
(1993) 01 GAU CK 0017

In the Gauhati High Court

Case No : Misc Appeal (First) No. 27 of 1989

Hindustan Paper Corporation Ltd.

APPELLANT

Vs

Sohan Lal Pugalia and Ors.

RESPONDENT

Date of Decision : 04-01-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 54, 54

Citation : (1993) 1 GLJ 165 : (1993) 1 GLR 267

Hon'ble Judges : U.L.Bhat, C.J.;R.K.Manisana Singh, J and D.N.Baruah, J

Bench : Full Bench

Advocate : K.P.Pathak, B.K.Sharma, B.K.Goswami, Advocates appearing for Parties

Judgement

U.L. Bhat, C.J.—The question whether a "company" at whose instance the Collector acquired land and passed an award can file an appeal before the High Court against the enhancement of compensation decreed by the civil Court on a reference under section 18 of the Land Acquisition Act, 1894, for short "the Act, at the instance of the claimants, has been referred to a Full Bench by a Division Bench of this Court.

2. The land belonging to the claimants has been acquired by the Collector at the instance of appellantCorporation. Not being satisfied with the compensation awarded by the Collector, the claimants sought a reference under section 18 and the reference was duly made. The appellant, claimants and the State appeared before the civil Court which ultimately passed an award enhancing the compensation. The appellant is aggrieved by the enhancement effected by the civil Court under section 26 of the Act. Learned counsel for the contesting respondents Shri Goswami contends that the appellantCorporation at whose instance the land was acquired is not a "person aggrieved" and cannot file an appeal before the High Court under section 54 of the Act.

3. High Courts have expressed conflicting views in regard to the question under consideration. However, we do not think we need refer to these conflicting views

in view of three decisions of the Supreme Court, namely, *Himalaya Tiles and Marble (P) Ltd. vs. Francis Victor Coutinho*, AIR 1980 SC 1118; *Krishi Upaj Mandi Samity vs. Ashok Singhal & others*, AIR 1991 SC 1320 and *Food Corporation of India vs. Makhan Singh & another*, AIR 1992 SC 1406.

4. The acquisition in question is one made under Part VII of the Act dealing with the acquisition of land for companies. Land required by a company can be acquired by virtue of sections 39 and 44B of the Act with the previous consent of the appropriate Government and on execution of the requisite agreement. Section 4, 5A, 6, 7 and 35 contemplate acquisition for the purpose of company also. Section 3 (b) defines the expression "person interested" as including all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act. Sections 5 A, 9, 10, 11, 12 and 17 of the Act refer to the expression "person interested in the land". Section 18 of the Act refers to "person interested". Section 54 dealing with the appeal states that an appeal shall lie in any proceeding under this Act to the High Court from the award passed or any part of the award, but does not state that appeal shall lie only at the instance of "party aggrieved".

5. The Supreme Court in *Francis Victor Coutinho* was required to decide whether a company at whose instance land was acquired can file a writ appeal against the decision in writ petition quashing the land acquisition proceeding and answered the question in the affirmative. Supreme Court referred to the provisions in section 18 enabling a person interested to seek reference as also subsection (2) of section 50 enabling the company to appear and adduce evidence before a Collector or a Court for the purpose of determining amount of compensation and observed that the expression "person interested" must be liberally construed so as to embrace all person who may be directly or indirectly interested either in the title of the land or in the quantum of compensation. Supreme Court took the view that the company at whose instance land is acquired is a person interested and can undoubtedly appear and adduce evidence on the question of quantum of compensation. Since the company is interested in the acquisition, the land acquired and the compensation, it was held to be a person with sufficient interest to appear in the writ petition and to file writ appeal.

6. In *Krishi Upaj Mandi Samiti's* case, the acquisition was made at the instance of the Samiti. Against the Collector's award reference under section 18 of the Act was made at the instance of the claimant. The reference Court enhanced the compensation. The claimant, not being satisfied with the enhancement made, filed an appeal before the High Court which further enhanced the compensation. The decree and judgment of the High Court were challenged before the Supreme Court by the Samiti. It was found that the Samiti had no notice of the proceedings before the High Court. The claimant, therefore, conceded that the judgment of the High Court may be set aside. The Supreme Court refrained from setting aside the award of the reference Court because it was satisfied that the Samiti had accepted and was satisfied with the award of the reference Court

though notice was not served on it and therefore it shall not be open to the Samiti to assail the correctness of the enhancement made by the reference Court. This decision would clearly indicate that when the reference Court enhances the compensation at the instance of the claimant, the company at whose instance the land was acquired has the option to accept the decision of the Reference Court or to challenge the same. The only effective way of challenging the same is by way of filing an appeal.

7. In Food Corporation of India's case the Supreme Court held that the company at whose instance land has been acquired has a right to challenge in" appeal enhancement made by the Reference Court.

8. The company at whose instance land has been acquired is a person interested in the determination of compensation. However, this does not mean that the company can move for reference under section 18 of the Act; we say so in view of section 25 of the Act which lays down that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11. A combined reading of section 18 and subsection (2) of section 50 of the Act would make it clear that the company has a right to appear before the Reference Court and oppose the enhancement sought by the claimant and support the Collector's award. This right can be effectuated either by adducing evidence independently or by cross-examining the witnesses examined by the other parties. When the Reference Court gives a decision enhancing the compensation, the decision adversely affects the company at whose instance land is acquired; that is because the compensation amount has to be paid by the company and not by the Government. Of course, it is the Government which makes payment to the claimant, but that payment is made by collecting the same from the company which sought acquisition. The company has a right to support the award passed by the Collector. If the compensation awarded by the Collector is enhanced, the company is certainly aggrieved by that decision to the extent of the enhancement. Section 54 of the Act states that "an appeal shall lie" from the award. Section 54 does not state that "any party aggrieved" can file an appeal. Where the statute does not restrict the right of filing an appeal to "a party aggrieved" it must follow that "any person aggrieved" can file an appeal. The company which is liable to pay the compensation fixed by the Reference Court is a person aggrieved by the decision of the Reference Court and can file an appeal invoking section 54 of the Act. This position clearly follows from the three decisions of the Supreme Court.

9. The order of reference refers to a decision of a Division Bench of this Court in First Appeal No. 79 of 1984, short noted in (1990) 1 GLR (NOC) 10. That was a case in which the Collector filed an appeal before the High Court against the decision of the Reference Court. The company at whose instance land was acquired also filed an appeal. The Division Bench observed that it was the duty of the Collector to safeguard the interest of the appellant, that the company has entered into an agreement with the Government under the Act and that it was

the duty of the appellant to watch the entire proceeding which was started in the Reference Court but failed to take part in the proceedings before the Reference Court, that the interest of the company was fully protected by the Collector and therefore the appeal is not maintainable at the instance of the company. With great respect we have to point out that this decision is not in accordance with the three decisions of the Supreme Court referred to earlier and the scheme and provisions of the Act which we have pointed out. The Division Bench, though it referred to the decision of the Supreme Court in Francis Victor Coutinho, did not interpret the decision correctly. We hold that decision in ,(1990) 1 GLR (NOC) 10 does not lay down the correct law. Our attention is invited to a later decision of a Division Bench of this Court in Union of India vs. Lohit Ch. Mazumdar & others, (19,92) I GLR 235 [1992 (1) GLJ 32]. This case arose under the provisions of the Requisition and Acquisition of the Immovable Property Act, 1952. The Division Bench held the Union of India at whose instance the Collector acquired the land is a person aggrieved and competent to file an appeal under section 11 of the 1952 Act. We are in respectful agreement with the view expressed therein.

10 We hold that the appellant in the case is entitled to file the appeal. The reference is answered accordingly.