(1995) 10 KL CK 0009

In the High Court Of Kerala

Case No : W.A. No. 723 of 1993

SAIL Ltd. APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 10-10-1995

Acts Referred:

Companies Act, 1956 — Section 20, 3, 3(c), 3(cc), 3(e)
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 20, 3(b)

Citation : (1995) 10 KL CK 0009

Hon'ble Judges : K.T. Thomas, Acting C.J.;P. Shanmugam, J

Bench : Division Bench

Advocate : N.D. Premachandran and V.P. Seemanthini, for the Appellant; N. Sukumaran, Ajith Prakash and Govt. Pleader (V.C. James), for the Respondent

Judgement

K.T. Thomas, Ag. C.J.

1. The Steel Authority of India Ltd. (for convenience we would refer to it as "SAIL" which is the acronym formed out of the first letters of that authority) moved the Government of Kerala to acquire some areas of land for its use. Accordingly acquisition proceedings were initiated by the government and reached finalisation when a Land Acquisition Officer has passed awards after estimating the market value of the land and other matters relevant for fixing the compensation payable to owners of land. However, the owners of land, not satisfied with such awards, applied for making reference to the civil court as proved in S.18 of the Land Acquisition Act (for short the Act). Thereupon references were made to the civil court. Those references were answered and awards were passed by the civil court enhancing the market value of the land. But SAIL was not heard by the civil court nor did an opportunity afforded to it by the civil court to be heard before passing the awards. With the said grievance the SAIL has filed the original petitions in challenge of all those awards passed by the reference court. Some of the original petitions were dismissed by the learned single judge at the admission stage itself on the premise that jurisdiction under

Article 226 of the Constitution cannot be invoked in respect of any order passed by the civil court. Those judgments are being challenged in the Writ Appeals now before us. The other original petitions filed by SAIL have also been sent up to be heard along with the Writ Appeals.

2. On a previous occasion all these matters were heard and disposed of by a division bench of this Court. It was found by the division bench also that jurisdiction under Article 226 cannot be invoked as against awards passed by civil courts. But the undeterred SAIL challenged the finding before the Supreme Court. Supreme Court held that with the pronouncement of the decision of the Constitution Bench in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., the matter is no longer res integra and it is open to the aggrieved persons to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution. All the cases were accordingly, remitted to this Court for disposal afresh on merits.

3. It is undisputed premise that SAIL was not a party before the reference court nor has it been given any notice by the reference court. SAIL contended that it had no knowledge about the proceedings before the reference court. Has the SAIL any right to be heard before the reference court is the first and the foremost question now to be decided. Learned counsel for SAIL contended that in view of S.20 of the Act, SAIL being a person interested has a right to be heard. As per that section a reference court has to give notice to "all persons interested" specifying the day on which the court will proceed to determine the objection, and directing their appearance before the court on that day. All the learned counsel who argued for the award holders contended, in one accord, that SAIL is not a person interested in the acquisition proceedings. But the factual position that SAIL is a beneficiary of the acquisition and that money for acquisition must ultimately be borne by the SAIL is not disputed by any party. The question now raised has to be decided on the above factual premises.

4. The expression "person interested" has been defined in S.3(b) of the Act as including all persons "claiming an interest in compensation to be made on account of the acquisition of the land under this Act". Apparently, the beneficiary is a person interested in such compensation because the amount of compensation has to be borne by such beneficiary ultimately. But learned counsel (appearing for the claimants) contended that such interest should be proximate and not distant. According to the counsel, since the interest of a beneficiary can be safeguarded by the State Government (who actually acquire the land though for the use of the company) it cannot be regarded as a person interested in the compensation.

5. The expression "person interested" in S.3(b) must secure a wide and liberal construction. This position has become well neigh settled (vide Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR''s., which was consistently followed by the Supreme Court in Neelagangabai and another Vs. State of Karnataka and others, ; Krishi Upaj Mandi Samiti v. Ashok Singhal and

others (1991 S (2) SCC 419) and in Union of India (UOI) Vs. Sher Singh and Others, . In this context it is apposite to extract the following observations made by the Supreme Court in Sher''s case (cited supra):

After examining the various case-law on the subject, it was observed that 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 the agreement to pay the compensation.

6. In their Lordships'' opinion the above view is in accord with the principles of equity, justice and good conscience. However, learned counsel appearing for the claimants canvassed for the position that the ratio laid down by the Supreme Court in the above cases has since been departed from by the Constitution Bench in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., . But a reading of the said judgment would show that the Supreme Court has only reiterated the principle (vide paragraph 25 of the decision).

7. The alternative contention adopted by the learned for claimant is the SAIL being a Government Company (as defined in S.617 of the Companies Act, 1956) is excluded from the purview of the definition "Company" by S.3(e) of the Act and hence SAIL cannot be regarded as a "person" for the purpose. It is not disputed before us that SAIL is a Government Company as defined in S.617 of the Companies Act 1956. Does it mean that SAIL is not a juristic person? By keeping a government company outside the purview of "Company" for the purpose of land acquisition proceedings a government company does not cease to have its legal characteristics. One of the offshoots of formation of a company, whether it is a government company or otherwise, is its acquisition of juristic personality. So it cannot be construed as having ceased to become a juristic person merely by distinguishing between a government company and non-government company. Here we refer to S.3(cc) which defines "Corporation owned or controlled by the State" as a body corporate established by a statute and includes a ''Government Company'' as defined in S.617 of the Companies Act, 1956. There can be no doubt that SAIL as a corporation falling within the aforesaid definition is a "person".

8. That apart, the definition clauses in S.3 are subjected or conditioned by the prefatory rider that such definition is subject to alterations and variations according to the context. The opening words used in S.3 are: "unless there is something repugnant in the subject or context". Definitions by and large in a statute are meant to be used only as long as such use would not lead to deadlocks. When a statute itself makes it further clear that the definitions are to be used only if a particular context in the statutory provision is not repugnant to such application, effort should be made to eschew such repugnancy (vide Said Mohammed v. Rama (1995(2) KLT 343).

9. What is the consequence of preventing SAIL from participating in the

proceedings before the reference court? Admittedly, SAIL is not a company controlled by the State Government as most of its shares are owned by the Central Government. In these land acquisition proceedings Union of India is not a party either before the reference court or before us. If without affording an opportunity to the person who has to bear the acquisition costs, land value happened to be increased by leaps and bounds it would be a negation of principles of natural justice. The contexts in which "person interested" in the Act would fall should therefore override the definition of the word Company in S.3(c) . Every person, whether it is a Government owned company or a private company, must also be regarded as a "person" for the purpose of participating in the proceedings if he or it is really interested in the outcome. We therefore, reach the following conclusions:

i) Writ petitions are maintainable under Article 226 of the Constitution as held by the Supreme Court following the decision in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., .

ii) SAIL is a person interested as envisaged in S.20 of the Act.

iii) As SAIL was not given notice by the reference court the awards passed by the reference court cannot be sustained.

In the result, we quash all the awards challenged before us. We direct the reference court to pass fresh awards on the references made, after affording a reasonable opportunity to all the parties including SAIL for participating in the proceedings. The writ appeals and original petitions are disposed of accordingly.