
(2000) 09 OHC CK 0001
In the Orissa High Court
Case No : First Appeal No. 264 of 1993

Special Land Acquisition Collector	Vs	APPELLANT
Bauri Dehury and Others		RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 19, 50, 54

Citation : (2000) 09 OHC CK 0001

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : J.K. Mishra, J.P. Patnaik, A.K. Biswal, D.R. Ray, A.K. Sahu for Rs. 1 to 4 and Jayant Das, for R 5, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—This appeal u/s 54 of the Land Acquisition Act, 1894 (in short the Act) has been filed by the Special Land Acquisition Collector, Dhenkanal challenging the award dated 12-8-1993 in Land Acquisition Misc. Case No. 144 of 1992 of the Court of Subordinate Judge, Talcher.

2. Claimants are Respondents 1 to 4, but inspire of notice they have not appeared and contested in this appeal. The General Manager of National Thermal Power Corporation Ltd. (in short the "N.T.P.C.") at Talcher having been permitted to intervene has been added as Respondent No. 5.

3. While hearing the appeal on merit, a contention Moving been raised by Respondent No. 5 regarding non-affording reasonable opportunity of hearing to him to contest the claim of the claimants relating to the valuation of the land and determination of die amount of compensation, he urges to afford an opportunity to adduce proper evidence in that context. Mr. Jayant Das, learned Senior Counsel appearing for the N.T.P.C. inviting attention of this Court to the ratio in the case of M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, and the provision in Section 50 of the Act

argues that in the absence of any notice served on the N.T.P.C. for whose requirement the land was acquired and without affording an opportunity of hearing to it, determination of the compensation on higher side is detriment to the interest of the N.T.P.C. as bulk of the compensation is required to be paid by it and therefore, the Respondent. No. 5 is allowed opportunity to adduce evidence to counteract the claim of bigger compensation by the claimants. Since the matter is of considerable importance thus besides bearing the counsel appearing for the Appellant and the N.T.P.C. with the consent of the parties, Mr. D.K. Das, an experienced counsel in that branch of law was permitted to address the Court as *amicus curiae*. The substance of the proposition of law propounded in the above cited decision goes in favor of the contention of the Respondent No. 5 and no counter decision has been brought to the notice of this Court so as to take a different view in the matter. Mr. Jayant Das also points out that in First Appeal No. 80 of 1997 and a batch of such appeals similar question was considered by a Bench of this Court and following the ratio from the above cited decision remanded the matter to the Court below for effective adjudication. Learned Counsel for the Appellant does not dispute the aforesaid statement of fact. He also does not dispute or distinguish the ratio in the above cited case from the Apex Court.

4. It may be mentioned here that the Appellant was directed to file affidavits to ascertain if notice was served on the N.T.P.C. when the reference was made u/s 18 of the Act. In that respect, affidavit has been filed stating that notice was sent and was accepted by some employee in the establishment of the N.T.P.C. The particulars of such employee and his competency to receive notice have not been clearly stated. In the counter affidavit filed from the side of the N.T.P.C. the factum of service of notice has been denied. In addition to that it is the admitted position on record that no notice was issued on the N.T.P.C. from the court of Subordinate Judge. On an analysis of the aforesaid facts and circumstances, it boils out to the situation that there is no proper proof of service of notice on the N.T.P.C. by the Appellant while making a reference u/s 18 or regarding pendency of such reference in the court of Subordinate Judge.

5. When the compensation amount is to be contributed by the N.T.P.C. it must have a say in the matter relating to the proper valuation while the matter is enquired into on the basis of a reference under Sections 18 and 19 of the Act. Unfortunately, that aspect was not properly visualized by the Appellant and the learned Subordinate Judge. Under such circumstance, this Court finds it just and proper to allow the N.T.P.C. an opportunity to adduce their evidence. Since the matter is going on remand the claimants if so desired may adduce fresh or further evidence in support of their claim. Learned counsel for the Appellant as well states that Appellant may be provided with an opportunity to adduce evidence, if necessary.

6. In view of the aforesaid facts and contentions the amount awarded is found to be non-sustainable as it was passed without affording proper opportunity of

hearing to the N.T.P.C.. Thus the said award is set aside and the appeal is allowed and accordingly the L. A, Misc. Case No. 144/1992 is remanded for fresh adjudication in accordance with law. On receipt of the case on remand learned Subordinate Judge shall do well to issue notice to the claimants for their appearance and participation and upon receipt of such notice if the claimants will appear and desire to adduce further evidence such opportunity may be granted to them before affording opportunity to the N.T.P.C. and the Appellant to adduce their evidences. Since the land was acquired as back at in 1991 the reference needs to be decided expeditiously. Hence, learned Subordinate Judge shall make the endeavor to dispose of this reference as far as practicable within a period of three months from the date of receipt of the L.C.R.. However, the Appellant and the N.T.P.C. are directed to appear dare the Subordinate Judge on 6-11-2000 and they shall not be entitled to any fresh or further notice from the lower Courts. Registry of the Court is directed to see that the L.C.R is received in the court below by 4-11-2000 without fail.

Appeal allowed