paragraph-2 that after the award has been passed the petitioner-Company deposited the compensation in terms of award passed i.e given by the 2nd respondent. This allegation made in the Writ Petition is uncontroverted and therefore the petitioner's statement in the Writ Petition has to be taken into on its face value. That as the petitioner has deposited the amount of compensation awarded by the L.A.O. and it has deposited it at the rate fixed by the LAO then the petitioner cannot dispute that rate which has been fixed by the LAO and the rate at which it has been awarded by the LAO in view of Section 50 Sub-section (2) of the Act. That being the position the amount of compensation fixed by the LAO there cannot be any dispute. That the respondent is entitled to withdraw that amount and that amount should be paid to the respondent concerned. That in case it has not yet been deposited, let it be deposited within a period of ten weeks and that amount may be paid to the persons entitled i.e., respondent. As regards the contention of the petitioner that the present Writ Petition is not maintainable in view of Section 50 of Sub-section (2) of the Act, I find there is no substance in this contention. That as regards to the question of exercise jurisdiction under Article 226 by the Court in cases where the order appears to be without jurisdiction order suffers for error of jurisdiction in law or violation of principles of Natural Justice or the like the power and jurisdiction under Article 226 is exercisable reasonably accordance with the Justice and fair play.

Section 50 provides that:-

"In any proceeding held before a Collector or Court in such cases the local authority or company, concerned may appear and adduce evidence for the purpose of determining the amount of compensation."

Proviso to Sub-section (2) very clearly speaks as under:

"Provided that no such local authority or company shall be entitled to demand a reference u/s 18."

Section 18 provides that the local authority or the Company, for whose benefit the land is being acquired, cannot apply u/s 18 for a Reference being made nor are they entitled to challenge the compensation awarded by the LAO. But as regards the proceedings, i.e., either before the Land Acquisition Officer/ Compensation Officer or before the Civil Court on Reference being made u/s 18 of the Act at the instant of the owner of the land, whose land is being acquired when the rate of the compensation has to be determined, or in case where the persons claim that the rate fixed by the LAO is less or deficient then what should have been awarded, it is open to the local authority or to the Company to produce evidence in support of its claim. This provision has got to be read as debarring the local authority or the Company for whose purpose acquisition is being made, from challenging the award made by the LAO. But the Proviso to Section 50(2) will not apply to the case where on Reference the award is to be or

has been made by the Civil Judge enhancing the compensation amount. That specially in cases where the award has been made on Reference u/s 18 of the Act at the instance of the owner of the land enhancing the burden on the person for whose benefit the land has been so acquired without that person/Company being given an opportunity of hearing or having his say, it can well be held Petition under Article 226 will be maintainable and powers of this Court thereunder will not stand curbed by the Proviso to Section 50(2) of the Act as power under Article 226 is power under the Constitution not curtail able by any ordinary legislation except by the Constitutional Amendment process. In this view of the matter, I am of the opinion that the preliminary objection taken by the respondent Counsel that the Petition is not maintainable in view of Section 50(2) and any other particular provision has got no substance. The petitioner's learned Counsel contended before me that the petitioner's case is that while passing the award u/s 18 on a Reference is being made to the Civil Court, the Civil Court has enhanced the compensation rate from Rs. 3,707/- per acre to Rs. 8,000/- per acre and has not issued any notice to the petitioner and as such according to the learned Counsel for the petitioner that the said order is illegal. Section 20 of the Land Acquisition Act, as amended in Mysore Land Acquisition Amendment Act 17/61 reads as under:-

Service of Notice:-

"The court shall thereupon cause a notice specifying the day on which the court will proceed to determine the reference, and directing their appearance before the court on that day, to be served on the following persons, viz., -

- (a) the Deputy Commissioner,
- (b) All persons interested in the reference; and
- (c) if acquisition is not made for government, the person or authority for whom it is made.

A bare reading of Section 20 as amended by Act 17/61 per se reveals that in case where the acquisition is not made for the Government but for some other person or authority, then notice, apart from its being issued and served on the Deputy Commissioner or on persons interested in the Reference, has got to be issued and to be served on the persons or authority for whose benefit the acquisition of the land has been made. Persons means and includes juristic person, the local authority, company or corporation in due course authority other than the Government. The Cement Corporation of India is the Corporation other than the Government and in this view of the matter u/s 20(c) as amended by Act 17/61 the notice ought to have been issued to the petitioner by the Civil Court while proceeding u/s 18 of the Act. The Division Bench of this Court in Land Acquisition Officer Vs. Chandrasekaragowda, relied on the case of NGEF LTD. vs. STATE OF MYSORE AND OTHERS 1980 URJ SC 805 and in particular on the following observations of their Lordships of the Supreme Court and has observed that: -

"It is obvious that Section 20(c) makes it obligatory for the court to issue notice to the person or authority for whom the acquisition is made. In the present case the entire grievance of the appellant is that no such notice was issued at all with the result that the appellant had no opportunity to appear in court, contest the claim of the fourth respondent regarding increased compensation, adduce evidence and otherwise prove that the amount ordered by the Land Acquisition Officer was adequate. The absence of the appellant before the Civil court had a disastrous impact on it because while Land Acquisition Officer had ordered a sum of Rs. 46,000/- by way of compensation, the Civil Judge raised it to Rs. 2,39,000/-."

His Lordship of the Supreme Court has further observed that-

"All that we need say is that an imperative obligation to give notice and hear the appellant's petition before the High Court, and on that strength of Section 20 referred to above, the High Court should have allowed the writ petition and set aside the decision of the Civil Judge."

It has not been controverted by the respondents that petitioner had no opportunity of hearing nor was any notice issued to the petitioner to have his say in the proceedings u/s 18 of the Act before the Civil Judge. Sri Venkatachala, learned Counsel appearing for the respondents submitted that petitioners, may be said to be the Government Undertaking and therefore it can be said that it was Government and in view of the fact that the land acquired, for the petitioner, it may be taken to the acquisition for the Company. Section 3 of the Karnataka General Clauses Act reads as under:-

Definition: In this Act, and in all (Mysore Acts and Karnataka Acts) made after the commencement of this Act, unless there is anything repugnant in the subject or context."

Then Sub-section (16) reads as follows:-

"Government" - "Government" or the Government shall, --

(a) in relation to anything done before the commencement of the Constitution mean the authority or person authorised at the relevant date to administer executive Government in Mysore -

(b) in relation to anything done or to be done after the commencement of the Constitution include both the Central Government and the State Government."

Section 22 Clause (c) as amended by Act 17/61 along with Section 3(16) of the Karnataka General Clauses Act prima facie reveals that the expression "Government", that has been made use of Clause (c) of Section 20 of the Act has been made in the sense as defined in the General Clauses Act. It means the Central Government or the State Government. I am fortified in taking this view from the definition of Expression "appropriate Government" given in Section 3 Clause (ee) of the Land Acquisition Act itself.

The definition as given thereunder reads as follows:-

"the expression "appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government."

This definition has not been amended by any amending Act in its application in Karnataka, in any manner to include the Corporation authority or even the Government undertaking. Thus considered, I am of the opinion that petitioner is not Government Undertaking but it is a Corporation or person rather than the Government and therefore in view of Section 20 Clause (c) of the Act as amended by Act 17/61, it was obligatory duty of the Civil Court to have issued notice on the Reference being made to it, to the petitioner to allow him an opportunity of having its say in the matter for enhancement of the compensation which has already been awarded by the Land Acquisition Officer. In view of Section 50 Sub-section (2) as well which has been relied by the Counsel of the opposite party the local authority as well as other person for whose benefit the land has been acquired has been declared as entitled to appear and to produce evidence to show that the compensation awarded is just and proper. Therefore there is no substance in the contention of the respondent Counsel that the petitioner has not been entitled to get the notice.

I, for view I have taken, find support from the Decision of the Division Bench of this Court in the case of Land Acquisition Officer v. Chandrasekar Gowda. As I have already mentioned earlier I have also got support from the Decision of the Supreme Court in the case of N.G.E.F. Ltd. v. State of Mysore and Ors., quoted above.

Learned Counsel for the respondent in support of his contention has referred to before me the Decision of the Supreme Court in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., wherein their Lordships of the Supreme Court defined the expression, "person interested" in the context of Section 18(1) itself. In paragraphs 12 and 13 of the Judgment, their Lordships of the Supreme Court laid down as under: -

"The only case which appears to have taken a contrary view is a Division Bench decision of the Orissa High Court in the case of State of Orissa Vs. Amarandra Pratap Singh and Another, where the High Court held that the expression "person interested" did not include a focal authority or a company on whose behalf acquisition is made by the State. At the same time, it was clearly held that it was open to the company in any proceeding before the Collector or court to appear and adduce evidence for the purpose of determining the amount of compensation."

"Thus the preponderance of judicial opinion seems to favour the view that the definition of "person interested" must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this

view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital? For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a court, he could have satisfied it that the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is acquired is not an interested person. We are satisfied that such a person is vitally interested both in the title to the property as also in the compensation to be paid therefore because both these factors concern its future course of action and if decided against him, seriously prejudice his rights. Moreover, in view of the decision of this court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by Section 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench."

Learned Counsel for the respondent placed reliance, for his submission in opposing the Writ Petition, on the Division Bench Decision of this Court in UNION OF INDIA vs. KASHAPPA MADIVALAPPA AND ANOTHER 1982 (2) KLJ 128. The following observations will show that the case is not applicable to the facts of the present case. The relevant observation of their Lordships reads as under:-

"It is thus clear from the stand taken by the appellant that the acquisition is made for the Government of India and not for a company or a local authority. Though the expression "appropriate Government" has been defined in the Act, the word "Government" has not been defined. It is clear from the definition of the word "Government" occurring in the General Clauses Act that it shall include both the Central Government and State Government, Section 20(c) of the Act makes it clear that it is only if the acquisition is not made for Government that the person or authority for whom it is made has to be notified. As according to the appellant in these cases the acquisition is made for the Central Government, the provisions of Section 20(c) of the Act referred to above are not attracted, Sri Basavaraju therefore rightly conceded that the Union of India cannot assert that it has a right to be notified u/s 20(c) of the Act."

It is thus clear that Union of India being the Government it was not entitled to notice u/s 20(c) of the Act as the acquisition was for the purpose of the Government.

Sri Venkatachala also made a reference to the Decision of Santosh Kumar and Others Vs. Central Warehousing Corporation and Another, This is a case where the request was made by the Warehousing Corporation respondent in appeal

before the Supreme Court for the deduction of the amount of compensation that has been awarded by the Land Acquisition Officer and in fact the land was acquired for the bona fide use of the Central Warehousing Corporation. The Central Warehousing Corporation ultimately moved for a Reference being made for consideration of the amount which has been awarded to the owner of the land and prayed for its determination. Their Lordships of the Supreme Court applied the principal provisions of Section 50(2) of the Act. In view of Section 50(2) of the Act the company for whose benefit the land has been taken had not been entitled to demand the Reference. In this view of the matter this Decision is also not applicable to the facts of the present case. In the present case the petitioner is not seeking to challenge nor is challenging the amount of the compensation that has been awarded by the Land Acquisition Officer nor he seeking to challenge the same on a Reference being made at his instance nor its liability to pay the compensation determined and awarded by the Land Acquisition Officer. In the present case award of the Land Acquisition Officer has been challenged by the respondent who has sought Reference to be made to the Civil Court u/s 18 of the Act and in these proceedings it was mandatory duty of the Civil Court to have proceeded u/s 18 of the Act after having issued the notice to the petitioner-Corporation for whose benefit the land has been acquired and from whose coffer the money has to be given as compensation and on whom every burden was likely to be placed and was placed by enhancing the rate of compensation from Rs. 3,707/- to Rs. 8,000/- per acre. It is also well settled principles of administration of Justice that even administrative orders having got civil consequences have got to be passed in accordance with the principles of Justice after giving opportunity for hearing to the person who is going to be affected adversely thereby. Keeping all these basic principles of law, I am of the opinion that the Writ Petition deserves to be allowed. The Petition is allowed. The impugned order Annexures "B" and "C" being violative of the principles of Natural Justice and fair play and having passed in breach of the principles of law and requirements of Section 20(c) of the Act and thus the said orders have been passed enhancing the compensation without giving any opportunity for hearing to the petitioner to appear to be null and void and deserve to be quashed.

The Writ Petition is thus allowed, Annexures "B" and "C" are quashed. A direction in the nature of Mandamus is issued to the opposite parties 1 and 2 and directed to proceed with the Reference which has been made u/s 18 of the Act at the instance of the respondents in accordance with law in the light of the observations made above and to dispose of the same after issuing notice thereof to the petitioner. As regards to the amount compensation that has been awarded by the LAO as it is not open to the petitioner to challenge that rate the amount that has been deposited by the petitioner at the rate of Rs. 3,707/- may be paid to the respondent if it has not already been paid to the respondent and the Assistant Commissioner/respondent-2 will take necessary steps needed for its payment expeditiously but it shall be subject to the respondents' right to pursue the Reference and to show that the rate of compensation awarded by the LAO is

adequate. It is open to the respondent No. 1 to decide and dispose of the Reference in accordance with law on merits, in the light of the claim which has been made by the respondent during the proceedings u/s 18 of the Act.

The parties are directed to appear before the Civil Judge concerned on 15th of December 1994 and within a period of four weeks from the date of appearance and service of the copy of this order on him, the respondent No. 1 is directed to consider and to finally dispose of the Reference. The petitioner will himself take the notice of the claim which has been made u/s 18 of the Act by the respondent.