

(1996) 05 AHC CK 0168
In the Allahabad High Court
Case No : First Appeal No. 569 of 1995

Tehri Hydro Development Corpn. and Another	APPELLANT
Vs	
Inder Singh and Others	RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 41 Rule 27
Companies Act, 1956 — Section 617
Contract Act, 1872 — Section 182, 186, 187
Land Acquisition Act, 1894 — Section 11, 18, 3, 4, 41

Citation : (1997) RD 490

Hon'ble Judges : S.P. Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Yatindra Singh, for the Appellant; Ravi Kiran Jain and Sudhanshu Dhulia, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mathur, J.—Land belonging to Respondent Nos. 1 to 6 was acquired for the construction of Tehri Dam Project. The Special Land Acquisition Officer gave an award u/s 11 of the Land Acquisition Act (hereinafter referred to as the "Act") on September 11, 1986. Being dissatisfied, they moved an application u/s 18 of the Act on October 6, 1986 for making a reference to the Court and thereupon the Collector made a reference which was registered as Land Acquisition Reference No. 1 of 1990 in the Court of District Judge, Tehri -Garhwal. The District Judge enhanced the compensation from Rs. 6,99,504 as awarded by the Special Land Acquisition Officer to Rs. 29,57,267 by his judgment and award dated July 14, 1995. Aggrieved by the enhancement of compensation, the present first appeal has been preferred by Tehri Hydro Development Corporation (for short T.H.D.C.) on October 16, 1995 u/s 54 of the Act wherein the State of U.P. through Collector Tehri-Garhwal has been arrayed as proforma Respondent No. 7. Along with the appeal, an application has been filed by the Appellant on the same day seeking

leave of the Court to file the appeal. The claimant-Respondents have filed an application on October 30, 1995 praying that the appeal being not maintainable should be dismissed in limine. The Appellant T.H.D.C. has also moved an application on May 2, 1996 for transposing Respondent No. 7, State of U.P. as Appellant No. 2. This application is also opposed by the claimant-Respondents.

2. Learned Counsel for the Appellant has submitted that the entire acquisition has been done for the benefit of the Appellant-corporation which has been entrusted the job of completing the project and it is a "person interested" within the meaning of Section 3(b) of the Act and therefore it is entitled to file the appeal against the judgment and award of the District Judge. Learned Counsel for the claimant-Respondents has, on the other hand, submitted that the Appellant Tehri Hydro Development Corporation was registered as a Government Company on July 12, 1988 and as per its own case, the project was transferred to it on June 1, 1989 which was long after the notifications had been issued under Sections 4 and 6 of the Act on April 11, 1981 and October 18, 1983 respectively and therefore the appeal at the instance of the corporation is not maintainable. It is urged that even the award of the Collector had been given long before the corporation had come into existence and in absence of any agreement having been executed between the State Government and the Corporation as contemplated by Section 41 of the Act, no acquisition of land could be made for its benefit and consequently it is not entitled to file an appeal challenging the judgment and award of the District Judge. It is further submitted that the plea of the T.H.D.C. that it had moved an application for impleadment before the learned District Judge was false as, in fact, no such application was filed.

3. The material on record shows that T.H.D.C. was incorporated as a Government Company as defined u/s 617 of the Companies Act, 1956 on July 12, 1988. The Memorandum of Association of the Company shows that it is a joint venture of Government of India and Government of Uttar Pradesh. The main object of the Company are as follows:

J. To plan, promote and organise an integrated and efficient development of Hydro resources of Bhagirathi river and its tributaries at Tehri and complimentary downstream development (hereinafter called the Tehri Complex) for power generation and other purposes in all its aspects including planning, investigation, research, design and preparation of preliminary, feasibility and definite project reports, construction, (including consequential environmental protection, afforestation and rehabilitation works), generation, operation and maintenance of Hydro electric power stations and projects, transmission, distribution and bulk sale of power generated at Hydro Electric Stations to beneficiary States and releasing water for irrigation and other needs to the State of Uttar Pradesh as per agreed parameters.

(a) To undertake in a similar manner the development and harnessing of such hydroelectric sites/projects in Bhagirathi Bhilangana valley as may be entrusted

to the company by the State Government.

4. The mere fact that the notifications under Sections 4 and 6 of the Act had been issued or the award of the Collector u/s 11 had been made long before the T.H.D.C. had come into existence can have no bearing on the question of maintainability of appeal at its instance. T.H.D.C. is a joint venture of Government of India and Government of Uttar Pradesh and has been incorporated as a Government Company within the meaning of Section 617 of the Companies Act. In view of Clause (iv) of Section 3(f) of the Act, the expression "public purpose" includes the provision of land for a Corporation owned or controlled by the State and in terms of Section 3(cc), a Government Company as defined in Section 617 of the Companies Act is such a Corporation. Therefore, provision of land for T.H.D.C. would be for a "public purpose" and Section 41 or for that matter Part VII of the Act will have no application here. It is not the case of the claimant-Respondents that the public purpose for which the land was acquired has either been changed by the State Government by transfer of the project to the T.H.D.C. with effect from June 1, 1989 or the Corporation itself has made any change. The order passed by the State Government on May 27, 1989 shows that the entire Tehri Dam Project including work of rehabilitation of displaced persons was transferred to the administrative control of T.H.D.C. It further provided that the formalities for transfer of assets and liabilities including stores, etc., shall be completed in three months. There is no dispute that the acquired land is in possession of the Appellant-corporation. It also has to complete the project and achieve the object of the acquisition. The main contention of the learned Counsel for the claimant-Respondents has, therefore, no substance.

5. It is averred in the affidavits which have been filed on behalf of the Appellant that the land was acquired by the State of U.P. for the construction of Tehri Dam by the Irrigation Department. After the Corporation came into existence, the entire work of the Tehri Dam Project has been transferred and assigned to it. The compensation amount as enhanced by the learned District Judge has to be paid by T.H.D.C. and not by the Irrigation Department. All the rights and liabilities of the Irrigation Department have been transferred to the Corporation which has rehabilitated the displaced persons in accordance with the policy framed by the State Government and has paid compensation to them. In view of these facts, there cannot be even a slightest doubt that the Appellant-corporation now stands in the position of a beneficiary for whose benefit the land has been acquired and which is ultimately liable to bear the burden of paying the compensation.

6. For a long time, there was a divergence of Judicial opinion regarding maintainability of an appeal at the instance of a beneficiary on account of two decisions of Supreme Court wherein conflicting views were taken. In *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel*, it was held that the Municipal Corporation for whose benefit the land was acquired by the State Government had no right to file an appeal against the judgment and order

of the High Court by which the writ petition filed by the owner of the land had been allowed and the notifications had been quashed. However, in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, it was held that the Company for whose benefit the land has been acquired and who has ultimately to bear the burden of paying the entire compensation amount is "person interested" within the meaning of Section 3(b) of the Act and is, therefore, entitled to file an appeal. In *Sri Gaurdham Housing Co-operative Society v. Bihari Lal* 1980 ACJ 345, a Full Bench of our Court has held that the co-operative society for whose benefit the land has been acquired will be a "person interested" within the meaning of 3(b) of the Act and shall be entitled to file an appeal u/s 54 of the Act with the leave of the Court. Similar view was taken by a Division Bench in *National Thermal Power Corpn. Vs. Raghunath Pd. and Others.* The conflict in the two Supreme Court decisions was noticed in *Union of India (UOI) Vs. Sher Singh and Others.*, and relying upon *Himalayan Tiles (supra)*, it was held that the "person interested" includes a person for whose benefit the land is acquired and whose interest would be adversely affected in case of enhancement of compensation and consequently, he is entitled to be impleaded as a party both before the reference court as well as before the High Court in appeal. In *N. Krishnamachari v. Managing Director, APSRTC* JT1994 (5) 391, after commenting upon *Municipal Corporation of Ahmedabad (supra)*, the Court relied upon *Himalayan Tiles* and held that the beneficiary of an order of acquisition is a "person interested" and is entitled to challenge the award when made without notice to it. The law has been finally settled by two recent pronouncements of Supreme Court wherein *Municipal Corporation of Ahmedabad (supra)* has been specifically overruled. In *M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyveli and others.*, it has been held that the beneficiary, namely, the local authority or Company or statutory authority is a "person interested" in determination of just and proper compensation for the acquired land and has the right to be heard by the Collector or Court and is also entitled to file an appeal. A Constitution Bench in *U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc.*, has held that in the event of enhancement of amount of compensation by the reference court, if the Government does not file an appeal, the local authority can file an appeal against the award after obtaining leave of the Court. In view of these authoritative pronouncements, the objection raised by the claimant-Respondents that the appeal preferred by T.H.D.C. is not maintainable cannot be sustained and has to be rejected.

7. The Appellant-corporation has also moved an application on May 2, 1996 praying that Respondent No. 7 State of U.P. be transposed as Appellant No. 2 and may be described as State of U.P. through its attorney, Tehri Hydro Development Corporation. This application has been moved on the ground that all rights and liabilities of the State of Uttar Pradesh have been assigned to the Appellant-corporation within the meaning of Order XXII, Rule 10, CPC and the corporation has stepped into the shoes of State of U.P. for the purpose of Tehri

Dam Project. It is further stated that the Governor of Uttar Pradesh has executed a power-of-attorney in favour of the corporation on March 7, 1990 and a copy whereof has been filed as Annexure SRA-1 to the affidavit. It is recited in the power-of-attorney that Governor of U.P. has transferred all the work of Tehri Dam Project including rehabilitation and design work to and under the administrative control of the Tehri Hydro Development Corporation Ltd. The Governor has also appointed the Corporation as an attorney for doing or executing all things enumerated therein. There is a long list appended thereto and Clause (1) authorises T.H.D.C. to appear and act in all the courts whether original or appellate. Clause (2) gives authority to sign and verify plaint, written statement, objection, memorandum of appeal and to file them before courts. Clause (12) authorises the Corporation to pay or satisfy awards, decrees, or orders of any court arbitrator or Tribunal. In view of the aforesaid power-of-attorney executed by Governor of Uttar Pradesh, we are clearly of the opinion that T.H.D.C. can file an appeal on behalf of the State of U.P. The State of U.P. was the only contesting party before the reference court, viz., learned District Judge, Tehri Garhwal and, therefore, it is entitled as of right to prefer the appeal against the judgment and award dated July 14, 1995. In the appeal as it was originally filed by T.H.D.C, the State of U.P. was arrayed as proforma Respondent No. 7. As there is no conflict of interest between T.H.D.C. and the State of U.P., we see no difficulty in granting the prayer made by the Appellant and in directing transposition of State of U.P. as Appellant No. 2 in the appeal. We are fortified in our view by a decision of Privy Council in AIR 1931 162 (Privy Council) , wherein it was held as follows:

If there was a technical objection to this, the Court clearly had power at any stage of the proceedings to remedy the defect under Order I, Rule 10, CPC by adding the proforma Defendants as co-Plaintiffs with the Appellant. Such a course should, in their Lordship's opinion always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings.

Similar view was taken in R.S. Madanappa and Others Vs. Chandramma and Another, . We are clearly of the opinion that in order to do complete Justice between the parties, the power under Order I, Rule 10, CPC ought to be exercised and State of U.P. should be transposed as a co-Appellant along with T.H.D.C.

8. Learned Counsel for the claimant-Respondents has vehemently opposed the aforesaid prayer and has urged that the power-of-attorney executed by the Governor in favour of T.H.D.C. does not give it a right to file an appeal. He has referred to Sections 182, 186 and 187 of the Contract Act and has urged that the power-of-attorney should be strictly construed and a person holding power-of-attorney cannot do or perform an act which is not specifically mentioned therein. In support of his submission, learned Counsel has placed reliance on AIR 1915 PC 131: 1893 App. Cas 170 ; The Prince Line Ltd. Vs. The Trustees of the Port of Bombay, and Syed Abdul Khader Vs. Rami Reddy and Others, . There can be no

dispute with the proposition urged by the learned Counsel. However, a perusal of the power-of-attorney would show that a right has been conferred upon the Corporation to appear and act in all courts to sign and verify plaint, written statement and to file memorandum of appeal before any court on behalf of the Governor. It has also been given right to pay or satisfy the awards, decrees or orders of any Court or Tribunal with regard to any matter connected with Tehri Dam Project. A wide power has been conferred upon the T.H.D.C. and, therefore, it is fully entitled to file the appeal on behalf of State of U.P.

9. Learned Counsel for the claimant-Respondents has next urged that the copy of the power-of-attorney filed by the Appellant corporation in this Court cannot be taken into consideration unless the requirement of Order XLI, Rule 27, CPC were complied with. We are of the opinion that the contention raised by the learned Counsel has no substance. The provisions of Order XLI, Rule 27, CPC will come into play when some additional evidence is sought to be adduced in appeal for either assailing or supporting the decree under challenge. Such is not the case here. The copy of power-of-attorney has been filed merely to show that the Appellant-corporation is entitled to file the appeal on behalf of State of U.P. The learned Counsel for the claimant-Respondents has also contended that the application for transposition could be allowed only in a competent appeal and as the appeal preferred by the T.H.D.C. was not maintainable, the same was liable to be rejected. The contention raised has no merit. We have already held above that the appeal filed by T.H.D.C. against the judgment and award of the learned District Judge is fully maintainable and consequently, there is no impediment in the way of granting the prayer of Appellant for transposing proforma Respondent No. 7 as Appellant No. 2 in the appeal

10. In the result, both the applications filed by the Appellant Tehri Hydro Development Corporation are allowed. It is accordingly granted leave to file the appeal against the judgment and award dated July, 14, 1991 given in L.A. No. 1 of 1990 by District Judge, Tehri Garhwal. State of U.P. which has been arrayed as proforma Respondent No. 7 in the appeal shall be transposed as Appellant No. 2 in the appeal. The application filed by claimant-Respondents for dismissing the appeal is rejected.