

(1970) 07 BOM CK 0008

In the Bombay High Court

Case No : Appeal No. 13 of 1965 and Miscellaneous Petition No. 9 of 1962

Himalayan Tile and Marble (Pvt.) Ltd.

APPELLANT

Vs

Francis V. Coutinho and Others

RESPONDENT

Date of Decision : 23-07-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 227, 31(2)
Land Acquisition Act, 1894 — Section 12, 17(2), 18, 18(1), 20

Citation : AIR 1971 Bom 341 : (1970) 72 BOMLR 910

Hon'ble Judges : Kotval, C.J.;Nain, J

Bench : Division Bench

Advocate : D.R. Dhanuka, F.S. Nariman and S.I. Thakur, for the Appellant; V.T. Walavalkar, G.N. Kini and J.M. Sethna, for the Respondent

Judgement

Kotval, C.J.—This is an appeal by the third respondent to a Miscellaneous Petition in which were challenged certain proceedings for the acquisition of land.

2. The three petitioners who are brothers were the owners of survey Nos. 6/3, 8/1, 9/1 and 9/2 at village Majas Mogra, Jogeshwari, Bombay admeasuring 2 acres. The Himalayan Tile and Marble (Private) Ltd., the Respondent No. 3 in the Petition are the appellant before us, They carried on the business of manufacture and sale of artificial marbles and tiles. They have a factory on the land adjoining the land of the original petitioners. Some time in 1957 or 1958 at the instance of the third respondents and for their purposes the law was set in motion for the acquisition of the petitioners' lands. On 7th of January 1953 a notification u/s 4 of the Land Acquisition Act was issued and a separate notice thereafter was also issued by the Land Acquisition Officer, to the 1st and the 2nd petitioners. It was alleged on behalf of the petitioners that no notice was served upon the 3rd petitioner. On the 31st of December 1959, the Land Acquisition Officer, similarly issued a notification purporting to be u/s 6 of the Act. According to the petitioners a notice was also issued but was served on the 1st petitioner only on the 25th of January 1960. The acquisition proceedings went on and an award

came to be made on the 11th of April 1961 u/s 12 of the Act. It was published in the State Gazette on the 18th of April 1961. On the 11th of December 1961 a letter was written on behalf of the Government, the 1st respondent in the petition, threatening to take possession of the land acquired and soon after on the 12th of January 1962 the present petition, out of which the appeal arises, was filed on the Original Side of this Court.

3. The purpose of the acquisition as stated in all the notifications is u/s 6 or Section 4 was stated as follows:-- "Public purpose for which the land is needed for Himalayan Tiles and Marble Pvt. Ltd.".

4. The petitioners challenged the proceedings taken for the acquisition of their lands as also the award made on 11th April 1961 on several grounds. Initially they alleged that the whole acquisition proceedings were inspired by the Himalayan Tiles and Marbles (Pvt.) Ltd. the 3rd respondent whose officers in collusion with one K.I. Hathi, a surveyor in the office of the Special Land Acquisition Officer, Bombay, the 2nd respondent, wanted to acquire the lands at a cheap rate by using the machinery under the Land Acquisition Act. The petitioners alleged that they are ignorant and illiterate people and that this Hathi "promised and represented to the 1st petitioner that the petitioners would be getting a large amount by way of compensation and that there was no harm or prejudice to them in allowing the said lands to be acquired". On this representation the officers of the land acquisition office and Hathi took various signa turns of the petitioners or some of them on different papers. The petitioners alleged that the said officers of the department "were interested in the said lands being acquired at the instance and instigation of the 3rd respondent" and that a fraud had been played upon the petitioners by obtaining their signa- turns on various papers and by holding out promises and inducements not to resist the acquisition proceedings. Pursuant to these representations and due to the fraud the petitioners at no stage participated in the enquiries or proceedings as they were not aware of the same. They also challenged the proceedings as invalid and not binding on them and illegal for other reasons. They stated inter alia that the alleged purpose of the acquisition was not a public purpose, that the Himalayan Tile and Marble Private Ltd., was not a company which had any charitable or public purpose as one of its objects, that it was a purely commercial venture carried on by some businessmen for the purpose of their own private profit and they were merely manufacturing and dealing in artificial marbles and tiles; that the public was in no way interested in the business of the 3rd respondent or the manufacture and the profits of the 3rd respondents are shared only amongst the shareholders of the 3rd respondent company who are a few individuals, that their activities are in no way advantageous to the community and the use of their work was merely for particular individuals namely the shareholders of the 3rd respondent company. Thus they alleged that the acquisition proceedings culminating in the award were illegal and should be so declared. They also challenged the award and the proceedings on the ground of mala fides.

5. In the petition the petitioners joined the Himalayan Tile and Marble (Pvt.) Ltd., the 3rd respondent as a party, the first two respondents being the State of Bombay and the Special Land Acquisition Officer. In paragraph 2 of the petition however they stated "no relief is being claimed against them (the 3rd respondents)". The principal reliefs which they claimed are set forth in prayer Clauses (a), (b) and (c) and these reliefs are only claimed against the 1st and the 2nd respondents. The first relief is to quash and set aside the notifications under Sections 4, 6 and 12. The second relief claimed is against the 1st respondent, its officers, subordinates and agents from giving effect to or enforcing the acquisition proceedings and/or taking any further steps pursuant to the impugned notification. The third prayer is for restraining by an order and injunction the first two respondents from proceeding further with the acquisition proceedings.

6. After the petition was filed the petitioners prayed for amendment of the petition in view of the Validating Act XXXI of 1962 having been passed and in view of the decision of the Supreme Court in the R.L. Arora Vs. State of Uttar Pradesh and Others, . They challenged the acquisition proceedings and the award as violative of Articles 14, 19 and 31(2) of the Constitution.

7. The decision of the Supreme Court in R.L. Arora Vs. State of Uttar Pradesh and Others, (the second Arora case) was given on 2nd February 1964 during the pendency of the writ petition before the learned single Judge. It upheld the validity of the Land Acquisition Amendment Act 31 of 1962. It gave an interpretation of Clause (aa) of Section 40(1) of the Act and indicated what is the true scope and effect of the definition of "public purpose" in the light of Clause (aa). Having regard to that definition the petitioners amended the petition and on the basis of that amendment the learned single Judge allowed the petition relying expressly upon the decision in the second Arora case. It appears that at the hearing before him the Himalayan Tiles and Marbles the 3rd respondents did not at any stage appear. They remained ex parte and for a time the only contest raised was by the 2nd respondent the Special Land Acquisition Officer who had filed an affidavit. Since allegations of mala fides and fraud on the part of Hathi had also been made he had also filed an affidavit on 7th January 1963 though he was not a party to the petition. It also appears that at the hearing on behalf of the State Government and the Land Acquisition Officer, counsel did not raise any particular contest to the petition but merely stated that they would submit to the decision of the Court in view of the R.L. Arora Vs. State of Uttar Pradesh and Others, and that is why perhaps the learned Judge Mr. Justice Tarkunde gave a very cryptic judgment relying on that case without further discussion.

8. Now it is not the State Government or the Land Acquisition Officer who had contested the petition before the learned Judge who come up in appeal to this Court against the allowance of the petition, but it is the Himalayan Tile and Marble Private Ltd., the 3rd respondent who appeals. The appellant is the party for whom the acquisition was undertaken. A preliminary objection has been

taken to the right of such a party to come up in appeal at all under the circumstances. On behalf of the respondents to the appeal (the petitioners before the learned single Judge) it has been contended that the party for whom the acquisition is being made has actually no locus standi whatever in the land acquisition proceedings beyond the right recognised in him to appear and adduce evidence for the purpose of determining the amount of compensation as indicated in Section 50(2) of the Land Acquisition Act. It has been pointed out that u/s 18(1) such a person is not "a person interested" within the meaning of the Act, and the proviso to Section 50 in terms says that no such local authority or company shall be entitled to demand a reference u/s 18. It was therefore urged that if a party has no right to take part in the acquisition proceedings at all nor is entitled to demand a reference u/s 18, nor is "a person interested" within the meaning of the Act, such a party cannot be allowed to intervene in proceedings taken under Article 226 or Article 227 of the Constitution for challenging those very land acquisition proceedings. It would be a very anomalous petition if while the acquisition proceedings are going on such a party has no right to intermeddle with the proceedings except to the extent of appearing and adducing evidence, as to the amount of compensation yet when constitutional proceedings are taken for the purpose of overthrowing the same land acquisition proceedings it will be entitled to take part in them.

9. Having heard counsel on this preliminary objection, we are inclined to hold that there is much substance in the objection which is entitled to succeed and it is clear upon the authorities that the party for whom acquisition is being undertaken has no locus standi whatever except as provided in Section 50, Sub-section (2) to intermeddle with the acquisition proceedings or to claim to set aside the award u/s 18. Therefore, such a party would not be entitled to challenge the same proceedings indirectly in a writ petition. We would first refer to some provisions of the law, relied on by either side, Section 18, Sub-section (1) merely gives the right to have a reference made only to "any person interested" who has not accepted the award. Therefore the person who can demand a reference must be a "person interested". That expression is defined by the Act in Section 3, Sub-section (b) as including "all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;" It was urged, therefore, that the 3rd respondent for whom the land is being acquired would be a "person interested" because it has an interest in the compensation we cannot accept this conclusion because Section 50, Sub-section (2) indicates what is the nature of the interest of such a person. It says:--

"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:

"Provided that no such local authority or company shall be entitled to demand a

reference u/s 18." Therefore in express terms Section 50 takes away the right to demand a reference from the party for whom the acquisition is set on foot. Not merely does the parent Sub-section by implication limit the scope and extent to which such a person can intermeddle with the land acquisition proceedings by the words "may appear and adduce evidence, for the purpose of determining the amount of compensation" but the proviso expressly takes away the right to demand a reference.

10. The earliest decision upon an interpretation of these provisions is a decision of the Calcutta High Court in 13 Cal WN 116, *Municipal Corporation of Pabna v. Jogendra Narain Raikut*. That was also a case of an appeal preferred to the High Court from the decision of a reference u/s 18 of the Act. The Subordinate Judge passed a decree modifying the award. In the Reference the then Secretary of State for India in Council who alone could represent the Crown was not made a party. An objection was taken therefore that the proceedings were bad on that score. The Division Bench ruled that "a company or corporation for whose benefit any land may be acquired by the Collector is not a necessary party in the proceedings and there can be no doubt that no proceeding can properly go on in the absence of the Secretary of State for India in Council. u/s 50 of the Act, a company or a local authority for whose benefit the acquisition is made may appear and adduce evidence for the purpose of determining the amount of compensation, but that is in the nature of the addition of a party simply for the purpose of watching the proceedings or assisting the Secretary of State. Such a company or local authority has not the power to ask for a reference u/s 18 of the Act; neither does the Act give it the right of appeal". The decision, therefore, shows that having regard to the provisions of Sections 18 and 50 of the Act a company or a local authority for whom an acquisition is being undertaken has no locus standi to take part in the proceedings or to challenge the award by way of appeal against the order of reference except to the extent mentioned in Section 294-A, that is to say "watching the proceedings or assisting the Secretary of State" by appearing and adducing evidence as to the amount of the compensation. This decision has been followed in a number of cases particularly in this Court. The earliest decision of this Court is that of a single Judge in *In re: Jerbai Framji Metha*, . In that case one of the claimants to compensation had raised a question as to whether Government was entitled to appear on a reference u/s 18 and in that connection the provisions in the matter of giving notice were brought to the notice of the learned Judge and he remarked at page 245:--

"It may be that this Court will have to frame rules for giving effect to the provisions of the Land Acquisition Act contained in Section 20 in the matter of giving notice. But having regard to the entire scheme of the Land Acquisition Act I am satisfied that the only person who is entitled to appear in a reference relating to compensation is the Collector as defined in Section 3(c) of the Act and that in cases relating to apportionment, neither the Collector nor the Government have any locus standi whatsoever".

11. Another decision of this Court is to be found reported in Corporation of the City of Nagpur Vs. Narendrakumar Motilal and Others, where a revision application was preferred by the Corporation of the City of Nagpur for whom the acquisition proceedings had been undertaken. In that case one of us (Kotval, J.) dismissed the application on the short ground that:--

"The compensation is paid by Government though it may be that it ultimately emanates from the person for whom the acquisition is being made. In my opinion, the words "claiming an interest in compensation" in Section 3(b) must be limited to the person who pays the compensation under the Act, namely the Government. It cannot, in any case, include within that expression the person for whom the acquisition is being made.

Moreover, it appears to me that Section 294-A expressly and in terms controls Section 18 and takes away the right from the local authority or company for whom the land is being acquired to demand a reference u/s 18. Whatever may have been the object of the law, in my opinion, the language of Section 294-A is plain and must be given effect to".

This decision was followed by a Division Bench of this Court at Nagpur (Kotval and Badkas, JJ.) in Appeals Nos. 4 and 5 of 1953 (Bom), Municipal Committee, Daryapur v. Bulidan Agyaram Rathi and Municipal Committee, Daryapur v. Ramchandra Narayan Ganorkar, decided on 20th November, 1958. In that case the precise question which arises in this appeal also arose. The Daryapur Municipal Committee was the local authority for whom the acquisition was undertaken by the State Government. The Land Acquisition Officer assessed the compensation at Rs. 500/- per acre. The owners of the land refused to accept the award and demanded a reference. The District Court gave an award and enhanced the compensation to Rs. 3,000/- per acre in the case of one plot and Rs. 2,500/- in the case of another contiguous plot. The Municipal Committee of Daryapur appealed to the High Court against the enhancement. The Division Bench after examining afresh all the provisions of law held:--

"The question then is whether a municipal committee can appear in appeal filed by any of the parties i.e.. Collector or claimant. It appears that there is no such provision for enabling a local authority to appear in the appeal in the High Court. It is thus clear to us, in view of the several provisions and the scheme of the Act, that the Municipal committee is not a party to the award though it may have facility to the extent mentioned in Section 50 of the Act.

Now, these appeals are filed by the Municipal Committee, that is to say, they have been filed by a person who, was not a party to the proceedings. The Scheme of the Act indicates that the land acquisition proceedings being proceedings between the Collector and the persons interested and being for the payment of the compensation and as the land vests in the Government on payment of the compensation, it cannot be held that the municipal committee can file an appeal u/s 54 of the Act. The Municipal Committee was not a party to

the proceedings out of which the appeals arise. It is accepted law that it is only a party to the proceedings, who, if aggrieved by the decision, can appeal against such decision".

12. Another Division Bench at Nagpur has held that a local authority for whom an acquisition was being undertaken had no locus standi even to file a cross objection. (See Appeal No. 111 of 1950 decided on 27-9-1957 (Bom) by Vyas and Kotval, JJ. Ramgopal Ramnath Maheshari v. Land Acquisition Officer, Amraoti, last paragraph). All these decisions further came to be reviewed in a recent judgment of the Gujarat High Court reported In Cautamlal Naranlal Vs. The Additional Special Land Acquisition Officer, Ahmedabad and Another, . The Division Bench held (vide paragraph 13 at page 86) that

"With such a scheme of the Act before us, and keeping in mind even the general principles referred to in Order 1 of the CPC relating to parties -- either necessary or proper -- to any such or a legal proceeding, we think that a Local Authority or Company as the case may be, has no status of a party as such, for it has no right to demand a reference, and against whom no award having the force of a decree can be passed. In other words, even if it is on record by reason of its being given a right to appear and adduce evidence, in regard to the compensation, no order either for payment or for costs can be passed against it by the Court. Nor has it been given even a right to appeal against the Award of the Court".

(The underlining is ours.)

13. If then such is the position of the party for whom acquisition proceedings are undertaken, under the terms of the Special Law dealing with acquisitions a question arises, can the self-same party be permitted to challenge or meet the challenge to an award in the proceedings taken under our constitutional powers but virtually challenging the acquisition proceedings and the award? We think that we would be doing violence to the provisions of the Land Acquisition Act if we were to permit the self-same party to challenge an award, in the proceedings under Article 226 of the Constitution, which would virtually amount to challenging the acquisition proceedings and the award, for though no doubt these proceedings taken under our constitutional powers are independent proceedings, nonetheless it is an accept-ed principle that such proceedings must be determined in accordance with the law and especially so is the case where there is a special Act making special provisions upon a special subject such as land acquisition.

14. Counsel sought to avoid the impact of the decisions to which we have referred above by urging that though no doubt it may not be open to the Company for whom the land is being acquired to intermeddle with the land acquisition proceedings while they are before the Land Acquisition Officer and prior to the award being made, there is nothing to bar such a person from challenging the proceedings and the award otherwise, if he can do so, that is to say, as for instance in a writ matter. We do not think that the Miscellaneous

petition which was preferred in this case was any ancillary or different proceeding. In fact it was undertaken in order to challenge those very proceedings and to set aside the very award which was passed, and if a party is deprived of the right to challenge those proceedings or to question the award by the special law by which it is governed, we cannot acting under our constitutional power permit that which the law Itself has prohibited.

15. It was next urged that the operation of Section 294-A must necessarily be limited upto the time that the company qua company retains its position as a company for whom an acquisition proceeding is going on, but in this case an award was made and on the date on which the award was made the title to the property vested in the Government. It was pointed out that the 3rd respondent the company had entered into an agreement with the Government on 3rd December, 1959 prior to the undertaking of these acquisition proceedings whereby the Government had agreed that the land shall, as conveniently as may be, be transferred to the company. Therefore there was a vested interest which the company had a right to protect and for the protection of which it could take any steps that it chose to take, and nothing that is contained in Section 294-A or Section 18 of the Land Acquisition Act can take away that right.

16. It seems to us that despite the fact that an award was made the position of the 3rd respondent remained the same as before namely that it was still merely a company for which land acquisition proceedings had been undertaken. In this respect, considerable controversy was raised as to whether the Government had been put in possession of a part of the land thus feeding their title and completing it to that extent. We may first of all dispose of this small ancillary point.

17. On the question of possession being delivered to the Government the petitioners specifically averred at the end of paragraph 15 of the petition "The Petitioners further say that notwithstanding the said letter and the threat therein contained the petitioners are still in possession of the said lands and their tenants are occupying the said struc turns standing thereon and possession thereof has not been taken by the respondents". They made similar averments at the end of paragraph 1 of the petition, that "the petitioners were at all times and still are in possession of the said Immovable properties". Now as we have stated the 3rd respondents fortunately for them were made parties to the writ petition but they did not only not contest the proceedings but did not even appear and were throughout ex parte. If they had intended to controvert any statement in the petition, surely it was their duty to have controverted the statements in the petition. That they have not done so would entitle the Court to hold that this allegation made in paragraphs 1 and 15 of the petition is true at least so far as the 3rd respondent is concerned and unchallengeable so far as they are concerned, but we do not propose merely to rely upon such a technicality. The party most concerned with the land acquisition proceedings namely the Land Acquisition Officer has filed an affidavit on 22nd December, 1962 and in reply to

paragraph 15 he stated in paragraph 21 "with reference to paragraph 15 of the petition I believe the contents thereof to be substantially correct". Similarly with reference to paragraph 1 of the petition also he stated in paragraph 8 of his affidavit that the contents thereof he believed were substantially correct. Therefore the only person who should be in the know of facts namely the Land Acquisition Officer has categorically admitted that what the petitioners had stated as to their possession was true. In the face of this admission of the Land Acquisition Officer himself and in the face of the non-filing of any affidavit on the part of the 3rd respondent, there can be only one conclusion namely that on the date of the petition the petitioners were in possession of the lands under acquisition.

18. But counsel on behalf of the appellants relied upon several other facts which we shall deal with: Firstly he relied upon the affidavit of one Hathi where in paragraph 2 that officer suggested that on 22nd February, 1960 one acre of land was taken possession of. In the first place this statement itself was not made in answer to paragraph 1 or paragraph 15 of the petition. It was paragraph 6 of the petition which was being answered and all that this officer was doing was referring to the notices served and it was in a most casual and ancillary manner that he brought in the question of possession in the following words :--

"The only signature which the petitioner No. 1 made in my presence was on the memo of possession which was prepared on the 22nd February, 1960 at the time of taking possession of one acre of land out of the lands belonging to the petitioners which was acquired with the urgency clause by the Notification a copy whereof is Ex. D to the petition".

In the second place, we may say that it is this same officer against whom the gravest allegations have been made in the petition that it was he who made false representations to the petitioners and that it was with his connivance that the 3rd respondents played a fraud upon the petitioners. We can hardly therefore accept the statement of this officer. At any rate it cannot be accepted in the face of the categorical admission of his superior officer, the special Land Acquisition Officer himself. Then it is further urged on behalf of the appellants that there is no doubt or dispute that proceedings were taken u/s 17(2) relying upon the urgency clause which empowers the State Government to take possession in anticipation of acquisition. It was urged that if those proceedings did take place some lands must have been taken possession of and that fact supports the affidavit of Hathi. If possession had been taken we have no doubt that adequate documents must have been prepared but none has been filed. Apart from all that, we will assume for the sake of argument that documents may have been prepared as to possession. If they were prepared by Hathi they would in our opinion be very suspicious. What is more, it is common knowledge that in spite of receipt of possession being filed in Court and reports being made of delivery of possession the facts as to actual possession are often different. The possession according to the affidavit of Hathi of one acre of land was said to have been

taken on 22nd February, 1960, but the petition was filed on 12th January, 1962, more than two years later and it is in the petition that the petitioners specifically averred that they were in possession of all the lands under acquisition. To that allegation there was not merely no reply on the part of the 3rd respondent but a positive admission on the part of the Land Acquisition Officer. It may be therefore that the fact as to possession had changed in the meanwhile between 1960 and 1962 and therefore the Land Acquisition Officer admitted that possession of all the lands was with the petitioners. At any rate in this state of the record we cannot but conclude that on the date of the petition the lands under acquisition were in the possession of the petitioners.

19. With this comment upon the ancillary point we turn to consider the main contention namely that the 3rd respondent acquired an interest or right de hors the Land Acquisition Act by virtue of the agreement entered in- to between them and the Government, which they could protect in the writ petition and therefore no provision of the Land Acquisition Act can bar them from protecting that right. We have already said that in our opinion the writ petition was nothing more or less than a continuation of the proceedings in land acquisition, for the whole purpose and the object of the writ petition was to challenge the entire land acquisition proceedings and the award made. It was not a different or new proceeding and the right which the 3rd respondent claimed was not a separate and an independent right. It was a right which they claimed as a party for whom the land acquisition proceedings were undertaken. It was this right as such a party which they were seeking to protect and it was precisely such a right which does not make them "a person interested" within the meaning of the Land Acquisition Act, and in regard to whom Section 294-A bars interference with the proceedings. The agreement which the appellants made with the State Government was made under the provisions of the land acquisition Act and is therefore subject to its provisions.

20. We may also say that there are other strong reasons why the 3rd respondent would have no right to file and pursue the present appeal. As we have already said they took no part in the writ petition at all. They were made a party though they were not a necessary party probably because they were given the right to adduce evidence and assist the Government u/s 294-A. Thus they certainly had an opportunity to contest these proceedings but they did not do so and remained ex parte. The real party and upon the authorities the only party who is interested in the land acquisition proceedings namely the Government does not choose to file an appeal. In fact counsel on their behalf categorically stated before us that they did not wish to urge anything in appeal and would abide by the orders of the Court. That was their attitude also before the learned single Judge, and for a very good reason. They had realised that the acquisition and the award must be set aside having regard to the second Arora case. The petitioners in the petition were substantially challenging the notices and the notifications u/s 4, Section 6 and Section 12 of the Act. None of these notices were served upon the 3rd respondents nor were they at all connected with them. In the petition itself no

relief has been asked for against the 3rd respondents. Whatever reliefs have been asked for are against the 1st and the 2nd respondents. We cannot, therefore, understand how under these circumstances the 3rd respondents can claim that they have a right of appeal. They are taking advantage of the fact that they have been made a party to the petition, to prefer this appeal. Under the circumstances, we hold that the appellants have no right of appeal and no locus standi to prefer the appeal. The appeal is dismissed with costs. The amount of Rs. 500 deposited towards the costs of the respondents be paid to them against their costs. We think that in the circumstances the costs of the two sets of respondents namely the respondents 1, 2 and 3 on the one hand and the respondents Nos. 4 and 5 on the other be quantified at Rs. 500/- each.

21. Appeal dismissed.