

(2019) 03 UK CK 0124
In the Uttarakhand High Court
Case No : First Appeal No. 46 Of 2010

Mussoorie Dehradun Development Authority	APPELLANT
Vs	
Arun Tomar & Others	RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 11, 11(1), 17(1), 18, 50, 50(2), 53
Reorganization Act, 2000 — Section 35
Land Acquisition (Amendment) Act, 1984 — Section 11(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 UK CK 0124

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rahul Consul, Tarun Lakhera, Anurag Bisaria

Judgement

Sharad Kumar Sharma, J

1. It's a very sorry state of affair where the litigants to the proceedings face the wrath of litigation due to procedural error committed by the Court.
2. The appellant had requested for an acquisition of the land lying in Khasra No. 261 M having an area of 0.43 acres situated at village Niranjanpur, District Dehradun. The respondents claim that there are Bhumidhars of the land, which they have purchased it by virtue of the sale deed dated 10.07.1981 executed in their favour from its predecessor recorded owner Smt. Satanchhaiya Kanwar w/o Shri Hoshiyar Singh Kanwar. The case of the respondent was that after the aforesaid purchase made on 10.07.1981, they had filed their mutation application and accordingly they have mutated by the orders of the competent authorities on 14.09.1983. The reference under Section 18 of the Act was sought on the pretext that the claim for the grant of compensation under the Land Acquisition Act has been rejected by an award passed under Section 11, of the Land Acquisition Act, on the ground that the predecessor/owner, who had sold the property to the respondent had not raised any claim for the grant of

compensation.

2. According to the claimants they have contended that looking to the other surrounding location of the land, its topography and in case if the belting system is adopted the land would atleast fetch compensation of Rs.12 lakhs per acre. Apart from the said compensation they contended that they would be entitled for a solacium @ 30% rate plus an additional 12% interest on the compensation.

3. In support of the contention the respondents/claimants have submitted that since the land acquired is situated near an abadi area adjoining the General Mahadev Singh Road and there were other public structures situated adjoining the land, it would be fetching a very higher price owing to its commercial potentiality. Apart from the land for which compensation was claimed, it was also claimed by the respondent that since the property is covered by a boundary wall, they would be entitled for the compensation for the super structure also existing over the property, for which they have claimed that atleast they will be entitled for total compensation of Rs.7,08,090/- per bigha atleast.

4. In response to the claimant pleadings as made before the reference court under Section 18 of the Act, the appellant's case was that as per the revenue records maintained by the Lekhpal for the fasli year 1392 to 1397, the entitlement of the claim would only be to the person who stands recorded during the aforesaid fasli years.

5. Besides this they also contended that the determination of compensation as made by the Land Acquisition Officer under Section 11 of the Act was absolutely appropriate and based on the market value of the property, and there is no plausible basis for the claim as raised by the claimant before the reference court. Besides this, they also denied that the property in question proposed to be acquired is a property, which is not situated adjoining an abadi area as claimed by the respondent and in support of these contention pertaining to the determination of compensation they contended that out of the total exemplars, which were placed on record, the exemplar which was relied for determining of the compensation was the sale deed dated 18.09.1986, which in accordance to the appellant was the actual value which could be determined to be payable that comes down to Rs.2,42,500/-.

6. They have also contended that the valuation as assessed by the respondent with regards to the boundary wall and other super structure it was also an accelerated amount, rather it would be only fetching an valuation of Rs.22,300/- only.

7. In support of their contention in the earlier set of proceedings decided by the reference court, the parties led their respective evidences and the reference court vide its order dated 14.04.1991 had framed the following points of determination:

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indicated earlier, by virtue of Section 3(i) that has been introduced in the L.A. Act by the U.P. Act the Board is a local authority for the purpose of the L.A. Act. The question aforementioned has, therefore, to be examined in the light of the provisions contained in the L.A. Act relating to acquisition of land for a local authority. The provisions which have a bearing on this question are contained in Section 50 of the L.A. Act which reads as under :

"50. Acquisition of land at cost of a local authority or Company. -(1) 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 and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) 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 under Section 18."

Sub-section (2) of Section 50 enables a local authority to appear in any acquisition proceeding at the stage of determination of compensation before the Collector or the reference court and adduce evidence for the purpose of determining the amount of compensation. The object underlying the aforesaid provision appears to be to safeguard the interests of the local authority who would be required to pay the amount of compensation that would be determined by the Collector or by the Reference Court by enabling it to adduce evidence having a bearing on the amount of compensation before the Collector or the Court and thereby assist them in making a fair determination. Such protection was necessary because in the matter of acquisition under the Land Acquisition Act a local authority for whom the land is acquired does not stand on the same footing as the Government. While making the award the Collector acts as an agent of the Government and functions under its administrative control. Prior to the insertion of the Proviso in sub-section (1) of Section 11 of the L.A. Act by the Land Acquisition (Amendment) Act, 1984, there were administrative instructions requiring preliminary valuation by the Collector of the land being acquired and if the Collector found that the eventual award would substantially exceed the provisional valuation he was required to obtain further instructions from the higher authorities. Now the proviso inserted in sub-section (1) of Section 11 by the Amendment Act of 1984 lays down the statutory requirement that no award shall be made by the Collector without previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf. There is no similar provision requiring the approval of the local authority. Sub-section (2) of Section 50 is the only provision which affords a certain degree of protection to it in the matter of determination of the amount of compensation by the Collector as well as the Reference Court. Keeping these considerations in view we are of the opinion that sub-section (2) of Section 50

must be construed as conferring a right on the local authority for whom the land is being acquired to participate in the acquisition proceedings at the stage of determination of the amount of compensation before the Collector as well as the reference court.

9. The said right can be effectively exercised by the local authority only if it has information for the proceedings which are pending before the Collector as well as the reference court. In other words the right conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L.A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court and has not suffered any prejudice on account of failure to give such notice.

10. The only limitation on the right conferred by Section 50(2) is that contained in the proviso to Section 50(2) which precludes the local authority from demanding a reference under Section 18. In the report of the Select Committee the policy underlying the proviso has been thus explained :

"..... We cannot however agree that the authority should be permitted to appeal from the Collector's award. We have not given to Government itself the power to make this appeal because the Collector is only the agent of the Government in the acquisition of land; his action is taken under the rules laid down for his guidance which include a preliminary valuation and these rules ordinarily provide and sought to provide, that when the Collector finds cause to anticipate that his eventual provisional estimate, he shall stay all proceedings till he receives the further instructions of higher authority. No local authority or company is compelled to proceed under the Land Acquisition Act. If it can procure land more cheaply by private negotiations, it is certainly at liberty to do so but if elects to set in motion the very special power given to the Government for public objects, it can expect no higher privileges and powers than those given to Government itself."

Having regard to the difference between the position of a local authority for whom the land is acquired and the Government in the matter of determination of the amount of compensation by the Collector to which the reference has been made by us earlier and especially after the insertion of the proviso in Section 11(1) in L.A. Act by the Amendment Act of 1984 the fact that no right has been conferred on the Government to seek a reference under Section 18 may not be a sufficient justification for denial of such a right to a local authority. While it is true that a local authority is not compelled to proceed under the L.A. Act and if it can procure land more cheaply by private negotiations it is certainly at liberty to

do so but there may be cases, as in the case of acquisition of land for the Board, where it is permissible for a local authority to take possession of the land which is being acquired under Section 17(1) before the making of the award by the Collector. In such a case the local authority would have no choice but to pay the amount of compensation as determined by the Collector. We have adverted to these aspects not with a view to find fault with the legislative policy underlying the enactment of the proviso in sub-section (2) of Section 50 of the L.A. Act but only to highlight the significance of the protection that has been made available to a local authority in the matter of determination of compensation under sub-section (2) of Section 50 of the L.A. Act:

11. Thus, on an interpretation of the provisions of Section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference court to give a notice to the local authority with regard to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference court, can take recourse to any legal remedy. Before dealing with this question we would take note of the decisions of this Court have a bearing on the issue.

21. We may now come to the stage of the proceedings before the court in a reference under Section 18 of the L.A. Act made at the instance of a person having interest in the land being acquired. At this stage also Section 50(2) of the L.A. Act envisages that the local authority has a right to appear and adduce evidence before the Court. This right is independent of the right that is available to the local authority to appear and adduce evidence before the Collector. Even though the local authority had failed to appear before the Collector inspite of notice or had appeared in response to notice and had adduced evidence the local authority may consider it necessary to adduce evidence to rebut the evidence adduced by the person who has sought the reference and to defend the award made by the Collector. Failure to give notice at this stage would result in denial of the said right of the local authority. Before we consider the remedy that is available for seeking redress against the denial of this right we may examine whether the local authority has a right to be impleaded as a party in the proceedings before the reference court. That raises the question whether the local authority can be regarded as a necessary or a proper party. The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: *Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue*, [1963] Supp. 1 SCR 676, at p. 681. A

local authority for whom land is being acquired has a right to participate in the acquisition proceedings in the matter of determination of the amount of compensation while they are pending before the Collector and to adduce evidence in the said proceedings. While it is precluded from seeking a reference against the award of the Collector it can defend the award and oppose the enhancement of the amount of compensation sought before the reference court by the person interested in the land. Moreover the local authority has a right to appear and adduce evidence before the reference court. Having regard to the aforesaid circumstances, we are of the opinion that the presence of the local authority is necessary for the decision of the question involved in the proceedings before the reference court and it is a proper party in the proceedings. The local authority is, therefore, entitled to be impleaded as a party in the proceedings before the reference court.

24. 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 and the reference court and 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 and 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 and oppose enhancement of the said amount and 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, the should be impleaded as a party and 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 under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened."

11. The said judgment has rather laid down that the beneficiary in whose favour the land has been acquired is a necessary party in the reference proceedings and they are bound to be heard with an opportunity to lead evidence at the stage when the reference Court determines the issue pertaining to the adequacy of compensation to be paid to the land losers and the basic principles as enunciated by the said judgment was based on a premise that any determination of compensation, as made by the reference court and its quantification, the ultimate financial liability has to be met with by the beneficiary of the land and, hence, no reference proceedings could be decided in the absence of the beneficiary being made as a party to the proceedings and an adequate opportunity is to be provided to the beneficiary of the land to adduce his evidence on the issue pertaining to the adequacy of compensation and for which they have been held out to be the necessary parties in the proceedings under Section 18 of the Land Acquisition Act of 1894.

12. Keeping the aforesaid ratio in mind, the Division Bench of this Court had allowed the Appeal and has remanded the matter back to the reference Court to decide the matter afresh after impleading the MDDA as a party to the proceedings and further there was a specific direction issued that an opportunity shall be given to the newly impleaded party to put forward its contentions and to adduce the evidence in support thereto. In support thereto, a reference is made to paragraph-3 of the judgment rendered by the Division Bench on 05.06.2006.

13. Looking to the fact that the acquisition proceedings happens to be quite old and the following direction was also simultaneously issued by the Division Bench vide its judgment dated 5.06.2006, to decide the reference within a period of 45 days from the date of production of the certified copy of this order, the relevant part of the judgment is quoted hereunder:

"Therefore, on this point we allow this appeal and remand the matter to the reference court to decide the reference afresh. The Reference Court will issue notice to the MDDA and opportunity shall be given to it to put forth its contentions and to adduce evidence in support of it. Till the decision in the reference case, the amount, if any, deposited in this appeal shall remain deposited and the payment made shall not be recovered. "

14. On revival of the proceedings in pursuance to the judgment of remand rendered by the Division Bench on 05.06.2006 the reference Court granted an opportunity to the appellant to file the written statement, which they did and denied the criteria of determination of compensation and the determination based on the exemplars on which the respondents relied for determination of compensation. Rather the reference court should have remodulated the issues for determination of the compensation, afresh based on the pleadings of the written statement of M.D.D.A. afresh. The reference Court on revival of the proceedings has rather proceeded with on the basis of the same issues, which stood framed by the reference court in the earlier set of proceeding which was adjudicated on 14.06.1996. As a matter of fact, even on perusal of the impugned judgment dated 6.10.1997, it is not reflected from the determination of the pleadings of the respective parties that at all the reference court after remand has applied its mind with regards to the re-framing of issues in the light of the written statement filed by the MDDA, which was for the first time was filed by the appellant on remand of the matter before the reference court in the light of the Division Bench judgment

15. In a precise observation which has been made by the reference court while dealing with the pleadings the reference court has referred the fact that in the written statement filed by the MDDA, they have specifically taken a ground that the manner of determination of the award was not in consonance of the provisions contained under the Land Acquisition Act, as no pleadings raised by the MDDA was considered and thus the reference judgment dated 06.10.1997 deserves rejection. On perusal of the impugned judgment, it shows that no issue based on the written statement of the appellant was ever framed by the reference court. Rather to the contrary further in case if we scrutinize the judgment impugned dated 06.10.1997 in precision even the oral and documentary evidences, which are shown to have been considered were the documentary and oral evidences, which stood considered in the earlier judgment of 14.06.1996 and no new evidence or opportunity to adduce the evidence is shown to have been provided to the appellant after the remand order dated 05.06.2006 when they were impleaded as party before the reference court. Further more, when the reference court was determining the issue no. 1, which is quoted hereunder, had in fact recorded the following finding:

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16. In fact, the reference court has based its finding on issue no. 1 on the basis of the reason, which has been assigned in the earlier judgment of 14.06.1996, which legally became non-existent in the eyes of law after allowing of the appeal and remand of the matter by the Division Bench for deciding the reference altogether afresh. Hence, the finding on issue no. 1 pertaining to the compensation and its determination was rather based on the basis of the finding of judgment, which already stood set aside, was contrary to the recognized procedure as provided under the Code of Civil Procedure, which has been made applicable in the light of the provisions contained under Section 53 of the Land Acquisition Act.

18. Considering the fact that the acquisition proceedings happens to be quite old one as the notifications under Section 4 and 6 itself is shown to have been issued on 06.02.1986 and 07.02.1986 respectively, it would be in all fitness of things that the reference Court may be directed to decide the reference afresh after providing an opportunity to the appellant to lead his evidence in the light of the pleading in the written statement, to adduce his oral evidence, to cross-examine the witness of the respondent and then the Court has to arrive at a fresh conclusion as to whether as to what would be the appropriate and adequate quantum of compensation to be determined is appropriate or not.

19. The reference Court is directed to conclude the proceedings as early as possible but not later than four months from the date of production of certified copy of this order.

20. Accordingly, the judgment impugned dated 06.10.2007 as passed by the Court of Additional District Judge/FTC in IA Case No. 140/1990 'Arun Tomar & Others vs. Collector, Dehradun' is set aside, and the reference is directed to be decided afresh as directed above.

21. However, there would be no order as to cost.