

(1999) 02 KL CK 0016

In the High Court Of Kerala

Case No : O.P. No. 16310 and 20411 of 1997

E.S.I. Corporation

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 18, 20, 3(aa), 3(b), 3(c)

Citation : (1999) 1 KLJ 441

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : T.D. Rajalakshmi, E.R. Venkitesh and P.N. Mohanan, for the Appellant; R. Haridasan, R. Rajeev, Rajasekharan Pillai and N. Reghuraj, Govt. Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The E.S.I. Corporation established in terms of the Employees State Insurance Act, 1948 has come up with these two original petitions challenging Ext. P1 judgment of the Subordinate Judge, Kottarakkara in L.A.R. Nos. 408/96, 13/1989 and 14/1989. Those judgments were passed in the references made by the second respondent at the instance of respondent Nos. 3 and 4, under Sec. 18 of the Land Acquisition Act, 1894. It is contended by the petitioner that those judgments were passed without notice to it and that being party interested as defined in Sec. 3(b) of the said Act, it was entitled to notice as provided in Sec. 20 of the Act. The petitioner was not aware of the proceedings which led to the impugned judgments enhancing compensation payable to the respondents 3 and 4 in this case. It is their contention that the compensation payable to respondents 3 and 4 on the basis of enhancement ordered in the impugned judgments has to be met from the funds of the petitioner Corporation. The petitioner is liable to pay the enhanced compensation as decreed in terms of the impugned judgments without notice to them, the petitioner submits, in spite of the statutory provision under Sec. 20 of the Act that they are entitled to such notice. In support of their contention, the decision

of the Supreme Court reported in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., and a Division Bench decision of this Court reported in Steel Authority of India Ltd. v. State of Kerala (1995 (2) KLT 683) are pointed out.

2. Countering these contentions, counsel for the respondents 3 and 4 submitted that the impugned judgments are now appealed against by them before this Court. It is also submitted that these writ petitions will not lie challenging the impugned judgments as the petitioner, if found aggrieved should have filed an appeal in terms of Sec. 54 of the Act. It is also contended that the petitioner has been made party in the appeals filed by them and it is only after getting notice in such appeals that the petitioner has preferred this appeal. It is also contended that the petitioner has executed a bond in terms of Rule 9(3) of the Kerala Land Acquisition Rules agreeing to pay the compensation as awarded by the Land Acquisition Officer or the court without any dispute. They have to honour the bond and deposit the amount as awarded in the impugned judgment. Without that, the petitioner cannot be heard, to contend against the judgment, respondents 3 and 4 submit.

3. The answer to these contentions raised by respondents 3 and 4 are contained in the two decisions cited by the counsel for the petitioner. It is now settled law in the light of the decision reported in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., that "even when notice has been served on the local authority, the remedy under Art. 226 of the Constitution would be available to the local authority on ground on which judicial review is permissible under Art. 226". This is a case where notices were not given at all to the petitioners. Therefore, certainly, they are entitled to challenge the impugned judgments under Art. 226. It had also been held by the Supreme Court that "the proviso to Sec. 5(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Art. 226 of the Constitution as well as the remedies available under the L.A. Act."

4. It was held by a Division Bench of this Court in Steel Authority of India Ltd. v. State of Kerala, (1995 (2) KLT 683) that "with the pronouncement of the decision of the Constitution Bench in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., the matter is no longer res integra and it is open to the aggrieved persons to invoke the extra ordinary jurisdiction of the High Court under Art. 226 of the Constitution."

5. In the light of these binding pronouncements, respondents 3 and 4 cannot contend before me that these original petitions under Art. 226 are not maintainable.

6. There are appeals pending, filed by respondents 3 and 4, the claimants and also by the State. Pendency of appeals will not preclude the petitioner, even if

they are parties to the appeal, to invoke the remedy of judicial review that is available to them, when the impugned judgments, which are also the subject matter of the said appeals, are passed without notice to them and in violation of the statutory provisions. Therefore the pendency of the appeal also will not preclude the petitioner from prosecuting these writ petitions.

7. The contention with regard to the agreement in Form No. 7, executed by the petitioner, as provided in Sec. 9(3) of the Kerala Land Acquisition Rules also will not disable the petitioner from approaching this Court assailing the impugned judgment. The said provision only provides that when the acquisition is for a public purpose, other than for the purpose of the State Government or Central Government, no declaration shall be published, unless the acquisition authority executes in favour of the District Collector, an agreement in Form No. 7. Such an agreement contemplates prompt payment of the amount payable in terms of the awards or enhancement decreed, as the case may be - The said provision or agreement does not take away the remedy available to the petitioner under the Constitution of India.

8. The submission of the respondents 3 and 4 that the petitioner cannot be heard to contend anything against the award unless they pay the amount decreed in terms of the said impugned judgment also, does not hold good. In order to invoke a constitutional remedy available to the petitioner, there is no such condition precedent.

9. It is further submitted by respondents 3 and 4 that acquisition proceedings started long ago and the property had been handed over to the petitioner and they had constructed the building. Judgments had been passed as early as in February, 1995 and August, 1996. The petitioner is, therefore, guilty of laches, in approaching this Court. Petitioner answered this point stating that they were not aware of any proceedings before the court. They need not enquire, because the statute makes the court liable to issue notice to the parties interested including the petitioner, before passing an award. Therefore, they were awaiting the notice as statutorily provided and that they became aware of the impugned judgments only on receiving the notice from the District Collector. Immediately, they have approached this Court with these petitions. In such circumstances, the petitioner cannot be said to be guilty of laches.

10. It is also contended that the petitioner being a statutory corporation was not entitled to be heard before the reference court in terms of Sec. 50(2) of the Act and it was-not an interested person in terms of Sec. 3(b).

11. It is true that the decision of the Supreme Court referred to above is concerning the local authority and a company. Local authority is defined in Sec. 3(aa) of the Act and it is an inclusive definition to include town planning authority as well. Therefore, the local authority means a local body or a town planning authority. Of course, the petitioner will not come within the terms "local authority". Sec. 50(2) also mentions about the "local authority or company

concerned". The petitioner is neither of these. Therefore, the Supreme Court decision cannot have any direct application to the case of the petitioner. Relying on the Supreme Court decision, a Division Bench of this Court in Steel Authority's case, examining the definition of person interested as contained in Sec. 3(b) and the notice to "all persons interested" contemplated under Sec. 20, made it clear that the Steel Authority of India Ltd., being a Government company owned by the Central Government is a person interested as envisaged in Sec. 20 of the Act. Therefore, the net position is that a local authority is a party interested, a company is a party interested and a company owned by Central Government is also a party interested. In such circumstances, there is no reason to exclude "Corporation owned or controlled by the State". Therefore, there is no reason to exclude a statutory corporation like the petitioner established by a Central Act from the person interested.

12. It is to be borne in mind that the funds in the hands of the petitioner Corporation is obtained from the workers and the contribution paid by the employers for the welfare of the workers. It is from out of that fund, that the petitioner has to defray expenses for acquisition. Therefore, such fund is public fund and before any liability is fastened on that public fund collected from the pockets of or for the workmen covered by the scheme of the petitioner, towards the enhanced compensation in terms of the judgments like Ext. P1 marked in this case, necessarily, the petitioner is entitled to be heard. There is no dispute that in terms of the bond executed by the petitioner in Form No. 7 as provided in Rule 9(3) of the Kerala Land Acquisition Rules, the petitioner is liable for the enhanced compensation as decreed in Ext. P1 judgment marked in these cases. But, before fastening such liability, it was incumbent upon the court to issue notice to the petitioner. It is also insisted as provided in Sec. 20 of the Act. As there is no such notice to the petitioner naturally, the impugned judgments are bad. As per Sec. 20, as held by a Division Bench of this Court mentioned above "the reference court has to give notice to all persons interested". Such a notice was not given to the petitioner. As held by the Division Bench, "if without affording an opportunity to the person who has to bear the acquisition costs, land value happened to be increased by leaps and bounds it would be a negation of principles of natural justice. The contexts in which "person interested" in the Act would fall should therefore, override the definition of the word Company" in Sec. 3(c). Every person, whether it is a Government owned company or a private company, must also be regarded as a "person for the purpose of participating in the proceedings if he or it is really interested in the outcome."

13. In such circumstances, there is no reason to exclude a statutory corporation owned and controlled by the Central Government or the State Government, as the case may be. Accordingly, it is held that these writ petitions are maintainable based on the said two decisions and that the petitioner is a person interested as envisaged in Sec. 20 of the Act. As the petitioner was not given notice by the reference court, the impugned judgments passed by the reference court cannot be sustained. Accordingly, I quash the impugned judgments and direct the

reference court to pass fresh awards after affording reasonable opportunity to all the parties, including the petitioner, the second respondent and respondents 3 and 4 for participating in the proceedings. The original petitions are allowed. Taking into account that this is a matter relating to acquisition of the year 1982 onwards, the reference court shall expeditiously dispose of the matter, at any rate, before, 31-12-1998.