
(2016) 04 OHC CK 0038

In the Orissa High Court

Case No : Misc. Case No. 244 of 2015 (Arising out of L.A.A. No. 47 of 2015)

Pitambar Sahoo

APPELLANT

Vs

Angul-Sukinda Railway Limited

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 3(b), 50, 54

Citation : (2016) AIRCC 2338 : (2016) 2 ILRCuttack 212

Hon'ble Judges : Mr. K.R. Mohapatra, J.

Bench : Single Bench

Advocate : M/s. N. Panda-I, M.K. Panda and S. Mazumdar (P-1) Miss S. Mishra, Addl. Standing Counsel (P- 2), for the Petitioner; M/s. S.K. Dash, A. Dhalsamantra, B.P. Dhal, S. Das and A.K. Otta, Advocates, for the Opposite Party

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J.—This is an application filed by the claimant-respondent No. 1 (for short "the petitioner") assailing the maintainability of

the appeal at the instance of the appellant, namely, Angul-Sukinda Railway Limited, Bhubaneswar (for short "the Opposite Party").

2. It is contended in the misc. case that basing upon a requisition made by East Coast Railways through its Chief Engineer (HQ/CQ),

Bhubaneswar, the State Government issued notification under Section 4 (1) of Land Acquisition Act, 1894 (for short "the Act") for

acquisition of the land for Angul-Duburi-Sukinda Road New B.G. Rail Link Project at the instance of the Union of India/Ministry of Railways. The

opposite party is neither the Requisitioning Authority nor has undertaken any liability as per the notification/declaration under the Act for payment

of compensation to the claimant and as such, it is neither a beneficiary nor a

person interested to sue or to be sued for the purpose of determination of compensation under the provisions of the Act. The opposite party has no locus standi to file the appeal and leave granted to the opposite party by this Court by order dated 16.11.2015 to present and prosecute the appeal is opposed to the provisions of Section 50(2) of the Act. The opposite party is neither a "local authority" as defined under Section 3 (aa) of the Act or nor a "Company" under Section 3 (e) of the Act for whom the land has been acquired. The opposite party is also not a "person interested", who is required to be noticed under Section 20 of the Act and thus, it has no right either to apply for a reference to the Court for determination of compensation or to prefer and maintain an appeal under Section 54 of the Act. SRO No. 1074 dated 14.05.1955 has been issued in exercise of power conferred on the Union of India by Article 258 (1) of the Constitution of India. In the said S.R.O., the Government of Odisha has been entrusted to act for and on behalf of the Central Government in relation to acquisition of land for the purpose of Union of India. The opposite party has been entrusted to carry out the project work. Thus, the status of the opposite party is not more than an allottee/ lessee or contractor on the basis of concession agreement under Annexure-1 to the petition. The opposite party cannot step into the position of East Coast Railways or Government of Odisha on the basis of concession agreement for execution of the project work under Public Private Partnership (PPP) mode. The Special Land Acquisition Officer has been provided with fund to pay compensation for acquisition of the land. The East Coast Railways for which the land has been acquired has the knowledge of such award of compensation and in many cases, has intimated the Special Land Acquisition Officer for payment of decretal dues/compensation. Hence, the petitioner contended that the appeal at the instance of the opposite party is not maintainable and prayed for allowing his prayer holding the appeal not maintainable.

3. The opposite party filed its counter affidavit refuting the allegations made in the petition. It is contended that the petition is not maintainable either in law or on fact. Upon a reference being made under Section 18 of the Act, the learned Civil Judge (Senior Division), Kamakhyanagar determined the market value of the acquired land which is impugned in the

present appeal. The Government of Odisha issued a notification vide Notification No. 26720 dated 7.7.2010 under Section 4 (1) of the Act for acquisition of the land for execution of Augul-Duburi-Sukinda New B.G. Rail Link Project which was required for Steel and Thermal Sector in the State. Land was acquired for East Coast Railways by the State Government. The project is to be carried out under the Public Private Partnership (PPP) mode adopted by the Ministry of Railways, where the State of Odisha is the major stake holder, two other Private Sector Undertakings have taken the burden to the extent of 32% in the Special Purpose Vehicle (SPV). The opposite party is a Company registered under the provisions of Companies Act, 1956. As per the terms of a concession agreement executed between Ministry of Railways and the Opposite Party, the latter (the opposite party) has been entrusted with the responsibility of raising the funds for the project and also the corresponding duty not only to pay compensation amount for acquisition of land for the project but also to pay the amount for laying the railway track to Rail Vikash Nigam Ltd. (RVNL). In other words, the opposite party is required to pay compensation as per the terms of the agreement. Thus, the Opposite Party is a person interested in the said acquisition. However, neither the East Coast Railways nor the Opposite Party was impleaded as party to the reference. In that view of the matter, the opposite party has presented the appeal with the leave of this Court and the East Coast Railways have also its concurrence in the matter of decision to prefer the present appeal (Annexures-2 and 3 to the counter affidavit). The opposite party is virtually interested in the quantum of compensation as SPV, for which it squarely comes within the definition of "person interested" under Section 3(e) of the Act. Refuting the allegations made by the petitioner to the effect that it was a mere allottee/lessee or contractor, the opposite party submitted that it is bound by the concession agreement, as aforesaid, to pay compensation and as such, it being a person interested is entitled to a notice under Section 20 of the Act and also has a locus patentee to participate in the proceeding before the Court of Reference as well as to maintain the appeal before this Court. It is further contended in the counter affidavit that in compliance of the terms of agreement, the opposite party has placed the funds with the Executive Engineer

(Con.)/RVNL Projects for the Chief Engineer (Con)-II, East Coast Railways, Bhubaneswar against their requisition and in turn the same has been

deposited by the East Coast Railways before the Special Land Acquisition Officer and to substantiate the same, the appellant/opposite party-

Company relied upon Annexures-4 and 5 series. Thus, it is contended that this Court has rightly granted leave to present and maintain the appeal

by the opposite party before this Court and prayed for dismissal of the petition being devoid of any merit.

4. Section 54 of the Act deals with appeals from the award passed by the Court of reference. It prescribes that subject to the provisions of the

Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the

time being in force, an appeal shall only lie against any proceedings under the Act to the High Court from the award, or from any part of the award

of the Court. Section 3(d) of the Act postulates that the "Court" means a Principal Civil Court of original jurisdiction, unless the appropriate

Government has appointed a Special Judicial Officer within any specified local limits to perform the functions of the Court under this Act. The

impugned award being passed by the Court of reference is amenable to appellate jurisdiction of this Court under Section 54 of the Act. The land in

question was acquired on the requisition dated 25.1.2010 of the East Coast Railways through its Chief Engineer (HQ & CQ), Bhubaneswar for

Angul-Duburi-Sukinda Road New B.G. Rail Link Project. SRO No. 1074 dated 14.5.1955 reveals that in exercise of power conferred under

Clause (1) of Article 258 of the Constitution, the President of India under the said SRO entrusts the Government of Odisha including few other

States with their consent, to discharge the functions of the Central Government under the Land Acquisition Act, 1 of 1894 (for short "the

Act") in relation to acquisition of land for the purposes of the Union within its territory. Thus, the State of Odisha being empowered under the

said SRO acquired an area of Ac.18.600 decimals of land under Section 4(1) of the Act vide Notification No. 26720 dated 7.7.2010 for the

aforsaid project. The declaration under Section 6 of the Act in respect of the acquired land was made vide OEG No. 1808 dated 5.8.2011.

Subsequently, on 21.5.2013, possession was handed over to the East Coast Railways to carry out the project.

5. It is pertinent to mention here that in the interregnum, on 14th May, 2010, an agreement called "Concession Agreement", was executed

between the Ministry of Railways, Government of India and the opposite party to set up a suitable framework under which the opposite party can

undertake all the activities connected with Development, Financing, Design, Construction, Operations and Maintenance of the Project. By virtue of

the said agreement, the opposite party took up the project work. Clause-2.1 of the Concession Agreement stipulates that the scope of the Project

shall include the performance and execution of all activities relating to Development, Financing, Design, Construction, Operations and Maintenance

of the Project by the opposite party in accordance with the provisions of the said agreement. As per the terms of the said agreement, a lease

agreement was also executed on the very same day to enable the opposite party to carry out the project. The project work was carried out on

PPP mode and the State of Odisha was the major stakeholder. Two other Private Sector Undertakings have also taken the burden to the extent of

32% in the Special Purpose Vehicle (SPV). As per the terms of the Concession Agreement, the opposite party has to raise funds to carry out the

Project including payment of compensation for acquisition of the land for the Project.

6. Mr. Panda, learned counsel for the petitioner strenuously urged that the opposite party is neither a Requisitioning Authority nor has undertaken

any liability as per the notification/declaration under the Act for payment of compensation to the claimants. Moreover, the land has not been

acquired for the benefit of the opposite party. As such, it is neither a beneficiary nor a person interested. It is further contended that the opposite

party is a Company which has been entrusted with the responsibility only to implement the project and do the needful incidental thereto. Thus, it

has no right to be heard either for determination of compensation or in that case has no locus standi to prefer an appeal against such determination.

It being an allottee/lessee/contractor under an agreement is not entitled to notice under Section 20 of the Act nor it has a vested right to be heard

as provided under Section 50(2) of the Act. In support of his case, Mr. Panda relied upon a decision in the case of Peerappa Hanmantha

Harijan (D) by L.Rs and others v. State of Karnataka, reported in AIR 2015 SC 2908, wherein the Hon'ble Supreme Court at

paragraph- 57 held as follows:

57. The reliance placed upon the provisions of Sections 50(1) and (2) of the L.A. Act, also are not applicable to the case on hand for the reason

that Section 50 of the L.A. Act applies to the acquisition of land in favour of a Company by the State Government by following the mandatory

procedure contemplated under Part-VII of the L.A. Act and relevant Rules framed for that purpose. Therefore, the claim made by the Company

that it has got every right to participate in the proceedings for determination and redetermination of the market value of the acquired land and

award of compensation passed by the Land Acquisition Officer or Deputy Commissioner or before the Reference Court or the Appellate Court is

wholly untenable in law and therefore, the submissions made on behalf of the Company cannot be accepted and the same is rejected.

Relying upon the case law (supra), Mr. Panda submitted that the claim of the opposite party to give him an opportunity of hearing for determination

of compensation is wholly untenable in law. Thus, the opposite party has no locus standi either to take part in the proceeding for determination

and/or re-determination of the compensation or to prefer an appeal before this Court.

7. Mr. Dash, learned counsel for the opposite party, on the other hand, refuting the contention raised by Mr. Panda, submitted that the said

decision is not at all applicable to the case at hand. The facts involved in the said case were that the land was acquired by the State of Karnataka in

exercise of its power under Section 28 of the Karnataka Industrial Areas Development Act, 1966 (for short 'the KIAD Act'). The said

acquisition was done for the purpose of an establishment of Industry at the instance of Karnataka Industrial Areas Development Board.

Subsequently, M/s. Rajashree Cement Works, a unit of M/s. Ultra Tech Cement Ltd. made a proposal to the State of Karnataka to set up a

cement manufacturing plant and applied for acquisition and allotment of 1187 acres and 5 guntas of land for that purpose. Accordingly, the

Company entered into an agreement with the State Government and KIADB and the land was allotted in favour of the Company as per the

provisions of the KIAD Act and the regulations made thereunder. In a reference under Section 18 of the Act, the Company was not made a party.

Thus, M/s. Ultra Tech Cement Ltd. through its unit M/s. Rajashree Cement Ltd. filed a writ petition questioning the correctness of the award of compensation on the ground that they are necessary party to the reference and were not noticed in the said proceeding. Ultimately, the matter came up before Hon'ble Supreme Court. The Hon'ble Supreme Court in the aforesaid decision has examined the question as to whether the company was a beneficiary of the acquired land either under the provisions of KIAD Act or under the Land Acquisition Act in the facts and circumstances of the said case. The procedure of allotment of the land to the Company in the said case is completely different than that is under consideration in the case at hand and thus, taking note of different provisions of the KIAD Act, the Hon'ble Apex Court held that the Company is neither a beneficiary nor a person interested which entitles it for a notice or to participate in the proceeding for determination of the compensation. Thus, Mr. Dash, learned counsel for the opposite party submitted that the said decision is not at all applicable to the case at hand.

On the other hand, he relied upon a decision in the case of Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (dead) by LR's, reported in AIR 1980 SC 1118. More particularly, he placed reliance at paragraphs-7 and 13 of the said decision which reads as follows:

7. It seems to us that the definition of "a person interested" given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In the instant case, it is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the Government, after acquisition, it stood transferred to the company under the agreement entered into between the company and the Government. Thus, it cannot be said that the company had no claim or title to the land at all. Secondly, since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce on the question of the quantum of compensation.

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13. Thus, the preponderance of judicial opinion, seems to favour the view that the definition of "person interested" must be liberally construed so

as to include a body, local authority, or a company for whose benefit the land is acquired and who, is bound under an agreement to pay, the

compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for

whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be, extremely vital?

For instance, the land acquisition proceedings may be held to be invalid and thus a person concerned is completely deprived of the benefit, which

is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a Court, he may have to pay a very heavy compensation

which, in case he is allowed to appear before a court, he could have satisfied it that the compensation was far too heavy having regard to the

nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court

that a company, local authority or a person for whose benefit the land is acquired is not an interested person we are satisfied that such a person is

vitaly interested both in the title to the property as also in the compensation to be paid therefore because both these factors concern its future

course of action and if decided against him, seriously prejudice, his rights. Moreover, in view of the decision of this Court referred to above, we

hold that the appellant was undoubtedly a person interested as contemplated by Section 18(I) of the Act. The High Court, therefore, committed an

error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.

(emphasis supplied)

The aforesaid view has been reiterated in the decision in the cases of U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead) by L.Rs. and

another etc. etc., reported in AIR 1995 SC 724 and Union of India v. Sher Singh and others, reported in (1993) 1 SCC 608. Also in a

decision in the case of M/s. Neyveli Lignite Corpn. Ltd. v. Special Tahsildar (Land Acquisition), Neyveli and others, reported in AIR

1995 SC 1004, a wider interpretation was given scope of Section 50(2) of the

Act. It has been held at paragraphs-11 and 13 as follows:

11. It is true that Section 50(2) of the Act gives to the local authority or the company right to adduce evidence before the Collector or in the reference under Section 18 as it was specifically stated that in any proceedings held before the Collector or the Court, the local authority or the company may appear and adduce evidence for the purpose of determining the amount of compensation. However, it has no right to seek reference. Based thereon, the contention is that the limited right of adduction of evidence for the purpose of determining the compensation does not carry with it the right to participate in the proceedings or right to be heard or to file an appeal under Section 54. We cannot limit the operation of Section 3(b) in conjunction with sub-section (2) of Section 50 of the Act within a narrow compass. The right given under sub-section (2) of Section 50 is in addition to and not in substituting of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice. The consistent thread that runs through all the decisions of this Court starting from Himalayan Tiles case (AIR 1980 SC 1118), is that the beneficiary, i.e., local authority or company, a coop. society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to file writ petition under Article 226 and assail its legality or correctness. When the award made under Section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1, Rule 10 C.P.C., in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and

effectual determination of binding just and proper compensation to the acquired land be made. So it is concomitantly a proper party if not a

necessary party to the proceedings under Order 1, Rule 10 C.P.C.. The denial of the right to a person interested is in negation of fair and just

procedure offending Article 14 of the Constitution.

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13. If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was

dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, who be the affected person? Is it not interested to see

that the appellate court reassess the evidence and fix the proper and just compensation as per law? For instance the reference court determined

market value at Rs.1,00,000 while the prevailing market value of the land is only Rs.10,000. Who is to bear the burden? Suppose State appeal

was dismissed due to refusal to condone the delay, is it not an unjust and illegal award? Many an instance can be multiplied. But suffice it to state

that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the

Collector and reference court under Section 18 or in an appeal under Section 54, it/they be interested to defend the award under Section 11 or

Section 26 or file an appeal independently under Section 54 etc., against the enhanced compensation. As a necessary or proper party affected by

the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the reference court

under Section 18 or in appeal under Section 54 etc. Considered from this perspective we are of the considered view that the appellant-Company

is an interested person within the meaning of Section 3(b) of the Act and is also a proper party, if not a necessary party under Order 1, Rule 10 of

the C.P.C.. The High Court had committed manifest error of law in holding that the appellant is not a person interested. The orders of the High

Court are accordingly set aside.

The ratio is equally applicable to the 'person interested'.

8. On a close reading of the aforesaid decisions, it emanates that the definition under Section 3(b) of the Act is not exclusive in nature. On the other

hand, it is an inclusive definition and must be liberally construed so as to

embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. It is the trite law that the decision of a Court should not be read like an enactment of the Parliament. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which judgment was delivered. The law which will be binding under Article 141 of the Constitution, therefore, extend to all observations on points raised and decided by the Court in a given case See *Director of Settlements, A.P. v. M.R. Apparao*, reported in AIR 2002 SC 1598. Further, in the case of *Union of India and others v. Dhanwanti Devi and others*, reported in (1996) 6 SCC 44, while discussing about the binding effect of a decision or precedent under Article 141 of the Constitution, it is held as follows:-

9. Before advertng to and considering whether solatium and interest be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that *Hari Krishan Khosla* case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it

because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Keeping in view the aforesaid principles laid down, the applicability of the case laws cited by learned counsel for the parties has to be read.

9. In the case of Himalaya Tiles and Marble (P) Ltd. (supra), Section 4(1) notification was made at the instance of the requisition of the appellant therein, namely, Himalaya Tiles and Marble (P) Ltd. for acquisition of additional land for purpose of the Company (the appellant therein). U.P.

Awas Evam Vikas Parishad's case (supra) (for short "the Board") the question arose as to whether the Board has a right to appear in the acquisition proceeding before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation. In the said case, Section 55 of the U.P. Act provides for acquisition of land. It lays down that such acquisition may be made under the provisions of the Land Acquisition Act as amended in its application to Uttar Pradesh and further provides that Land Acquisition Act for that purpose shall be subject to the modification specified in the Schedule to the U.P. Act. The Board was constituted under Section 3 of the U.P.

Awas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act 1 of 1966). In the schedule to the said Act modifications have been introduced in the provisions of the Land Acquisition Act. Clause-(i) has been added to Section-3, whereby the "local authority" has been defined to include the Board. The Board in exercise of its power under Section-28 of the said Act

(analogous to provisions under Section 4 of the Act) issued

notification for acquisition of land for a Scheme known as "Trans-Yamuna Housing and Accommodation Scheme". Further, a notification of

declaration under Section 32 of the said Act (analogous to provision under Section 6 of the Act) was also issued. However, the Board was neither

impleaded as a party in the reference before the Tribunal or in the appeals before the High Court. In the aforesaid backdrop, the aforesaid

question arose for consideration, which was answered in the affirmative in favour of the Board.

Likewise, in the case of M/s Neyveli Lignite Corpn. Ltd. (supra), the entire controversy hinged around interpretation of Section 3(b) and Section

50(2) of the Act, as to whether the appellant therein is a person interested either to be impleaded as a party to the pending references under

Section 18 of the Act to lead evidence, contest the reference or, if the compensation is enhanced, to file an appeal in the High Court under Section

54 of the Act. While dealing with the reference made by two Hon'ble Judges of the Hon'ble Supreme Court, the question that was framed

for consideration at paragraph-5 of the decision, which is as follows:-

5. The question, therefore, is whether the appellant for which benefit the land is acquired is a "person interested" within the meaning of Section

3(b) of the Act.

Thus, in all the aforesaid cases relied upon by Mr. Dash, learned counsel for the opposite party, the question, more or less, for determination was

whether the Company, or the Board (local authority), for whose benefit the land was acquired has a right to participate in the acquisition

proceeding before the Collector, reference before the Court or Tribunal, and in that case maintain an appeal before the High Court. In all these

cases it has been held in the affirmative.

But, the case at hand is little different than those referred to above. Admittedly, in the instant case, the land has not been acquired either at the

requisition of or for the benefit of the opposite party. The land was acquired at the requisition of and for the purpose and benefit of the East Coast

Railways for Angul Duburi-Sukinda Road New B.G. Rail Link Project. Concession and lease agreements were executed with the opposite

party (Company) to execute the said project. Thus, the question that arises for

consideration is whether the opposite party can be armed with the provision of Section 50 of the Act to claim for impleadment as a party to the reference before the Court and for that reason maintain this appeal.

10. Before delving into the issue, it has to be kept in mind that the right of being impleaded as a party and the right of opportunity of hearing as

provided under the Act are statutory right and not a common law right. Further, in a decision in the case of Poonam v. State of U.P. and others,

reported in 2015 (12) Scale 227, Hon'ble Supreme Court held as follows:-

17. The term "entitled to defend" confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed

by any legal forum, for there be violation of natural justice. The principle of audi alteram partem has its own sanctity but the said principle of natural

justice is not always put in strait jacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail.

Thus, it is abundantly clear that the principles of audi alteram partem cannot always be put in a straight jacket formula. A person or any authority

must have a legal right or a right in law to defend or assail to ask for compliance of the principles of natural justice. The term "Company" as

referred to in Section 50 of the Act only includes a Company for whose benefit the land has been acquired. At this stage, it may be profitable to

refer to a decision relied upon by Mr. Dash in the case of Abdul Rosak and others v. Kerala Water Authority and others, reported in AIR

2002 SC 817. The factual backdrop of the said case law had its origin from a notification under Section 4(1) of the Act dated 19.07.1981 made

by the State of Kerala for acquisition of land for the benefit of the public Health Engineering Department of the State Government. Subsequently,

declaration under Section 6 of the Act was made. Thereafter, Collector (Land Acquisition) initiated proceeding for assessment of the

compensation payable and award was made on 15.06.1986. The reference at the instance of the claimants for enhancement of compensation

came to be decided in different awards by the Court in between 1989 to 1991. The peculiarity in this case is that in the interregnum, State of

Kerala on 01.04.1984 through an executive order constituted "Kerala Water Authority" as a statutory Corporation. For that purpose, Kerala

Water Supply and Sewerage Act, 1986 was given retrospective operation with

effect from 01.03.1984 declaring Kerala Water Authority to have been constituted under the Act. It succeeded to all the liabilities of Public Health Engineering Department of the State Government. In that capacity, State of Kerala and Kerala Water Authority preferred appeals before the High Court assailing the award in the references. The question arose as to whether Kerala Water Authority has any locus standi to prefer any appeal. Relying upon the Constitutional Bench decision in the case of U.P. Awas Evam Vikas Parishad (supra), the Hon'ble Supreme Court in paragraph-7 of Abdul Rosak (supra) held as follows:-

7. Shri T.L.V. Iyer, the learned Senior Counsel for the claimant-appellants has submitted that Kerala Water Authority is the successor of Public Health Engineering Department of the State Government, and bound by the proceedings conducted by or against the State Government and, therefore, the Constitution Bench decision does not have any applicability to the facts of the present case and the High Court ought not to have set aside the awards and remanded the cases to the reference court. We find it difficult to subscribe to the view so forcefully canvassed by the learned Senior Counsel for the appellants. KWA came into existence as a statutory corporation on 1-4-1984. It may be said to have succeeded to the liability incurred by the State Government so far as the quantum of compensation awarded by the Collector is concerned but so far as the enhancement in the quantum of compensation is concerned, it will be a liability of KWA incurred by it after its coming into existence and, therefore, to the extent of enhancement, the authority was certainly entitled to notice and right to participate in the proceedings before the reference court leading to enhancement of compensation.

The aforesaid case laws make are certainly distinguishable on facts. But the consistent view in all the aforesaid case laws makes it abundantly clear that the definition of a "person interested" is inclusive in nature. It should be interpreted liberally to embrace all persons, local authority, Company and Cooperative Society created under any enactment, who may be directly or indirectly interested either in the title to the land or in the quantum of compensation, depending upon facts and circumstances of each case. In the case at hand, the opposite party-Company comes into picture by virtue of Concession Agreement.

11. The Concession Agreement executed between the Ministry of Railways and the opposite party-Company reveals that the parties have agreed

for setting up a suitable framework under which ASRL (the opposite party) can undertake all activities connected with development, finance,

design, construction, operation and maintenance of the project.

Concession defined as the authorisation granted by the Authority granting concession to the concessionaire (opposite party) to develop, finance, design, engineer, procure, construct, operate and maintain the project

Railway and to exercise and/or enjoy the right, power, benefit, privileges, authorisation and entitlement as set out in the agreement during

concession period. In order to appreciate the rights and obligation of the opposite party with the agreement, relevant clauses as quoted here under

have to be gone into

4.1 Grant of Concession MoR hereby grants Concession to ASRL, in accordance with the provisions of this Agreement.

4.2 Rights of ASRL The Concession hereby entitles ASRL, inter-alia, to the following:

a. to exercise all the rights and authority vested in the Concessionaire under this Agreement;

b. to have the exclusive right and authority during the Concession Period to implement the Project;

c. the right to Commercial Exploitation;

d. the right to develop Additional Facilities in the Project Area;

e. the right to quote special tariff rates for freight traffic moving within the Project Railway i.e. where origin and destination both are on the Project

Railway in terms of the policy instructions issued by MOR from time to time. However, any special tariff rates applicable on other than the Project

Railway shall require prior approval of MOR;

f. the right to receive from MoR its share in accordance with the rules of inter-railway apportionment of earnings, of the tariff collected from the

freight traffic originating, terminating and moving on the Project Railway, including haulage charges collected from container operations, after

deduction of Operations and Maintenance costs, in accordance with the Project Related Agreements.

Clause 4.3 (j) reads as follows:

4.3 Obligations of ASRL

Subject to this Agreement and Applicable Laws, ASRL hereby undertakes to do the following:

xx xx xx

j. indemnify MoR against all actions, suits, claims, demands and proceedings and any loss or damage or cost of expense that may be suffered by

MoR on account of anything done or to be done by ASRL in connection with the performance of its obligations under this Agreement;

12. From a conjoint reading of the aforesaid terms and conditions of the agreement it is manifest that the compensation for land acquisition has to

be paid by the opposite party. Neither the Ministry of Railways nor the East coast Railways for whose benefit the land has been acquired has

shouldered any liability for the same. In view of the above, the submission of Mr. Panda to the effect that the opposite party was only a lessee

under the lease agreement and has no say in the matter of determination of the compensation, cannot be accepted. The lease agreement was

executed between the parties to work out the terms and conditions of the Concession Agreement. Thus, the opposite party has a right more than

that of a lessee or a contractor as alleged by Mr. Panda. In view of the above, it necessitates the Court to have a close reading of the case of P.H.

Harijan (supra). In the said case, the land was acquired under the provisions of KIAD Act. The land was acquired by the State Government at the

instance of KIADB under Section 28 (1) of the Act, 1966. The said provision is pari materia to Section 4(1) of the L.A. Act. Section 30 of the

said Act provides that the provision of L.A. Act shall mutatis mutandis apply in respect of holding enquiry and to pass award determining the

compensation for acquisition of land by the Deputy Commissioner. In paragraph-33 of the P.H. Harijan (supra), Hon'ble Supreme Court held

as under:

33. In view of the above statutory provisions of the KIAD Act, the provisions of Sections 11, 18 and 30 of the LA Act are applicable for the

purpose of determination of just and reasonable compensation of the acquired land payable to the landowners either by the Deputy Commissioner

or Reference Court.

13. Taking into consideration different provisions of the lease agreement and

relevant clauses of regulations framed under KIAD Act, Hon'ble

Supreme Court held as follows:

50. In the instant case, a perusal of the provisions of the lease agreement executed between the parties referred to supra and Regulation 10

clauses (a), (c), (d) and (e) of the KIADB Regulations make it abundantly clear that the Company is only the allottee/lessee of the acquired land

and as per Clauses 5(a) and (b) of the lease agreement referred to supra, the premium indicated in the lease agreement in respect of the allotted

land in its favour represents the tentative cost of the land. It has been further specified in the lease agreement that in the event of the lessor incurring

the payment of amounts to the landowners over and above the awards made by the acquiring authority by virtue of awards passed by the

competent court of law in view of the provisions of the Land Acquisition (Amendment) Act, 1984 in respect of demised premises or any part

thereof, the same shall be met by the lessee within one month from the date of receipt of communication signed by the Executive Member or any

other officer authorised by the lessor. In view of the above conditions of the lease agreement, neither KIADB nor the Company can contend that

the acquisition of the land involved in these proceedings is in favour of the lessee Company. Therefore, the Company is neither a beneficiary nor an

interested person as claimed by them in terms of Section 2(11) of the KIAD Act or under Section 3(b) of the LA Act as per which, "person

interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the KIAD Act and that

a person shall be deemed to be interested in the land if he is interested in an easement affecting the land. It is necessary to examine Section 3(b)

read with Section 9 of the LA Act, which deals with notice to persons interested and Section 11, which deals with enquiry and award to be passed

by the Deputy Commissioner/Land Acquisition Officer.

Thus, the Company/lessee was only the allottee/lessee to the acquired land as per the Clause 5(a) and (b) of the Lease Agreement. It further

specified in the lease agreement that in the event the lessor incurring payment of the amounts to the land owners over and above to the award made

by the acquiring authority by virtue of the award made by the competent Court of Law in view of the provisions of the Land Acquisition

(Amendment) Act, 1984 in respect of the demise premises or any part thereof, the same shall be made by the lessee. Thus, the status of the

opposite party in the instant case cannot be equated with that of the lessee (M/s Rajshree Cement) as the opposite party is under obligation liable

to raise funds, execute the project work, pay the compensation to the land owners and to execute all other things as agreed upon by it in the

Concession Agreement. Neither the East Coast Railways nor the Ministry of Railways had undertaken any liability for payment of compensation.

Moreover, Clause 4.3(j) of the Concession Agreement made the opposite party liable to indemnify Ministry of Railways against all actions, suits,

claims, demands and proceedings and any loss or damage or cost of expense that may be suffered by MoR on account of anything done or to be

done by ASRL in connection with the performance of its obligations under this Agreement. One who is under obligation or is liable to indemnify

against all actions suits, claims, demands and proceedings has a right to be heard in it. In view of the above, it can be safely said that the opposite

party has a right to be heard in the matter following the principles of audi alteram partem. It has become more expedient when neither the Ministry

of Railways nor the East Coast Railways have been impleaded as a party to the reference. In addition to the above, the East Coast Railways have

also its concurrence in the matter of preferring an appeal before this Court by the opposite party as evident from Annexures- 2 and 3 to the

counter affidavit. Thus, taking into consideration the facts and circumstances of the case and the discussions made above, it can be safely said that

the East Cost Railways for whose benefit the land has been acquired and the opposite party-Company will be defenceless, if the opposite party is

not permitted to file an appeal and thus the statutory right provided under Section 54 of the Act will be redundant. Thus, it is held that the opposite

party-Company is a "person interested" within the meaning of Section 3(b) of the Act and can present and maintain an appeal under Section

54 of the Act.

14. Accordingly, the Misc. Case being devoid of any merit stands dismissed.