
(2009) 03 OHC CK 0061
In the Orissa High Court

Special Land Acquisition Officer

APPELLANT

Vs

Jyushnamayee Dei and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 149, 151
Land Acquisition Act, 1894 — Section 11, 18, 23, 32, 50

Citation : (2009) 108 CLT 146 : (2009) 1 OLR 924 Supp

Hon'ble Judges : P.K. Tripathy, J; L.K. Mishra, J

Bench : Division Bench

Judgement

1. Heard.

2. Respondent No. 5 - General Manager, East-Coast Railway, Chandrasekharapur, Bhubaneswar in the district of Khurda argues to enforce the statutory right of the Respondent as provided in Section 50 of the land Acquisition Act, 1894 (in short "the act") and claims for remand of M.J.C. No. 42 of 1997 of the Court of the Learned Civil Judge, Senior Division, Bhawanipatna with an opportunity to Respondent No. 5 to adduce evidence on valuation for minimizing and reducing the award. In that respect Respondent No. 5 relies on the case of N.T.P.C. Ltd. v. State of Bihar and Ors. (2004) 12 SCC 96.

3. Dr. Rath, Learned Counsel appearing for claimant-Respondent Nos. 1 to 4 on the other hand differentiate the ratio in the case of N.T.P.C. (supra) on the ground that NTPC had filed the appeal challenging the award but in this case Respondent No. 5 has not preferred appeal against the impugned award. He relies on the case of U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., , Contribution Bench decision of the Apex Court and states that since Respondent No. 5 got included in this proceeding by filing application for intervention, therefore, it has no right to advance the aforesaid contention in exercise of the right conferred u/s 50 of the land Acquisition Act, 1894 (in short the Act). He further argues that for the acquisition of land from the same locality in other proceeding leave application of the Respondent No. 5

was not only rejected by this Court, but also by the Apex Court on the ground of limitation and such delay is also abundantly available against the Respondent No. 5, so far as the present case is concerned. Accordingly, he opposes to the aforesaid argument for Respondent No. 5. It is needless to say that the Appellant does not oppose to the prayer of Respondent No. 5.

4. In the case of *U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead)* by L.Rs. (supra) the Constitution Bench summarized in the following manner.

Law having been decided it appears necessary to refer to the facts as it shall demonstrate that how unfair it would be if such construction as is claimed by the Board is placed on the provision of the L.A. Act. A scheme was notified by the Awas Vika Parishad Adhiniyam, 1965 called Trans Yamuna Grihasthan and Sarak Yojana, Agra: It was a combination of a housing accommodation & street scheme. The finalized scheme was published u/s 32 of the Adhiniyam and the land of the owners was notified to be acquired. An award was made by the Land Acquisition Officer who adopted belting system for determining the market value and divided the land covered by the award into three belts fixing definite amount for each belt. In reference, the Tribunal determined the market value & enhanced the compensation. The High Court in first appeal doubled it nearly. It also awarded solatium at the rate of 30% on the amount of enhanced compensation & interest at the rate of 12% under Sub-section (1 -A) of Section 23 of the L.A. Act. The High Court decided the appeal on 18th April, 1991. The owners were still not satisfied & consequently filed the special leave petitions in this Court, for grant of interest u/s 23A added to the L.A. Act, 1984. The Board claims to have come to know of these proceedings after the Judgment of the High Court & filing of special leave petitions by the claimants &, therefore, it moved applications u/s 114 & Order 47 Rule 1 r/w Section 151 of the CPC before the High Court for the review of its order. The application was dismissed on 3rd December, 1992 as it was filed after long delay without proper explanation & even the Court-fee paid was deficient. The High Court observed that even though this was brought to the notice of the Learned Counsel for the Board yet the deficiency was not made good. Another effort was made in 1993 but the Court refused to recall its order as it was not disputed that the Court-fee was not made good for long time & even no application as contemplated u/s 149 of the C.P.C. for extension of time was made.

5. Keeping in view a similar dispute like the present one in hand, in paragraph-27 of the Judgment, per majority view their Lordships set aside the order of the High Court and remitted the case to the High Court for decision in accordance with law. In the case of *N.T.P.C. (supra)*, the Apex Court referred to and relied on the view of the Constitution Bench and said:

6. The question which arises for consideration is whether the Appellants have a right to be impleaded in all references. This question is no longer *res integra*. The law is settled by a Constitution Bench of this Court in the case of *U.P. Awas Evam Vikas Parishad v. Gyan Devi*. In that case, after considering various provisions of

the land acquisition Act, it has been held that the body on whose behalf the land is acquired is not just a necessary party but is also a proper party before the reference Court. It has been held that not giving them notice either at the stage of fixing compensation by the Collector or by the reference Court affects their rights. It has been held that they must be impleaded as a party in the reference proceedings.

6. Section 50 of the Act reads hereunder:

50. Acquisition of land at cost of a local authority or company -(1) Where the provision of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company the charges of and incidental to such acquisition shall be defrayed from or by such fund of company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation;"

Provided that no such local authority or company shall be entitled to demand a reference u/s 18.

7. It is apparent from the aforesaid statutory provision that the local authority or the company on whose behalf the acquisition is made and who is liable to pay has to be provided opportunity of hearing for the purpose of determining the amount of compensation. In the proviso to Sub-section (2) only restriction against such authority is to make a reference u/s 18, obviously against an award made u/s 11. In other words save and except making an application for reference u/s 18, the concerned local authority or the company as the case may be, has the right of audience in a reference u/s 18 in respect of determination of amount of compensation. For that the Apex Court has said that such local authority or the company is a necessary party to the proceeding and should be provided with opportunity of hearing. Once that position of law is clear the objection of the claimant-Respondent on the ground that the Respondent No. 5 brought itself on to the record by application for intervention makes no difference, when it is a matter of record that in course of adjudication u/s 18 of the Act, the Respondent No. 5 was neither noticed nor heard and the State even after filing the appeal did not add the Respondent No. 5 as a necessary party to the proceeding. Apart from that in view of the provision under Order 41, Rule 22 C.P.C. the Respondent No. 5 can raise the issue of its non-joinder as a ground to interfere with the impugned award.

8. Regard being had to the facts and circumstances and the ratio as noted above we set aside the impugned award of the Civil Judge (Senior Division), Bhawanipatna and remit back the case for fresh adjudication in accordance with law within a period of four months from the date of receipt of a copy of this order.

9. Respondent No. 5 undertakes to appear before the Civil Judge (Senior

Division), Bhawanipatna within six weeks together with certified copy of this order. We direct the Court below to add the Respondent No. 5 as Opposite Party No. 2 the proceeding and the said Opposite Party No. 2 to file its counter/objection within one month from the date of appearance in the Court below. In course of further inquiry, if the claimant-Respondents opt they may be given opportunity to adduce further evidence on valuation before providing opportunity of adducing evidence, if any, by the Respondent No. 5.

The First Appeal is disposed of accordingly on contest but without cost. Hearing fee be assessed at contested scale.