

(2011) 03 MAD CK 0527

In the Madras High Court

Case No : CRP (NPD) No. 2162 of 2004 and C.M.P. No. 16371 of 2004

Thiagarajar Polytechnic Salem

APPELLANT

Vs

C. Rajaveeran and Revenue Divisional Officer and Land
Acquisition Officer

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 18

Citation : (2011) 3 CTC 632

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S.R. Rajagopal, for the Appellant; P. Jagadeesan, for R1 and Bhavani Subbarayan, AGP (CS) for R2, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—This Revision has been filed under Article 227 of the Constitution of India challenging the order dated 25.02.2004 in R.E.A. No. 954 of 1995 in REP. No. 1/93 on the file of the Additional Sub-Court, Salem. By the said order, the Executing Court dismissed the petition filed by the Petitioner herein seeking to implead themselves in the execution proceedings thereby denying them to right to contest the claim of the first Respondent.

2. The facts of the case lie in a narrow campus.

The Petitioner is an educational institution and a third party to the proceeding. The first Respondent herein was the original land owner, whose lands were subject to land acquisition proceedings under the provisions of the Land Acquisition Act 1894, (herein after referred to as the "Act"). The acquisition proceedings were initiated by the second Respondent herein for the purpose of the Petitioner institution. It appears that there was no challenge to the land acquisition proceedings and the land in question was handed over to the

Petitioner. The first Respondent/land owner not satisfied with the compensation awarded by the Land Acquisition Officer, sought for enhancement and the same was referred to the Sub-Court, Salem, u/s 18 of the Act and the said reference was taken on file as LAOP. No. 134 of 1962. The Reference Court passed decree on 03.05.1975 and as against which, appeals were filed before this Court in A.S. Nos. 496, 565 & 785 of 1975 and the same were disposed of by judgment and Decree dated 15.07.1980. The first Respondent/land owner filed execution petition to execute the said judgment and decree in the execution petition, wherein the first Respondent made a total claim of Rs. 2,27,762.30/- , this total claim was under two heads, namely enhanced compensation for market value, solatium and interest of Rs. 64,915.97/- and equitable compensation for advance possession of Rs. 1,62,846.43/- .

3. According to the first Respondent the claim under the second heads, namely equitable compensation is liable to be paid, since the possession of the lands were handed over to the Petitioner institution well in advance, before the award was passed. On coming to know about the execution petition filed by the first Respondent, the Petitioner for whose benefit the land was acquired, filed the application in REA. No. 954 of 1995 under Order 1 Rule 10 Code of CPC r/w Section 20(d) of the Land Acquisition Act, 1894. It was contended that the amount awarded as compensation by the land acquisition officer was paid by the Petitioner to the first Respondent and the enhanced compensation as awarded has also been deposited by the Petitioner institution and the claim of Rs. 1,62,846.43 under the head equitable compensation is a new claim not covered by any of the decree or award and such claim cannot be adjudicated by the Executing Court, as the Court go behind the decree. Therefore, the Petitioner contended that they are proper and necessary party to the execution proceedings and prayed for impediment.

4. As the first Respondent/land owner resisted the application by contending that since the possession of the land was handed over to the Petitioner prior to the award, he is entitled for equitable compensation and such claim need not find place in the decree and the Petitioner herein is need not to be arrayed as the Respondent in the execution petition. The Executing Court by order dated 25.02.2004, dismissed the application for impediment and as against which, the Petitioner is before this Court by way of the present revision petition.

5. The learned Counsel appearing for the Petitioner submitted that the order passed by the Executing Court is a non-speaking order and has not considered any of the points raised by the Petitioner. Further, in terms of Section 20(d) of the Act, which came to be inserted by Tamil Nadu Act 14 of 1990, if the acquisition is not made for the Government, the person or authority for which it is made, shall be entitled to notice. The Petitioner being the requisitioning body is therefore entitled to notice. Further, it is contended that the claim made by the first Respondent in the execution petition is out side the purview of the award and decree, and therefore, the Petitioner has to be heard before such claim is

decided. The learned Counsel further submits that in terms of Order 21, Rule 46(E) of the Code of Civil Procedure, the Executing Court has power to hear the third party and in terms of Rule 101 of Order 21 CPC, the Executing Court has power to decide all questions arising between the parties. Further, the learned Counsel would submit that the claim for equitable compensation is outside the scope of the decree and the Executing Court cannot go behind the decree. Further, the Executing Court by invoking the power Order 1 Rule 10 Code of CPC is entitled to add or delete the parties to any of the proceedings and such proceedings shall include the execution proceedings. In support of the said contention, the learned Counsel placed reliance on the decision of the Hon''ble Supreme Court in Rameshwar Das Gupta Vs. State of U.P. and Another, . Further, the learned Counsel submitted that in a recent decision of the Hon''ble Supreme Court in Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others, the Court considered the scope of "person interested" as defined u/s 20(d) of the Act and by applying the said decision, the Petitioner being a requisitioning body is a "person interested".

6. The learned Counsel appearing for the first Respondent placed reliance on the decision of this Court in (1993) 2 L.W. 323 [Union of India Rep. By the Steel Authority of India Ltd v. Kuppayammal and Anr.] and submitted that the requisitioning body cannot seek for imp leading itself as a party at the stage of execution and Section 20(d) of the Act has no application to execution proceedings. The learned Counsel also placed reliance of another unreported judgment of this Court in CRP. No. 1782 of 1997, dated 18.12.2001, in which this Court followed the decision in the case of (1993) 2 L.W. 323.

7. Heard the learned Counsels appearing for the parties and perused the materials available on record.

8. The Hon''ble Supreme Court in a recent decision of Delhi Development Authority, referred supra, exhaustively considered the definition of the expression "person interested" and after referring to all the earlier decision on the said issue culled out the legal principle and summarized the same as follows:

30. The definition of the expression "person interested" is in two parts. The first part includes all persons claiming an interest in the compensation to be made on account of the acquisition of land under the Act. The second part contains a deeming provision and declares that a person shall be deemed to be interested in land if he is interested in an easement affecting the land. Section 50(1) lays down that where the provisions of the Act are invoked for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the incidental charges are required to be defrayed from or by such fund or company.

31. Section 50(2) lays down that in the cases covered by Sub-section (1), the local authority or company concerned may appear in any proceeding held before a Collector or court and adduce evidence for the purpose of determining the

amount of compensation. However, by virtue of proviso to Sub-section (2), the local authority or company is barred from seeking reference u/s 18 of the Act.

32. Section 50(2) represents statutory embodiment of one of the facets of the rules of natural justice. The object underlying this section is to afford an opportunity to the local authority or company to participate in the proceedings held before the Collector or the court for determining the amount of compensation and to show that claim made by the landowner for payment of compensation is legally untenable or unjustified. This is possible only if the Collector or the Court concerned gives notice to the local authority or the company concerned. If notice is not given, the local authority or the company cannot avail the opportunity envisaged in Section 50(2) to adduce evidence for the purpose of determining the amount of compensation. Therefore, even though the plain language of that section does not, in terms, cast a duty on the Collector or the court to issue notice to the local authority or the company to appear and adduce evidence, the said requirement has to be read as implicit in the provision, else the same will become illusory.

9. By applying the above legal principle to the facts of the present case, it cannot be denied that the Petitioner for whom the land was acquired was a "person interested" since the object underlying the said principle is to afford an opportunity to the requisitioning body to participate in the proceedings before the land acquisition officer or before the Reference Court for determining the amount of compensation and to demonstrate before the Court as to how the claim made by the land owner is untenable. In the present case, the factual position is slightly different, in the sense that the acquisition proceedings were already completed and the award was passed and modified to a certain extent by this Court and the Petitioner being the requisitioning body, though did not participate in the award proceedings or before the Reference Court complied with the payment of enhanced compensation as per the award/decreed. The Executing Court was called upon to execute the decree and in the execution petition, a claim has been made by the first Respondent/land owner under the head "equitable compensation". This according to the Petitioner did not form part of the decree and that the Executing Court cannot go behind the decree and grant a relief to the first Respondent in respect of a claim, which did not form part of the decree is not permissible in law.

10. In my view this question is academic in the present case as the stage has not come for deciding such question, since the Executing Court is faced with an application filed by the Petitioner for imp leading them in the execution proceedings.

11. In the case of Union of India Rep. By the Steel Authority of India Ltd, referred supra, the Union of India was the revision Petitioner challenging an order passed by the Executing Court. The facts in the said case was that on a reference u/s 18 of the Act, an award was passed by the Reference Court and the claimant filed execution petition to realize the award amount and at that time,

the Union of India, filed a petition to implead themselves. The said implead petition was dismissed and as against the same, the revision petitions were filed. This Court while considering the validity of such order held that the amendment to Section 20(d) of the Act cannot be pressed into service in the facts and circumstances of the case, as it would unsettle everything and such provision was included by the Tamil Nadu Amendment Act to enable the party for whom acquisition was made to take part and assist the Court in fixing the compensation reasonably and it cannot come at a later stage and put forth contentions unsettling the award. In such circumstances, this Court held that the petition cannot be entertained. However, the case on hand is factually different, the Petitioner though has relied upon Section 20(d) of the Act, in my opinion such provision may not be relevant to the facts of the present case, since award proceedings are already over, the Reference Court has decided the matter and this Court has also passed a decree and such decree is stated to have been complied with by the Petitioner.

12. Therefore, in the present case, we are faced with only an application for impediment in execution proceedings. Therefore, this Court is required to examine whether such impediment application in the light of the provision of Order 1, Rule 10 Code of CPC and to see whether the Petitioner herein is a proper and necessary party to execution proceedings. While examining such application, the Court is given ample discretion to consider as to whether the party seeking impediment is a necessary party.

13. As noticed above, the contention of the Petitioner itself is that the claim for equitable compensation is not covered under the decree. Even assuming without admitting that such claim is adjudicated by the Executing Court and if the Executing Court comes to a conclusion that the first Respondent is entitled to the said amount under the head "equitable compensation" it goes without saying that the Petitioner, who is the requisitioning body shall be responsible for settling such claim, since the land in question was acquired for their purpose. Thus, by applying common law principle, the Petitioner who may be called upon to settle a claim is definitely a proper and necessary party in the proceedings. By impleading the Petitioner it serves more than one purpose. Firstly, it affords an opportunity to the Petitioner to put forth their contentions in the presence of the requisitioning body; secondly, it gives a binding adjudication to the issue and would avoid multiplicity of proceedings.

14. It is seen that the Executing Court in the impugned order has not dealt with any of the contentions raised by the Petitioner and rejected the same by cryptic and non-speaking order. Therefore, this Court is fully satisfied that the order passed by the Executing Court deserves to be interfered.

15. In the light of the above discussion, it is held that the Petitioner is a proper and necessary party to the Executing Court in the light of the fact that the first Respondent/land owner has made a claim in the execution petition under the head "equitable compensation" which according to the Petitioner did not form

part of the decree passed by the Reference Court as confirmed by this Court. As rightly pointed out by the learned Counsel for the Petitioner in the case of Union of India Rep. By the Steel Authority of India Ltd, referred supra, this Court did not go into question as to whether the Petitioner therein can seek impediment under Order 1, Rule 10 CPC, as they claimed impediment only u/s 20(d) of the Land Acquisition Act. However, in the instant case, the impediment application has been filed under Order 1, Rule 10 Code of CPC r/w Section 20(d) of the Act. As observed earlier in the strict sense Section 20(d) of the Act would have no application to the facts and circumstances of the case.

16. Therefore, the order passed by the Executing Court is set aside and the Executing Court is directed to implead the Petitioner herein as the second Respondent in the execution petition, afforded an opportunity to the Petitioner to file their counter affidavit to the execution petition and decide the matter on merits and in accordance with law. It is made clear that this Court has decided the question regarding impediment alone and has not gone into question as regards the first Respondent's entitlement for compensation under the head "equitable compensation", which shall be decided by the Executing Court on merits and in accordance with law.

17. In the result, the Civil Revision petition is allowed on the above observations. No costs. Consequently, connected miscellaneous petition is closed.