

(2000) 09 OHC CK 0044
In the Orissa High Court
Case No : First Appeal No. 251 of 1995

Special Land Acquisition Collector

APPELLANT

Vs

Chhala Sahu and Another

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 19

Citation : (2000) 2 OLR 579

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

Bench : Single Bench

Advocate : A.G. and Add. Stg, for the Appellant; B. Brahamachari, U.S. Patnaik, S.K. Ray, S.K. Rout, D.R. Mohapatra, S.R. Mohapatra and Jayanta Das for R 2, 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 8.5.1995 in Land Acquisition Misc. Case No. 126 of 1991 of the Court of Subordinate Judge, Talcher.

2. Claimant (s) is/are Respondent No (s) 1. The General Manager, National Thermal Power Corporation Limited (in short "NTPC") at Talcher having been permitted to intervene has been added as Respondent No. 2-.

3. While hearing the appeal on merit, a contention having been raised by Respondent No. 2 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 the amount of compensation, he urges to afford an opportunity to adduce proper evidence in that context. Mr. Jayanta Das, learned Senior Counsel appearing for the NTPC inviting attention of this Court to the ratio in the case of M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyveli and others, and the provision in Section 50 of the Act argues that in the

absence of any notice served on the Company for whose requirement the land was acquired and without affording an opportunity of hearing to it determination of the compensation on higher side is detrimental to the interest of NTPC as bulk of the compensation is required to be paid by it and therefore, the Respondent No. 2 be allowed opportunity to adduce evidence to counteract the claim of higher compensation by the claimants. Since the matter is of considerable importance thus besides hearing the counsel appearing for the appellant and the claimant (s)/ respondent (s) and NTPC on 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 favour of the contention of the Respondent No. 2 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 and the claimant/respondents do not dispute to the aforesaid statement of fact. They also do 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 affidavit and to state if notice was served on NTPC when the reference was made u/s 18 of the Act. In that respect, affidavit has been filed by the appellant stating that notice was sent and was accepted by some employee in the establishment of NTPC. The particulars of such employee and his competency to receive notice has not been clearly stated. In the counter affidavit filed from the side of the NTPC 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 NTPC 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 NTPC by the appellant while making the 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 NTPC it should have a say in the matter relating to the proper valuation while the matter is inquired into on the basis of a reference under Sections 18 and 19 of the Act. Unfortunately, that aspect was not properly visualised by the appellant and the learned Subordinate Judge. Under such circumstances, this Court finds it just and proper to allow the NTPC an opportunity to adduce their evidence. At this stage, learned counsel for the claimant respondents states that the claimants may be provided with an opportunity to adduce further and better 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 impugned award is found to be non-sustainable as it was passed without affording proper opportunity of

hearing to NTPC. Thus the said award is set aside and the appeal is allowed and accordingly the Land Acquisition Misc. Case No. 126 of 1991 is remanded for fresh adjudication in accordance with law.

7. In that connection, it may be stated that after acquiring the land since the NTPC was also negligent in not ascertaining what happened to the determination and payment of compensation and if it resulted in making reference. As a result, the remand order has caused harassment to the claimants so also by putting them to expenditure, thus the NTPC is directed to pay a cost of Rs. 1000/- (one thousand) to the claimant respondents by 16.10.2000 or to deposit it in Court by 17.10.2000 and in that respect to produce receipt to the satisfaction of lower Court by 6.11.2000. In the event the cost is not paid in the aforesaid manner. NTPC shall be debarred to adduce evidence. In that event claimant shall be entitled to recover the said amount in accordance With the provision in the Code of Civil Procedure. Mr. Jayant Das states that it may not lead to such a situation.

8. On receipt of the case on remand, learned Subordinate Judge shall do well to hear and dispose of the reference within a period of two months from the date of receipt of the L.C.R. In that connection, parties are directed to appear before the Subordinate Judge on 6.11.2000 and they shall not be entitled to any fresh or further notice from the lower Court. On receipt of the record, learned Subordinate Judge shall allow opportunity to the claimants to adduce their further evidence, if any, and then opportunity to the NTPC and then to the appellant. The inquiry be ten up on day to day basis unless adjournment will be unavoidable. Registry is directed to see that L.C.R. is received in the Court below by 4.11.2000 without fail.