

(1989) 03 MAD CK 0080
In the Madras High Court

The Tamil Nadu State Housing Board

APPELLANT

Vs

Sangama Nadar and Others

RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:

Citation : (1989) 2 MLJ 345

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

Bench : Division Bench

Judgement

P.K. Sethuraman, J.—The petitioner, Tamil Nadu State Housing Board, is the revision petitioner. There was a reference u/s 18 of the Land Acquisition Act before the Subordinate Judge, Srivilliputhur, in respect of the enhanced compensation claimed by the landowners in respect of the land belonging to them acquired by the Government for the purpose of construction by the Tamil Nadu Housing Board. The Tamil Nadu Housing Board filed a petition under Order 1, Rule 10 and Section 151, C.P.C. read with. Sections 3(b) and 50(2) of the Land Acquisition Act praying that the Tamil Nadu Housing Board to be Added as a party in the Land Acquisition O.P. pending before that Court and permitting the Tamil Nadu Housing Board to cross-examine the witnesses examined on behalf of the claimants and also permitting the Housing Board to adduce evidence on its behalf with regard to the enhanced amount claimed by the claimed by the claimants. The learned Subordinate Judge after considering the contentions put forward by the petitioner, Housing Board, and also the objections raised by the claimants as regards the petition filed by the housing board passed the order permitting the Housing Board passed to cross-examine the witnesses examined on behalf of the plaintiff, but stating that such cross-examination had been done through the Government Pleader as instructed by the Housing Board, and dismissed the petition. Aggrieved against the said order the present revision petition has been filed contending that the learned Subordinate Judge erred in dismissing the petition without directing impleading of the Housing Board and if the Housing Board is not impleaded, the Housing Board will be greatly prejudiced and the learned Subordinate Judge failed to see that the Housing Board is a

person interested as defined u/s 3(b) of the Land Acquisition Act and the learned Subordinate Judge also failed to follow the decisions. On this point and hence the petitioner has prayed to set aside the order passed by the learned Judge and allowed the Housing Board to be impleaded as a party in the Land Acquisition Proceedings.

2. The point that arises for consideration in this revision is as to whether the Housing Board has to be impleaded in the land acquisition proceedings and allowed to cross examine the witnesses examined by the claimants.

3. Section 11 of the Land Acquisition Act deals with the enquiry and Award by the Collector. According to that section, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8 and into the value of the land and into the respective interests of the persons claiming the compensation and thereafter make an award with regard to the true area of the land compensation should be allowed for the land, of whom or of whose claims the claimant has information whether or not they have respectively appeared before him. It may be pointed out that Section 9 deals with notice to persons interested by the Collector with regard to the intention of the Government to take possession of the land and that claims to compensation for all interest in such land to be made to him. u/s 9(3) it is incumbent on the Collector to serve notice on the occupier, if any, of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested therein. On a perusal of Section 9 it may be stated that under that section persons interested is with reference to persons who could claim compensation in respect of the land proposed to be acquired by the Government in the capacity of owner, occupier etc.

4. Section 10 deals with power to require and enforce the making of statements before the Collector with regards to the persons possessing any interest in the land or any part thereof in any capacity and also rents or profits derived from the land three years next proceeding the date of statement and it is for the purpose of fixing compensation. After compliance of the formalities the enquiry as contemplated u/s 11 has to be taken by the Collector. No doubt, what is to be contemplated u/s 8 with regard to measurements has to be complied with before the enquiry. There are other provisions in the Land Acquisition Act. Section 23 of the Act deals with matters to be considered in determining compensation and Section 24 relates to the matters to be neglected in determining compensation and Section 30 deals with dispute as to apportionment and Section 31 is with reference to payment of compensation or deposit of the case in court.

5. Section 18 of the Land Acquisition Act enables any person interested he 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 as regards his objection 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. Section 19 deals with the procedure to be followed by the Collector in making the reference. Under that section the Collector shall state for the information of the Court in writing:

- (a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon;
- (b) the names of the persons whom he has reason to think interested in such land
- (c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded u/s 11;
- (cc) the amount paid or deposited under Sub-section (3-A) of Section 17 and
- (d) if the objection to the amount of compensation the grounds on which the amount of compensation was determined.

Under Section 9(2) a statement shall be attached to the schedule giving the particulars of the notices served upon and of the statements in writing made or delivered by the parties interested respectively. u/s 20 of the Act the Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection and directing their appearance before the Court on that day and the Court has to serve notice on

- (a) the applicant,
- (b) all persons interested in the objection, except each (if any) of them as have consented without protest to receive payment of the compensation awarded
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the collector.

6. Mr. K. Duraiswami, learned senior counsel for the petitioner, also took up the contention that in this case the Housing Board, the revision petitioner herein, was not given notice by the Court and as such the whole proceedings pending before the learned Subordinate Judge, Srivilliputhur, has to be set aside. In this connection the learned Counsel also submitted the decision reported in *The State Industries Promotion Corporation of Tamil Nadu by its Managing Director v. The Special Tahsildar* 1986 W. L.R. 494 rendered by learned Judge Mohan (as he then was). In that decision the learned Judge has held that notice in proceedings for determination of compensation to be given to the beneficiary of the proceedings, namely the person for whose benefit the acquisition is made. In as much as the notice had not been served the proceedings as regards the awards passed in O.Ps. by the Civil Court were set aside and the proceedings quashed. The learned Judge has placed reliance in the earlier decision reported in *Indian Rare Earths Limited v. The Sub Collector, Land Acquisition Officer, Padmanabhapuram* 1986 W L.R. 146 rendered by the Honourable Mr. Justice Natarajan and Justice Singaravelu. It may be pointed out here that in the Bench decision reported in *Indian Earths Ltd. v. The Sub Collector Land Acquisition Officer, Padmanabha*

puram 1986 W. L.R. 146 the learned Judges as regards the proceedings u/s 18 before the Court have pointed out that the company for whose sake acquisition proceedings were taken was a person "interested in the objection" u/s 20 and therefore entitled to notice of hearing u/s 20(b) and failure to issue notice will result in setting aside the proceedings. It may be pointed out their Lordships have also dealt the difference in the expression "person interested" as defined in Section 3(b) and persons interested in the objection in Section 20(b).

7. With reference to the non-issue of notice it may be pointed for want of records of the lower Court this Court is not in a position to say whether the notice had been actually sent and received by the Housing Board apart from the Acquisition Officer and the Collector. But it may be pointed out that it is a contention not even put forward in the revision petition itself. It may also be pointed out that even in the lower Court in the affidavit filed on behalf of the petitioner, Housing Board, there had been no such averment. No doubt the Executive Engineer and Administrative Officer, Madurai special division has submitted that he came to know of the Land acquisition O.P. having been posted for trial on 28-11-1988. In the counter filed by the claimants it has been clearly stated that such notice on 28-9-1988 to the said Engineer informing that the C.P. was posted on 26-10-88 for enquiry. The notice had been served on him on 29-9-88 and on the Managing Director on 30-9-88. It may also be pointed out that in the counter to C.M.P. No. 990 of 1989 which is a petition filed for stay of further proceedings in the lower Court the special Tahsildar has also stated that the petitioner's officials were present and watched the case throughout. The claimants in the counter filed in the lower Court have also stated that the officials of the Housing Board were present and they were instructing the Government Pleader for cross-examining the claimants' witnesses and it appears at the stage when the case was posted for evidence on behalf of the acquiring authority, the petition had been filed. Therefore, the contention as regards non-issue of notice without being raised in the revision petition but raised during arguments cannot at all be accepted.

8. As regard the "person interested" the petitioner appears to have relied on the judgment reported in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's., . The said decision has been extensively discussed by the learned Subordinate Judge, Srivilliputhur and the learned Judge also discussed the decisions reported in Neyveli Lignite Corporation v. Special Tahsildar (1988) 2 L.W.79 and Land Acquisition Officer v. Pappammal (1988) 2 L.W.266 and also has considered Section 18-III and 50(2) of the Act as well the decision in 1982 L.W. 266. In the decision reported in Kanyaka Parameswari Devasthanam and Charities Vs. Srila Sri Ambalawana Pandara Sannadhi and Another, rendered by a Bench the learned Judge Sethuraman and Balasubramanyan have discussed elaborately Sections 3(b), 5-A, 18 and 50(2) and in that case Sri Kanyaka Parameswari Devasthanam and Charities filed a petition for re-hearing of the appeal and also praying for being impleaded as a party and the application had been filed Under Order 1, Rule 10 and Order 41, Rule 21, C.P.C. and the learned Judges held that the Devasthanam was not a

person interested within the meaning of Sections 3(b) and 5(a) of the Act and as such it could not be a party and it has no locus standi and could not be impleaded as a party-respondent. They have clearly indicated that the provisions of the Act would clearly show that there are really two parties to the reference in the Civil Court and further proceedings that may emanate from it, the two parties being the Collector and the owner of the property under proviso to Section 50(2) the entity for the benefit of which the land is acquired has no locus standi even to demand a reference u/s 18 after the Award is passed and only appear and adduce evidence for the purpose of determining compensation. When such person is not a party even before the collector it cannot be impleaded as a party-respondent after the appeal is disposed of.

9. It may be pointed out that in the decision reported in *The Land Acquisition Officer, Udthagamandalam v. Pappammal* (1988) 2 L.W. 266 by the Division Bench of this Court in which I was a party and the Judgment was rendered by myself, the question has been discussed and all the earlier judgments were considered and therein it has been held that it was not permissible for impleading of the party for whose benefit the land is acquired in the appeal preferred by the State against the decree of the Lower Court for enhanced compensation. In that decision the Division Bench Judgment of the learned Judges Natarajan and Singaravelu reported in *Indian Rare Earths Limited v. The Sub Collector, Padmanabhapuram* 1986 W. L.R. 146 has been considered. The decision reported in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, relied upon by the learned Counsel for the petitioner also has been considered and it may be pointed out that in the decision rendered by the Supreme Court reported in Judgment Today in *Shri Chandu Lal Chandrakar v. Shri Puran Mal* (1988) 2 S.C.C. 15 it was held that a school which was given part of the land acquired by the Municipal Committee under an agreement which required that in the event of compensation being enhanced, the school will be liable to pay the same which wanted to be impleaded in the proceedings regarding the enhanced compensation, the Tribunal refused to implead and the Supreme Court affirmed that the school cannot be held to be a person interested and the school had no right to question the Award. Referring to the case reported in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, the Supreme Court held that the ratio laid down by the Supreme Court in that case will not apply as the appellants were not interested persons and they have no right to question the Award. It may also be pointed out that even in the *Himalayan Tiles* case the learned Judges of the Supreme Court have pointed out for the purpose of fixation of proper quantum of compensation so that the company may not have to pay very heavy amount the company could undoubtedly appear and adduce evidence on the question of quantum of compensation. Even in the instant case as could be seen from the order passed by the learned Subordinate Judge, the Housing Board has been instructing the advocate appearing for the Government and they can as well let in evidence when the witnesses on behalf of the acquiring authority are to be

examined. Having regard to the decisions rendered by this Court as well as Supreme Court on the point as on date, it has to be held that the petitioner cannot as such claim to be impleaded as a party on the ground that the land had been acquired for the purpose of the petitioner. In such circumstances, I am unable to accept the contention put forward on behalf of the revision petitioner. Accordingly, I find the revision petition has to be dismissed.

10. In the result, the revision petition is dismissed, but in the circumstances of the case without costs.