

(2013) 08 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (C) No. 13628 of 2013

M/s. Paradeep Phosphates Ltd.

APPELLANT

Vs

The Land Acquisition Officer, Jagatsinghpur and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 116 CLT 918 : (2014) 1 ILR (Ori) 330

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : Sambit Rath and B.K. Nayak-3, for the Appellant; K.K. Jena, A.K. Mohapatra and S.N. Das, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mishra, J.—The Petitioner, Paradeep Phosphates Ltd. has assailed the Order Dated 18.06.2013 passed in Execution Case No. 27 of 2010, arising out of I.A. No. 161 of 1990 of the Court of Civil Judge (Senior Division), Jagatsinghpur, rejecting an application filed by the Petitioner under Order 1, Rule 10 of the Code of Civil Procedure, 1908, hereinafter referred to as the "Code" for brevity, for impleading the Paradeep Phosphates Ltd. as a party to the execution proceeding. The facts are not disputed. Lands of the Opp. Party No. 2 to 45 were acquired by the Land Acquisition Officer under Land Acquisition Act, 1994 for the purpose of utilizing the same by the Petitioner company. At the time of acquisition, a reference was made to the Learned Civil Judge (Senior Division), Jagatsinghpur u/s 18 of the Land Acquisition Act for determination of compensation amount in respect of the acquired land, as the Petitioners raised objection being dissatisfied by the compensation amount awarded. The Learned Civil Judge (Senior Division), as per the Judgment dated 18.05.2009 in L.A. Case No. 161 of 1990, passed the following order:

The reference is allowed on contest against the Opp. Parties & the said reference is answered accordingly. The Opp. Party No. 2 is directed to pay compensation at the enhanced rate of Rs. 31,000 (Rupees thirty-one thousand) per acre for the

lands of the Petitioners under acquisition along with the additional market value at the rate of 12% per annum from the date of publication of notices u/s 4(1) of the L.A. Act till the date of taking possession of the land, statutory solatium at the rate of 30% on the market value & interest at the rate of 9% per annum for the first year after acquisition & at the rate of 15% per annum for the subsequent years till the payment on the excess amount of compensation.

After passing of such an order, Opp. Parties 2 to 45 challenged the same by preferring LAA Case No. 84 of 2009 in this Court, which is pending. As the matter stood thus, the said Opp. Parties have initiated an execution proceeding before the Learned Civil Judge (Civil Judge), Jagatsinghpur, which is registered as Execution Case No. 27 of 2010 without making the Petitioner-company as a party to this case.

2. The Petitioner-company came to know about the initiation of the execution proceeding after receipt of letter No. 181 dated 27.04.2013 along with copy of the order passed by this Court in W.P. (C) No. 17839 of 2012 issued by the Opp. Party No. 1. In the letter, Opp. Party No. 1 has intimated the Petitioner to deposit the total compensation amount of Rs. 97,29,538.41 immediately for payment of higher compensation as prayed for by the decree holders. Though the Petitioner was arrayed as Opp. Party No. 2 in LAA. No. 161 of 2009, it was not made a party by the Opp. Parties in the aforesaid Writ Petition filed in this Court. In that Writ Petition, this Court has directed the Opp. Party No. 1 to satisfy the decree immediately with a further direction to conclude the execution proceeding by the end of June, 2013. After receipt of letters from the Special Land Acquisition Officer, MIP, Jagatsinghpur, the Petitioner filed a petition on 17.06.2013 under Order 1, Rule 10 read with Sections 47 & 151 of the Code for impleading it as a party to the Execution Case No. 27 of 2010. To avoid any delay, the Petitioner also filed its objection to the execution petition stating therein the exorbitant claims made by the decree holder & maintainability of the execution petition.

3. The decree-holders filed objection on 18.06.2013 & a copy of the same was served on the Petitioner's Counsel. Learned Civil Judge (Senior Division) after hearing the parties, rejected the petition filed for intervention on 18.06.2013 without assigning any reason only on the ground that this Court, has directed to conclude the execution proceeding by end of June, 2013. The Petitioner further submits that a meeting took place for settlement of enhanced compensation to the land-losers in presence of the Collector, Member of Parliament, Jagatsinghpur, representative of land-losers & intervener-Paradeep Phosphates Ltd. & an agreement was arrived at between the parties & the same was signed in the form of proceeding. On 20.02.2010, the Special Land Acquisition Officer, MIP, Jagatsinghpur being directed by the, authority, forwarded copy of the said proceeding on 11.02.2010 for payment of additional compensation to the land losers of Paradeep Phosphates Ltd. In that letter, various terms & conditions were agreed upon by the parties & it was signed by the Collector & District Magistrate, Jagatsinghpur.

4. The Petitioner further claims that the claim of Rs. 97,29,538.41 has been wrongly calculated & it will be around Rs. 62,00,000 & the executing Court also did not consider the aforesaid fact & rejected the application directing the Opp. Party No. 1 to deposit Rs. 97,29,538.41. It is therefore prayed that since the amount to be paid to the Opp. Party Nos. 2 to 47 is to be adjudicated in the execution case, the Petitioner-company should be arrayed as a party.

5. While disposing of the application under Order 1, Rule 10 of the Code, the Learned Civil Judge (Senior Division), Jagatsinghpur has not assigned any reason for rejecting the application filed by the Petitioner. It is only stated in the order that this Court has directed in W.P. (C) No. 17839 of 2012 to conclude the execution proceeding by the end of June, 2012. Hence, the Opp. Party No. 1 i.e. the Judgment debtor, namely the Special Land Acquisition Officer is directed to deposit the said amount, otherwise the Bank Accounts were to be attached by the order of the Court.

6. Learned Counsel for the Petitioner submits that since the direction has been given by the Learned Civil Judge (Senior Division) to the present Petitioner to pay the compensation, the Petitioner-company is a necessary party to the execution proceeding. Secondly, it is contended that in U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., the Constitution Bench of the Supreme Court has laid down that the Land Acquisition Authority or the Company, for whose benefit the land acquisition is being made, is a necessary party in the proceeding under the Land Acquisition Act. The Learned Counsel for the Opp. Parties 2 to 47 on the other hand, submits that in view of the order passed by this Court in the afore stated Writ Petition, the Learned Civil Judge (Senior Division) has no other option but to order for payment of the compensation to the decree holders.

7. Having gone through the ratio decided by the Constitution Bench of the Supreme Court in U.P. Awas Evam Vikas Parishad v. Gyan Devi (dead) by L.Rs. & another (supra), this Court is of the opinion that the ratio laid down therein is squarely applicable to the present case. In paragraph 25 of the Judgment, the majority view of the case has been laid down in the following terms:

25. To sum up, our conclusions are:

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector & the reference Court & adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(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 Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference Court & is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector & oppose enhancement of the said amount & also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference Court, if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the Court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference Court the local authority should be impleaded as a party & is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority u/s 50(2), whatever has been said with regard to a local authority would apply to a company too.

8. Section 50 of the Land Acquisition Act provides that where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of & incidental to such acquisition shall be defrayed from or by such fund or Company-Sub-Section (2) provides that any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear & 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 of the Land Acquisition Act. Thus, a plain reading of Section 18 reveals that the Petitioner-company is a proper party in all proceedings under the Land Acquisition Act & they have a right of being heard.

9. Secondly, it is seen that the Learned Civil Judge (Senior Division) while answering to the reference very categorically directed the Opp. Party No. 2 to pay the compensation amount on the enhanced rate as specified therein. So the Paradeep Phosphates Ltd. is a proper & necessary party to the execution proceeding, more so, because of the fact that they claim that the calculation

made by the Judgment-debtors are in the higher side & is not in accordance with the order passed by the Learned Civil Judge (Senior Division). Accordingly, this Court comes to the conclusion that merely because this Court has passed an order in W.P. (C) No. 17839 of 2012 to direct conclusion of the execution proceeding by certain date, in which the Petitioner was not a party, cause of justice cannot be ignored & the Petitioner cannot be estopped from raising all the legitimate objections available to it. In that view of the matter, the Writ Petition succeeds, however, in view of the facts of the case, without cost. The Order Dated 18.06.2013 passed in Execution Case No. 27 of 2010, arising out of L.A. Case No. 161 of 1990 by the Learned Civil Judge (Senior Division), Jagatsinghpur is set aside. It is directed that the Petitioner-company be arrayed as a party to the proceeding. The Learned Civil Judge (Senior Division) shall consider the objections raised by the Petitioner & dispose of the execution proceeding as expeditiously as possible after affording reasonable opportunity of hearing to the parties. Parties are directed to appear before the lower Court on 31.08.2013.