(2006) 10 OHC CK 0040

In the Orissa High Court

Case No : First Appeal No. 82 of 2002

Special L.A. Officer, Junagarh Rail Link Project — APPELLANT

Vs

Prabhabati Majhi and Others — RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1), 20, 28, 3

Citation : (2006) 102 CLT 858 : (2006) 2 OLR 720

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Sangram Das, A.S.C, for the Appellant; M. Kanungo, on behalf of D. Mund, (for Respondent Nos. 1 to 6) and Bijoy Pal, A. Pal and B.P. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Parichha, J.—This is an appeal u/s 54 of the Land Acquisition Act (in short, ''the Act'') filed by the Special Land Acquisition Officer, Lanjigarh Road-Junagarh Rail link project, Bhawanipatna challenging the award dated 1.9.2001 passed by the learned Civil Judge (Senior Division), Bhawanipatna in M.J.C. No. 141 of 1997.

2. On the basis of notification u/s 4 Sub-section (1) of the Act, 1.39 decimals of land in Holding No. 14 of Village-Sinangbhata in the district of Kalahandi belonging to the claimant-respondent Nos. 1 to 6 (in short "claimants") was acquired for construction of Lanjigarh Road, Junagarh Rail Link Project, as. per Government Notification No. 36652 dated 17.4.1995 and declaration No. 40941 dated 16.09.1995. After conducting necessary inquiry the appellant awarded a compensation of Rs. 21,023.10 paise in favour of the claimants who received that amount under protest claiming higher compensation. On the prayer of the claimants the matter was referred to learned Civil Judge (Senior Division), Bhawanipatna u/s 18 of the Act for adjudication of the dispute regarding quantum of compensation. Learned Civil Judge (Senior Division), Bhawanipatna

(hereafter called "reference Court") received evidence of the parties and by resorting to captilization method fixed the market rate of the "Atta" variety of acquired land at Rs. 48,000/- per acre and "Bahal" variety of land at Rs. 52,000/- per acre. Challenging that enhancement in the rate of compensation, the present appeal has been preferred.

3. Mr. Sangram Das, learned Counsel appearing for the appellant alleges that non-issuance of notice to the Union of India represented by General Manager, East Coast Railways in the reference proceeding was violative of Section 18(1) and Section 20 of the Act because the compensation to the claimants is payable by the railways and notice to such interested person is mandatory as per the above noted provisions of law. He further contended that when contemporaneous sale statistics indicating market value of the land of the area were available, fixation of market value of the acquired land under capitalization process was not proper. Mr. Das also challenged the legality of the award of compound interest in a land acquisition proceeding. He cited several decisions of the Apex Court in support of the submissions.

4. Mr. A. Pal, learned Counsel appearing for the Union of India, which was permitted to be impleaded as respondent No. 7, supported the contention of learned Counsel for the appellant and specifically argued that the compensation amount being payable by the railways, it was a necessary party and so it should have been noticed and given opportunity of participating in the proceeding. According to him any award passed behind the back of the respondent No. 7 becomes unsustainable and non est in the eye of law as such act offends the principles of natural justice and the dictum of the Apex Court in the case of NTPC Ltd. v. State of Bihar and Ors. reported in (2004) 12 SCC 96.

5. Mr. Milan Kanungo, learned Counsel appearing on behalf of Mr. D. Mund, learned Counsel for respondent Nos. 1 to 6 supporting the impugned order argued that Union of India represented through the railways is not a person interested within the meaning of Section 18(1) of the Act, as ''State'' is not a person and Section 18(1) refers to persons who are claimants and in whose favour compensation has already been awarded by the Land Acquisition Collector. He argued that as per the provisions of Section 20(c) of the Act in case of reference relating to quantum of compensation or area of the acquired land no other person except the Collector of the District as defined in Section 3(c) of the Act is to be noticed. According to him, for the above said reasons the reference Court was not obliged to issue notice to respondent No. 7 inviting it to participate in the reference proceeding. Mr. Kanungo further argued that when contemporaneous Sale statistics of land situated in the same locality are not available, the Court can adopt capitalization method for determining the market value of the acquired land and thus by adopting the capitalization method the reference Court did not commit any illegality. He also argued that award of compound interest is permissible u/s 28 of the Act and the interest awarded in the impugned order being within the ambit of Section 28 of the Act no legal fault

can be attributed.

6. The main grievance advanced by the learned Counsels for the appellant and respondent No. 7 is that Union of India represented through the General Manager, East Coast Railways was not given an opportunity to contest the claim of the claimants relating to the valuation of the land in the reference proceeding. According to them, respondent No. 7, being the authority paying the compensation amount to the claimants for the acquired land, is a person interested and was entitled to notice in the referred proceeding, so that it could have produced evidence and contested the claim of the claimants. To support this contention learned Counsel relied on the cases of Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR''s., ; U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., ; Agra Development Authority Vs. Special Land Acquisition Officer and Others, ; Abdul Rasak and Others Vs. Kerala Water Authority and Others, ; NTPC Ltd v. State of Bihar and Ors. (2004) 12. S.C.C. 96, Union of India (UOI) Vs. Sher Singh and Others, .

7. Learned Counsel for the respondents Nos. 1 to 6 counter argued that the ratios laid down in the Cases cited by the appellant and respondent No. 7 are not applicable to the present case as those decisions were rendered in connection with Section 50 of the Act which relates to companies and local bodies. According to him, the Union of India not being a Company or local body, the ratio of the cited cases would not apply to the present case. It is further argued that the provision of Section 20(c) of the Act not having been taken into consideration in any of he above noted cases, the observations made in those cases would not be binding on this Court in the present appeal. Reliance was placed in the case of Sharda Devi Vs. State of Bihar and Another, and Ahad Brothers Vs. State of M.P. and Another, .

8. To resolve the controversy raised by the learned Counsel for the parties, it is necessary to recount Section 18(1) of the Act.

18(1). Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

Although a plain reading of Section 18(1) indicates that the person interested for the purpose of this Section means, a person, who has been awarded compensation for the acquired land, but has not accepted the award, the meaning of "person interested" was expanded by the apex Court in the case of Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (supra) by making the following observation.

xxx The definition of "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 of the land or in the quantum of compensation. Thus, the definition of "person interested" in Section 18 must be 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 compensation. This view accords with the principle of equity, justice, good conscience.

The ratio of Himalaya Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (supra) was concurred by majority of Judges of the Constitution Bench in the case of U.P. Awas Evam Vikas Parishad v. Gyan Devi (supra). In that case it was said that Section 50(2) of the Act confers on all local authorities for whom land is 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 as such local authorities are to pay the compensation for the acquired land and are necessary and proper parties, who deserve to defend any enhancement of the compensation. Reiterating the principle laid down in the above noted case, a Division Bench of the Apex Court in the case of Agra Development Authority v. Special Land Acquisition Officer and Ors. (supra), remitted the matter back to the Special Land Acquisition Officer for refixing the amount of compensation after giving notice to the Agra Development Authority on the ground that although the land was acquired for Agra Development Authority, the said authority was not given any opportunity to adduce evidence in the matter of fixation of rate of compensation. The same principle was again adopted by the apex Court in the case of Abdul Rasak and Ors. v. Kerala Water Authority and Ors. (supra) and it was held that Kerala Water Authority being liable to pay compensation, was entitled to notice and right of participation in the proceeding before the reference Court.

9. It was argued on behalf of the respondents that the above noted cases relate to Section 50 of the Act, which specifically provides for the local authority or the company concerned to appear and adduce evidence for the purpose of determining the amount of compensation and as such, the ratios/principles laid down in the above noted cases are not applicable to matters where the land is acquired for the State. In this regard, reliance is placed on Section 20(c) of the Act, which says that if objection is in regard to the area of the land or the amount of compensation, then the reference Court shall notice only the Collector of the district. According to the learned Counsel for the respondents, if objection is regarding the area of the land or the amount of compensation, then the reference Court is under obligation to issue notice only to the applicant and the Collector and none else. A close reading of Section 20 would show that the submission offered from the side of the respondents is not tenable. Section 20(b) says that all persons interested except such of them who have consented without protest to receive payment are to be noticed and Sub-section (c) says that besides the persons interested as noted in Sub-section (b), the Collector shall also be noticed if the objection relates to the area of the land or the amount of compensation. The word occurring between Sub-sections (b) and (c) is ''and''

and not ''or''. Moreover contention of the respondents has also been answered by the apex Court in the case of NTPC Ltd v. State of Bihar and Ors. (supra), where despite the proceeding not u/s 50 of the Act and NTPC for whom land had been acquired being a component of the Union of India, the apex Court observed that notice has to be issued by the reference Court to the NTPC and opportunity has to be given to the NTPC to participate in the reference proceeding. So, the matter has been virtually clarified by the apex Court in the case of NTPC Ltd v. State of Bihar and Ors. (supra) that even if the land is acquired for a body owned by Union of India, the authority for whom the land has been acquired shall be considered as a "person interested" u/s 18 of the Act and must be noticed to participate in the reference proceeding. Following this view of the apex Court, this Court also in the case of Special Land Acquisition Collector, Dhenkanal v. Narahari Sahu and Anr. (First Appeal No. 18 of 1994 disposed of on 25.9.2000) set aside the orders of the reference Court and remanded the matter for fresh disposal after giving due notice to the N.T.P.C.

10. Relying on the case of Sarada Devi v. State of Bihar (supra) and Ahad Brothers v. State of M.P. (supra), Mr. Kanungo argued that the State cannot be said to be "person interested" to agitate any claim under Sections 18 or 30 of the Act. In the case of Ahad Brothers v. State of M.P. (supra) no doubt the apex Court observed that the State couldn''t be said to be a person interested to agitate any claim u/s 18 or Section 30, but that observation was made in a situation where there was inter se dispute between the claimants for apportionment of the compensation amount. Such observation of the apex Court, which was given in connection with Section 30 of the Act cannot be applied to the present case.

11. In view of the above noted factual and legal position, the inescapable conclusion is that the Union of India represented through the East Coast Railways is a "person interested" because ultimately it has to pay the compensation amount for the land acquired. Since the reference Court did not notice such interested person before passing the impugned order in the reference proceeding, the order enhancing the quantum of compensation becomes unsustainable. The impugned order, is accordingly set aside and the matter is remitted back to the reference Court for fresh determination of the quantum of compensation after giving adequate opportunity to the respondent No. 7 to participate in the proceeding and adduce evidence in support of its plea and also giving opportunity to the respondent Nos. 1 to 6 to adduce rebuttal evidence. Since the matter is old, the appellant and all the respondents are directed to appear before the learned Civil Judge (Senior Division), Bhawanipatna in MJC No. 141 of 1997 on November 6, 2006 to take necessary instruction. The learned Civil Judge is directed to dispose of the Misc. Case as expeditiously as possible preferably within a period of three months of receipt of this order and the LCR.

12. The appeal is allowed. In the peculiar circumstances, the parties are to bear their own cost.

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