

(2007) 05 OHC CK 0056

In the Orissa High Court

Land Acquisition Zone Officer

APPELLANT

Vs

Dhobani Sahu and Others

RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 20

Citation : (2007) 104 CLT 293 : (2007) 2 OLR 56

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Judgement

A.K. Parichha, J.—This is an appeal by the State against the award passed by the learned Civil Judge (Senior Division), Angul in L.A. Misc. Case No. 14 of 1998 in connection with land measuring A.0.42 decimals appertaining to Plot No. 126/1610 and Khata No. 117 of village Jamunda belonging to the respondents which was acquired for Talcher-Sambalpur Rail Link vide declaration dated 5.3.1986 published in E.O.G. No. 363 dated 31.3.1986. The Land Acquisition Zone Officer, Talcher-Sambalpur Rail Link after conducting an enquiry u/s 11 of the Land Acquisition Act, 1894 (for short "the Act") awarded a sum of Rs. 4,460.74 paise for the acquired land and the trees standing thereon. Not being satisfied with the quantum of compensation, the respondents demanded reference of the matter to the Civil Court u/s 18 of the Act and consequently the matter came before the learned Civil Judge (Senior Division), Angul in the above noted LA case.

2. To justify higher rate of compensation the claimant-respondents examined one witness and produced the certified copies of the judgment of the Land Acquisition Misc. Case Nos. 1 of 1990 and 144 of 1994 and the registered sale-deed No. 4870 dated 16.12.1982 which were marked as Exts. 1 to 3 respectively. The Land Acquisition Zone Officer (appellant-OP) did not examine any witness; but produced claim petition of the respondents which was marked as Ext. B. On the basis of these evidence and the surrounding circumstances, the learned Civil Judge estimated the market value of the acquired land at Rs. 14,700/- and the

standing trees at Rs. 6,000/-. He directed payment of compensation accordingly along with statutory benefits available under the Act. The said award is under challenge in this appeal.

3. Mr. Sangram Das, learned Additional Standing Counsel appearing for the appellant submits that the impugned award is vitiated for the simple reason that the Union of India, who is the beneficiary and is to pay the compensation ultimately was neither noticed nor given opportunity to participate in the proceeding before the referral Court. According to him, this was in clear violation of the mandatory provisions of Section 20 of the Act. In support of this submission, he relies on the cases *Rajmani Vs. Collector, Raipur*, *Neelagangabai and another Vs. State of Karnataka and others*, *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, and *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*. Regarding the merit of the award, Mr. Das submits that the assessment of the referral Court of the market value of the land and the trees is founded on imagination and conjectures.

4. Though the respondents received notice and engaged counsel, no one is in attendance despite repeated calls.

5. At the outset, it is necessary to find out whether the learned referral Court failed to comply with the provision of Section 20 of the Act. Section 20 of the Act reads as under:

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

A plain reading of the aforesaid section shows that a duty has been cast on the Court concerned to issue notice to the applicant, all persons interested in the objection, except those who have consented without protest; and if the objection is regarding the area of the land or the amount of the compensation, the Collector also. In the Section the word "shall" has been used. It has been clarified in the case of *State of U.P. v. Babu Ram* (supra) that when a statute uses the word "shall" prima facie, it is mandatory, but the Court may ascertain the "real intention of the legislature by carefully attending to the whole scope of the statute. It was also said that for ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, the consequences which would follow from construing it one way or the other, the impact of the other provisions whereby the necessity of complying with

the provisions in question is avoided, the circumstance that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

6. In the case of *Rajmani v. Collector, Raipur* (supra) the apex Court made an observation that Section 20 of the Act enjoins the Court the, service of notice with a mandatory language and, therefore, it is the mandatory duty of the Court to have the notices served on all the persons interested. This observation was no doubt passed by the way and is in the form of obiter dicta, but as has been said in the case of the *Municipal Committee, Amritsar Vs. Hazara Singh*, obiter dictum of the Hon''ble apex Court on the question of law shall be accepted as binding on all the Courts. Similar view has also been expressed by the apex Court in the cases of the *Commissioner of Income Tax, Hyderabad-deccan Vs. Vazir Sultan and Sons*, and *Sarwan Singh Lamba and others Vs. Union of India and others*, . The observation of the apex Court in the case of *Rajmani v. Collector, Raipur* (supra) was an obiter dictum on the point of law and, therefore, the same has binding effect. Thus the issue of notice to all the persons interested in the objection as provided u/s 20 of the Act is mandatory in nature. Now the question is whether the Union of India represented through the General Manager, Railways is a party interested ? It is not disputed that the land in question was acquired for the purpose of Talcher-Sambalpur Rail Link and for the benefit of the Union of India represented through the Railways. It is also not disputed that the Union of India represented through the Railways is to pay the compensation ultimately. That being so the Union of India represented through the Railways is a "party interested" in the issue relating to the quantum of compensation of the acquired land. This view finds support from the findings of this Court in the case of *Special Land Acquisition Officer, Lanjigarh Road-Junagarh Rail Link Project, Bhawanipatna v. Prabhabati Majhi and Ors.* reported in 2006 (2) OLR 720 wherein the decision of the apex Court in the case of *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, was relied on.

7. In the case of *Bhikraj Jaipuria v. Union of India* (supra) it was clarified by a five judges Bench that if the statute is mandatory, the thing must be done according to the mandate and if the things are not done in the manner or form prescribed in such mandatory statute, then the natural and usual consequence of disobedience would be nullification of the Act or order done in deviation of the mandatory provision. In the case of *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, it was also said that a mandatory provision is one which is to be obeyed in its letter and spirit and anything one without such compliance stands vitiated.

8. The inner meaning of the above-noted observations is that once a thing is not done in the manner or form prescribed under the mandatory statute, then such act would stand vitiated.

9. In the present case, the Union of India represented through the Railway Authorities was a "party interested" in the determination and payment of compensation of the acquired land. But it was not noticed u/s 20 of the Act and the proceeding was concluded behind the back of such interested person. Such act on the part of the referral Court amounted to violation of Section 20 and accordingly the award passed becomes vitiated and unsustainable.

10. For the aforesaid reasons, the impugned award is set aside and the matter is remitted back to the learned Civil Judge (Senior Division), Angul for determination of the market value of the acquired land and trees thereon afresh after giving due notice to the Union of India represented through the General Manager, East Coast Railways. The appellant and the respondents who are the O.P. and petitioner respectively in the L.A. proceeding need not be noticed. They shall appear before the referral Court on 20.6.2007. Since the appeal is already 8 years old the learned Civil Judge (Senior Division), Angul would do well to dispose of the matter at the earliest, preferably within three months from the date of appearance of the parties and production of a copy of this order.

The appeal is allowed in part.