

(1993) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1896 of 1992

Central Railway and Another

APPELLANT

Vs

Ramaiya Chhokodi Ram and Others

RESPONDENT

Date of Decision : 24-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 18, 20, 54

Citation : (1993) ILR (MP) 444 : (1994) 39 MPLJ 154 : (1994) MPLJ 154

Hon'ble Judges : R.P. Awasthy, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : No appearance, for the Appellant; L.P. Singh, for Respondents Nos. 1 to 4, for the Respondent

Judgement

Gulab C. Gupta, J.

This will also govern disposal of Misc. Pet. No. 1889 of 1992, Central Railway, Bombay and Anr. v. Baijnath and Anr., Misc. Pet. No. 1873 of 1992, Central Railway, Bombay and Anr. v. Bharat Prasad and Ors., Misc. Pet. No. 1878 of 1992, Central Railway, Bombay and Anr. v. Rameshraya and Ors., Misc. Petition No. 1894 of 1992, Central Railway, Bombay and Anr. v. Jagdish Prasad and Ors., Misc. Pet. No. 1875 of 1992, Central Railway, Bombay and Anr. v. Roshandhar and Ors., Misc. Petition No. 1888 of 1992, Central Railway, Bombay and Anr. v. Kalloo, Misc. Pet. No. 1877 of 1992, Central Railway, Bombay and Anr. v. Ramavatar and Anr., Misc. Petition No. 1892 of 1995, Central Railway, Bombay and Anr. v. Raijbhan and Anr., Misc. Petition No. 1874 of 1992, Central Railway, Bombay and Anr. v. Vanspati and Ors., Misc. Pet. No. 1876 of 1993, Central Railway, Bombay and Anr. v. Ashok Kumar and Ors., Misc. Petition No. 1895 of 1992, Central Rly., Bombay and another v. Devnath and Anr. Misc. Petition No. 1893 of 1992, Central Rly., Bombay and Anr. v. Koshal Prasad and Anr., Misc. Pet. No. 1897 of 1992, Central Railway, Bombay and Anr. v. Ramjiyawan and Ors., Misc. Pet. No. 1891/92, Central Railway, Bombay and Anr. v. Vanspati and Anr.,

Misc. Pet. No. 1890 of 1992, Central Railway, Bombay and Anr. v. Sundershan and Ors., which raise common questions of law and facts and for that reason have been heard together.

The land of the respondents was acquired at the instance of the petitioners for completing Satna-Rewa Rail Link Project. Notifications under Sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as the Act) were accordingly issued and after completing formalities, the possession of the land taken. The land of the respondents has been acquired for establishing Lilua Railway Station. The respondent Land Acquisition Officer determined the compensation of the said land and passed award dated 25-5-1987. According to the respondent Land Acquisition Officer, the compensation for irrigated land would be Rs. 72,405/- per hectare, whereas it would be Rs. 60,337/- for unirrigated land. He also determined compensation at the rate of Rs. 48,270/- per hectare for fallow land. The amount so determined was deposited by the petitioners and has been paid to the respondents. The respondents, however, were not satisfied with the aforesaid award and claimed a reference u/s 18 of the Act, which was made and has been decided by Shri R. P. Tihaiya, III Additional District Judge, Rewa. According to the learned Judge, proper compensation for the acquired land should be Rs. 1.50 lakhs per hectare and gave the award dated 19th February, 1992, which is impugned in the present writ petition. It is common ground that the said award is appealable u/s 54 of the Act, but the appeal has not been filed.

On 19th August, 1993, when these cases came up for final hearing, no one appeared for the petitioner Railway or the respondent Land Acquisition Officer. Their Advocates were reported to be on strike. Shri Praduman Singh, Advocate for the respondents, had travelled from Rewa to Jabalpur to attend this hearing and was not happy with the adjournment. In fact, he was ready with the cases and argued the same fully.

The important question requiring consideration of this case, as contained in the petitions, is "whether the Additional District Judge was legally bound to serve notice to the petitioner u/s 20 of the Act and grant them an opportunity to contest the claim?" Section 20 of the Act reads as under :-

"Section 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; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector."

The submission of the petitioners is that the land was acquired for them and this

fact was within the knowledge of the respondents and, therefore, they were entitled to a notice and opportunity of hearing. It appears that notice under sub-clause (c) of this provision was sent to the Collector, who had appeared and participated in the proceedings. The petitioners, however, contend that they being persons interested within the meaning of clause (b) of Section 20, were entitled to the notice and hearing and the fact that the notice had been given to the Collector of the State Government would not serve the requirement of the said provision. This provision came up for consideration before the Supreme Court in *Sunder Lal Vs. Paramsukhdas*, and it was clarified to mean in order to fall within this definition, it is not necessary that a person should claim interest in land, which has been acquired. A person becomes a person interested, if he claims an interest in compensation to be awarded. A person claiming an interest in compensation is entitled to be heard under Sections 20 and 21 of the Act. The Supreme Court has since then given a liberal interpretation to this legal provision and the said interpretation has been consistently followed. In *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, the Supreme Court again emphasised the said approach and held that the person for whom the land was acquired and who was liable to pay compensation was the person interested within the meaning of this clause and, therefore, entitled to notice and hearing. This was a case where the acquisition has been made for a private company and in the reference the said company had not been given notice. The Company, therefore, challenged the legality of the award. It appears that the Orissa High Court has taken a contrary view of the matter in *State of Orissa Vs. Amarandra Pratap Singh and Another*, and following the said view, the appeal of the Company was dismissed by the High Court on the ground that the Company had no locus standi to file the same. This view was not accepted by the Supreme Court whose view is contained in the following passage appearing in para 14:-

"Para-14:

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 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."

[Himalaya Tiles" case (supra)]

This view has been very recently followed by the Supreme Court in Neelagangabai and another Vs. State of Karnataka and others, In this case, the land was acquired for the Corporation, which paid the compensation. The said Corporation was, however, not given notice u/s 20 of the Act. Relying on its earlier decision in Himalaya Tiles and Marbles (P) Ltd. 's case (supra), the Supreme Court held that the Corporation was entitled to notice. The view taken by the Supreme Court that it was mandatory for the Court of Reference to have caused a notice served on the respondent Corporation before proceeding to determine the compensation claim was affirmed by its catena of decisions. This Court has also taken the same view in M. P. Grih Nirman Mandal and Anr. v. Umashankar Kunjilal and Anr. 1990 MPLJ 780 and M. P. Electricity Board, Rajgarh v. Rukmini Bai 1992 MPLJ 434. In the subsequent case, the land was acquired for M. P. Electricity Board and was not given a notice to appear and contest the reference. The Board, however, filed an application under Order 1, Rule 10, CPC claiming to be a person interested and having a right to rebut the claim. The said application was allowed recognising the right of the M. P. Electricity Board to appear and contest the claim. There should, therefore, be no difficulty in holding that since the petitioners were the beneficiaries of the acquisition and liable to pay compensation, they were persons interested within the meaning of this provision and entitled to notice. Since the compensation has been enhanced, without notice to them, the award is patently illegal.

The submission of the learned counsel for the respondents, however, is that the petitioners were entitled to file an appeal u/s 54 of the Act and since they have not done, even though they had obtained the copy of the award when the period of limitation had not expired, they should not be permitted to challenge the legal validity of the award invoking extraordinary jurisdiction under Article 226 of the Constitution. In other words, the submission is that since the alternative and efficacious remedy of appeal was available and since the said remedy has not been availed, this Court should refuse to exercise its extraordinary powers. The question whether the petitioners, who had not been noticed by the reference Court, have the locus standi to file the appeal, is not free from doubt. It is now that it has been clarified that the right has been clearly established because of the decision of the Supreme Court in Himalaya Tiles"case (supra). Earlier a Division Bench of this Court in R. S. Deoji Dharsi and Sons v. Ghisulal and Anr.

1953 NLJ 349 : AIR 1953 Nag 256 , had taken the view that a Company for whose benefit the land was acquired has no locus standi to prefer an appeal against the award. In this view of the matter, the argument based on alternative remedy cannot really be accepted. Then, the submission based on alternative remedy does not touch the jurisdiction of this Court. It relates to the discretion of the Court in exercise of jurisdiction. The jurisdiction is conferred on the Court for protecting Constitutional and legal rights and thereby promote justice. In the instant case, the Court has overlooked its obligations u/s 20 of the Act, thereby causing serious prejudice to the petitioners. It is well settled that a mistake of the Court cannot be permitted to cause injustice to a party. In this connection, the decision of the Supreme Court in Rashid Ahmed Vs. The Municipal Board, Kairana, has to be kept in view, which imposes an obligation on the High Court to consider in each case with reference to the facts of the case, whether it will promote the cause of justice by directing the petitioner to seek the alternative remedy of appeal. Considering the doubtful legal position in respect of the petitioner's right, this Court finds enough justification on their part for invoking extraordinary jurisdiction of this Court.

The submission of the learned counsel for the respondents, based on Supreme Court decision in Santosh Kumar and Others Vs. Central Warehousing Corporation and Another, that the Collector, who had appeared and participated in the reference proceedings was the agent of the party for whom the acquisition had been made, need not detain us, in view of other decisions of the Supreme Court, which recognise the right of the person interested to appear and contest the claim. The appearance of the Collector, in the context aforesaid, cannot be accepted as sufficient compliance of the aforesaid statutory provision.

In view of the aforesaid, petitions succeed and are allowed by quashing the impugned award. Considering the fact that this will delay final decision of the reference, it is considered in the interest of justice to direct the parties to appear before the reference Court at Rewa on 11-10-1993 to participate in the proceedings. The matter is remanded to the reference Court for fresh consideration, in accordance with law. No orders as to costs. The outstanding amount of security, if any, be refunded to the petitioners.