

(1998) 02 PAT CK 0061

In the Patna High Court

Case No : Civil Revision No. 1944 of 1994

National Thermal Power Corporation

APPELLANT

Vs

Surendra Prasad Jha and Others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Land Acquisition Act, 1894 — Section 23, 50(2), 54

Citation : AIR 1998 Patna 116 : (1998) 46 BLJR 1022 : (1998) 1 PLJR 677

Hon'ble Judges : B.M. Lal, C.J.;S.K. Singh, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and Prafulla Kumar, for the Appellant; Rajeshwar Pd. Sinha "Rajesh", for the Respondent

Judgement

B.M. Lal, C.J.—The order in this revision petition shall govern the disposal of the following revision petitions:--

- 1.C.R. No. 1945 of 1994 (N.T.P.C. v. Yogendra Prasad Sah and others).
2. C.R. No. 1947 of 1994 (N.T.P.C. v. Bhuneshwar Yadav and another).
3. C.R. No. 1948 of 1994 (N.T.P.C. v. Sri Ram Singh and another).

2. This revision petition u/s 115 of the CPC is directed against the order dated 15-7-1994 whereby the learned Land Acquisition Judge rejected the application filed by the petitioner under Order 47, Rule 1, C.P.C. to review the earlier award dated 15-4-1993, inter alia, on the ground that the applicant-petitioner N.T.P.C. was not a party in the original reference case and if the party to the original land acquisition case had any grievance against the award, it should have preferred the appeal.

3. Shri Mihir Kumar Jha, learned counsel appearing for the petitioner, submitted that in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., the Apex Court held that if the land is acquired by the

Government for local body or a company, at the stage of determination of compensation, rights of local body or company accrue for the purposes of determining the compensation, they being the necessary party. Thus, the company or local body are to be heard before the award is passed by the Land Acquisition Officer or by the reference Court.

4. Learned counsel in support of his contention also referred to an order dated 2M-1995 passed in C.W.J.C. No. 4516 of 1993 whereby a learned single Judge of this Court directed that on an appropriate application made by the company or the local body for being impleaded as a party in reference cases which are still pending before the authority concerned, the same shall be considered and they be added as party. Learned counsel submits that on similar lines in these civil revisions also direction be issued for setting aside the award and making the petitioner-company as party. This decision of the learned single Judge, however, is of no avail to the petitioner as in the instant case proceedings are not pending but have been finally determined.

5. These are review petitions praying for review of order dated 15-4-1993 passed by the learned Land Acquisition Judge, Bhagalpur. The scope of review is well settled, i.e., to reconsider by the same Court the subject-matter which has already been adjudicated upon considering the total material placed before the Court concerned, if the order apparently suffers from error on the face of the record.

6. Thus, it has to be seen whether while passing the award on 15-4-1993 the learned Land Acquisition Judge or the Land Acquisition officer committed error ignoring the petitioner-company in not impleading them in the land acquisition proceeding which admittedly legally had no right till the decision rendered in *U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead)* by L.Rs. and another, etc. etc., (supra) which was delivered on 20-10-1994 by the Apex Court and which could be said to be apparent error on the face of the record warranting review. It is, therefore, manifest that the company or local body has acquired right to be heard at the stage of determination of compensation by virtue of *U. P. Awas Evam Vikas Parishad's* case (supra) which was propounded on 20-10-1994 and prior to that local body or a company had no right to be heard. Therefore, it cannot be said that the Land Acquisition Officer or the reference Court has committed an error of law on the face of record ignoring the company or local body in not affording hearing to them and passed the award on 15-4-1993. In this context, it may be mentioned that at the stage when the award was passed on 15-4-1993 the local body or company cannot be said to be a person aggrieved to whom the right is conferred by virtue of Rule I of Order 47, C.P.C. Thus, a company or a local body which had no locus standi to be heard cannot ordinarily have a legal grievance against the award and, therefore, in our considered opinion, it cannot apply for review and thus the review application as made and filed has been rightly dismissed by the Land Acquisition Judge.

7. Besides this, under the scope of review mistake or an error apparent on the

face of the record only can be seen and considered, but an error which is not self-evident and has to be detected by a process of reasoning cannot be a ground for review. Thus, having not impleaded N.T.P.C. a party after the order of award in the reference by any error of fact or law when admittedly N.T.P.C; was not a necessary party under the eye of law, the same cannot be a ground for review (See Parsion Devi and Others Vs. Sumitri Devi and Others, Moreover, considering the plight of those whose lands have been acquired making them landless and economically crippled and who are at a look to rehabilitate themselves, it will be too harsh and cumbersome for them if at this stage the revision petitions are allowed directing reopening of the award passed on 15-4-1993.

8. However, since the local body or the company have been given right to, be heard at the stage of determining compensation and since they have not been afforded opportunity, indeed, they may ventilate their grievance by challenging the award dated 15-4-1993 in appeal. In a recent another pronouncement in the case of M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, the Apex Court held that local body or a company comes within the purview of persons interested for whose benefit land is acquired and thus are a proper party and if not impleaded during the land acquisition proceedings, they are entitled to file appeal or writ petition against the enhanced award. However, in this case, the Apex Court directed to convert the writ petitions into appeal u/s 54 of the Land Acquisition Act. This being so, relying on M/s. Neyvely Lignite Corporation's case (supra), we also direct that the revision petitions be converted into memo of appeal u/s 54 of the Land Acquisition Act complying with the requirements of memo of appeal, i.e., paying Court-fee etc. within two months.

9. The revision petitions are accordingly disposed of. There will be no order as to costs. S. K.

S.K. Singh, J.

10. I agree.