
(1995) 04 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 4516 of 1993

National Thermal Power Corporation Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0016

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner in this application seeks to challenge all such awards in which the Court following references made to it u/s 18 of the Bihar Land Acquisition Act enhanced the amount of compensation determined by the Collector. A further prayer is made for quashing the demand for a sum of Rs. 2.25 crores in the letters dated 1.7.1992 (Annexure-3) and 14.12.1992 (Annexure-5) issued by the Collector, Bhagalpur for making payment of the enhanced amount of compensation ordered by the court. The petitioner's challenge to the enhanced awards and the consequential demand by the Collector is based on the simple plea that the amount of compensation awarded by the Collector was enhanced by the Court without impleading the petitioner in the references u/s 18 of the Act and without giving it a notice or an opportunity of hearing in this matter.

2. The material facts are brief and without much controversy. It was decided that the Corporation should construct and establish a Super Thermal power Station at Kahalgaon, Bhagalpur. In order to make available to it, the land required for the purpose, a requisition was made to the Collector, Bhagalpur for acquisition of nearly 3500 acres of land for the petitioner Corporation. There were discussions and correspondence between the Collector and the petitioners in this regard following which the Collector vide his letter dated 12.2.1985 asked the petitioner to place at his disposal a sum of Rs. 10.50 crores as the value of the lands to be acquired (Calculated @ Rs. 35,000/- per acre approx. as the market rate at the material time) and an additional sum of Rs. 200,000/- for meeting the contingent

charges likely to be incurred in course of the acquisition proceeding. Thus, a total sum of Rs. 10.52 crores was required to be placed at his disposal.

3. It is stated by the petitioner that it made payments from time to time and by 30.3.1987 a total of Rs. 2.19 crores was deposited with the Collector.

4. It is further stated that from 1987 to 1991, 3340.885 acres out of the proposed 3355 acres of land were acquired and delivered to the petitioner. As compensation for the land acquired the Collector made payment to the tune of Rs. 9,27,68,690.75 out of Rs. 10.69 crores deposited by the petitioner and, thus, a sum of Rs. 1,41,31,380.25 was left in deposit with the Collector.

5. It appears that the land acquisition proceedings gave rise to a number of reference cases u/s 18 of the Act and according to the petitioner the total number of such reference cases was 1710. It is further the case of the petitioner that it was neither impleaded as a party in those reference cases nor was any notice issued to it; it did not have any knowledge or information otherwise also and came to learn about the reference cases and the enhancement of compensation by the Court only when it received the letter dated 1.7.1992 (copy at Annexure-3) from the Collector, Bhagalpur demanding a further sum of Rs. 2.25 crores for making payment of the enhanced compensation by the order of the Court. The Corporation by its letter dated 30.11.1992 protested against the demand for further money. In reply it received the Collector's letter dated 14.12.1992 wherein the demand for a further sum of Rs. 2.25 crores was reiterated.

6. From the correspondence on the subject it appears that the Collector also advised the petitioner to take steps for its impleadment in the reference cases before the Court in order to protect and safeguard its interests. The petitioner, accordingly, made an application for being added as a party in one of the reference cases still pending before the Court. The application for addition as a party was turned down by the Land Acquisition Judge but following a direction by this Court the petitioner has been added as a party to that reference case. On that score the petitioner hopes and expects to get added as a party in all those reference cases which are still pending before the Land Acquisition Court and, thus, hopes to get an opportunity to resist the claims of the land owners for enhancement of compensation in those cases.

7. The real problem, however, lies in respect of cases which have been disposed of by the Land Acquisition Judge with a direction for enhanced compensation. The aggregate of the differential amounts in all such cases comes to a very large sum and according to the petitioner the enhancements were wholly unjustified and unreasonable, as also illegal inasmuch as they were ordered without affording an opportunity of hearing to the petitioner. In this application, this Court is primarily concerned with those cases which have been disposed of by the Land Acquisition Judge with a direction for enhancement of compensation.

8. At this stage, it needs to be recorded and borne in mind that the petitioner

has absolutely no grievance against the compensation fixed by the Collector in the awards made by him u/s 11 of the Act. The grievance of the petitioner is only in respect of the enhancement of compensation by the Court on references made u/s 18 of the Act and the sole ground on which the enhanced awards are assailed is that the order of enhancement was made without affording an opportunity of hearing to the petitioner.

9. Before proceeding to consider the reliefs to which the petitioner may be entitled, it would be useful to have an account of the cases arising from the land acquisition proceedings in question. A list of cases has been supplied by Mr. Mihir Kumar Jha, learned Counsel for the petitioner. This list is not disputed by the State Counsel or Mr. Y. V. Giri and Dr. S.N. Jha, counsel appearing for some of the private respondents. The list of cases is as follows:

- (i) The total number of reference cases for the land acquired for N.T.P.C.- 1710
- (ii) Total number of pending reference cases-1006
- (iii) Total number of reference cases already decided (i-ii)-704
- (iv) Total number of reference cases in which the awards of the Collector made u/s 11 of the Act have been confirmed-212
- (v) Total number of awards which have been enhanced by the judgment and award of the Court in reference cases-492.
- (vi) Total number of appeals filed against the awards in which compensation had been enhanced by the judgment of the Court in reference cases-302
- (vii) Total number of reference cases in which no appeal has been filed despite enhancement made by the Court in the reference cases-108
- (viii) Total number of reference cases in which though enhancement had been made but the Collector of Bhagalpur is not aware, as to whether appeals have been filed or not-82

At Serial No. (iv) are cases in which the award of the Collector made u/s 11 of the Act has been confirmed. It has been noted above that the petitioner has accepted the Collector's awards u/s 11 of the Act and has no grievance against them. Thus, in respect of these cases the petitioner can have no occasion for any grievance against the Court's orders and these cases, therefore, go out of any further reckoning in this judgment.

10. Now, coming back to the rest of the cases, it may be noted that recently the Supreme Court in the case of U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., has examined the rights of the company for whose benefit land was acquired and the remedies available to it in case of denial of an opportunity of hearing at the different stages in the proceeding under the Act. The conclusions arrived at in the decision are summed up in para 25 of this judgment which is as follows:

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 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 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 u/s 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 reported.

In the facts and circumstances of this case as narrated above, it is apparent that paras 1 to 5 of the aforequoted summing up would have no application as the

petitioner has no grievance against the compensation determined by the Collector in the awards made u/s 11 of the Act. In this case the petitioner would be entitled to reliefs in terms of paras 6 to 9 of the aforequoted conclusions.

11. From Serial No. 2 of the accounts of cases given earlier in this judgment, it appears that 1006 cases are still pending before the Land Acquisition Judge. I have been informed that in one such case the petitioner has already been impleaded as an opposite party. In terms of the law laid down by the Supreme Court vide para 6 of the aforequoted conclusions, the petitioner is entitled to be impleaded as a party in all pending proceedings. It is accordingly directed that on an application made by the petitioner it shall be impleaded as a party in all reference cases which are still pending before the Land Acquisition Judge and it would be afforded full opportunity to defend the determination of the amount of compensation by the Collector and, oppose enhancement of the determined amount and would also be afforded an opportunity to adduce evidence in that regard.

12. This takes me to the cases which have already been disposed of and are no longer pending before the land Acquisition Judge. The total number of such cases is 704 out of which 212 cases being out of reckoning, the remaining cases are 492 in number. Out of these 492 cases the State has filed appeals in this Court in 302 cases (vide Serial No. 7 of the accounts of cases given earlier). All these cases are clearly covered by para 8 of the conclusions arrived at in U.P. Awas Parishad's case according to which the company should be impleaded as a party in all those appeals and is entitled to be served notices of the said appeals. It would be, thus, open to the petitioner to make applications in all the appeals arising from the reference cases which are at present pending in this Court. I see no reason why this Court would not allow those petitions and allow the petitioner to be impleaded as a party respondent in the pending appeals. The petitioner's application for impleadment as a party respondent in the appeals pending before this Court can be disallowed only if it is shown to the Court that the petitioner had knowledge about the pendency of the proceedings before the reference Court and it did not suffer any prejudice on account of failure of the Court to give notice (vide para 9 of the U.P. Awas Parishad's case). In case, however, it is not shown to the Court that the petitioner had knowledge or information about the pendency of the proceedings before the reference Court from a source other than the notice issued by the Court, then its case would be fully covered by para 8 of the conclusions in the U.P. Awas Parishad's case and the petitioner would be added as a party respondent in the appeals pending before this Court without any difficulty as per the directions of the Supreme Court.

13. Similarly in the 108 cases in which no appeals have been filed by the State against the order of enhancement made by the reference Court (vide Serial No. 8 of the accounts of cases) and also in the 82 cases where it is not definitely known whether an appeal has been preferred by the State (vide Serial No. 9 of the accounts of cases) as also in cases where an appeal filed by the State was

later dismissed for non-compliance of any per-emptory orders and/or on any other technical ground, the case of the petitioner shall be fully covered by Para 7 of the conclusions in U.P. Awas Parishad's decision and it will be open to the petitioner to file an appeal against the award, in the High Court after obtaining leave of the Court. In the facts and circumstances of this case, I see no reason why the delay in filing the appeal may not be condoned and the leave of the Court for filing such appeals may not be granted to the petitioner. As noted above, the leave can be denied only in case it is shown that though no notice had been issued to the petitioner, it had otherwise knowledge and information about the pendency of the proceedings before the reference Court. In case, however, that is not the position, as claimed by the petitioner, then the leave to file an appeal is bound to be granted to it.

14. At this stage, it may be noted that Mr. Tara Kant Jha, learned Counsel strongly argued that the awards in the 492 cases where the reference Court passed order for enhanced compensation without issuing any notice to the petitioner were fit to be quashed in this writ petition itself. He relied upon a Supreme Court decision in the case of Neelagangabai and another Vs. State of Karnataka and others, . Mr. Jha, however, was fair enough to accept that Neelagangabai's case was decided on the basis of the amendments introduced in Section 20 of the Land Acquisition Act as applicable to the State of Karnataka. The position in this regard is quite different in this State. Moreover, as shown above the petitioner is not remedyless in the facts and circumstances of this case and the decision in the case of U.P. Awas Parishad provides it with complete and adequate remedies.

15. Mr. Jha then argued that instead of leaving the petitioner in the hands of the concerned Courts, a clear direction may be issued to implead it as an opposite party, respondent in the cases pending before the reference Court/appeals pending before this Court and to admit and entertain on merits the appeals that might be filed by it in this Court. So far as the question of impleadment in the reference Court is concerned. I have already issued such a direction earlier in this judgment. However, so far as being added as a party respondent in appeals pending before this Court and the filing of appeals in this Court are concerned, I do not think it would be proper to issue a direction in this order because the concerned respondent land holders are not before me and it would amount to preempting their right to try and show to the Court that the petitioner had knowledge and information of the pendency of the proceeding before the reference Court otherwise than from a notice issued by the Court. From para 7 of the conclusions in the Awas Parishad's case. It is clear that the petitioner can maintain an appeal only after obtaining leave of the Court and the respondent land holders would have a right, though a very limited one, to be heard at that stage, in opposition to grant of leave by the Court. The right, though a limited one, is nevertheless there and it would not be proper to extinguish it altogether by issuing a direction which would tantamount to granting leave to the petitioner even without hearing the land holders. I am, therefore, not inclined to issue an

absolute direction as asked for by Mr. Jha learned Counsel for the petitioner.

16. This application is accordingly disposed of with a direction to the petitioner to make appropriate applications/appeals before the Courts concerned in the light of the Supreme Court decision in U.P. Awas Evam Vikas Parishad's case (supra) and as directed earlier in this order.

17. In the result, this application is allowed to the extend indicated above.