

(2004) 02 AHC CK 0103
In the Allahabad High Court
Case No : C.M.W.P. No. 5243 of 1987

Union of India (UOI) and Another

APPELLANT

Vs

Special Judge and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Telegraph Act, 1885 — Section 10, 16(3), 16(4)

Citation : AIR 2004 All 213 : (2004) 2 AWC 1271 : (2004) 4 RCR(Civil) 49

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : N.B. Singh, S.S.C. and Manoj Kumar and B.N. Singh, for the Appellant; V.B. Khare and A. Shukla and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Manoj Kumar, on behalf of the petitioner-Union of India and Sri A. K. Shukla, holding brief of Sri V. B. Khare, on behalf of the respondents.

2. The present petition has been filed by Union of India through Divisional Engineer, Telecommunications, U. P., Kanpur against the order of the District Judge passed in Misc. Case No. 7/70 of 1972, Brij Bhan Chandra and Ors. v. Union of India and Ors., u/s 16(3) of the Indian Telegraph Act. By means of the said order, the District Judge has determined a sum of Rs. 2,500 as compensation to be paid to the plaintiffs for loss of wood and loss of prospective yield of mango trees.

3. It is stated that the proceedings were not legally maintainable inasmuch as the claimants should have first approached the authority concerned u/s 10(d) of the Indian Telegraph Act before filing a petition u/s 16 of the Act. Further, the petition as filed by the plaintiff suffered from the defect of non-impleadment of necessary parties inasmuch as Union of India could not be represented through D.G.C. (Civil).

4. Lastly, it is contended that the compensation determined by the District Judge is excessive.

5. Section 16(3) of the Telegraph Act read with Section 16(4) of the said Act, confers a right upon the aggrieved person to approach the District Judge for determination, entitlement of compensation as well as the amount of compensation. Section 16(3) and (4) read as follows :

"(3) If any dispute arises concerning the sufficiency of the compensation to be paid u/s 10(d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share to it; the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under Sub-section (3), that amount, and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it."

6. The aforesaid provision is wide enough to take within its fold all issues, which may arise with regard to determination and payment of compensation under the Act. The aforesaid provision do not mandate the claimant to approach the District Judge only after an order has been passed u/s 10(d) nor the said provisions are in the nature of an appeal against the order to be passed u/s 10(d). The right of adjudication conferred u/s 16(3) and (4) is not dependent upon any order to be passed u/s 10(d). The objection raised on behalf of the petitioner as such is legally not sustainable.

7. The claimants were justified in invoking the jurisdiction of the District Judge u/s 16(3) and (4) of the Indian Telegraph Act without awaiting the orders from the authorities u/s 10D.

8. The second contention of the petitioner is that the claim suffered from the vice of non-impleadment of necessary parties. It appears to have some weight in the facts of this case, from array of parties, as disclosed from the claim filed by the claimants annexed as Annexure-1 to the writ petition, it is clear that there are only two respondents namely : "(1) Union of India, New Delhi service of summons to be made on D.G.C. (C), Fatehgarh ; (2) State of Uttar Pradesh, Lucknow service of summons through D.G.C. (Civil)." Union of India cannot be represented or served summons through D.G.C. (C), Fatehgarh nor the State of Uttar Pradesh can be served summons through D.G.C. (C), Fatehgarh. Claimants should have impleaded the departments through the officer concerned as respondents. However, I am not inclined to interfere with the order, despite the wrongful description in the array of parties, as a written statement, made on

behalf of Divisional Engineer. Telephone, Kanpur had been filed, who is the highest officer of the department in the District and further it is not in dispute that the D.G.C. (C) had represented the said officer in the proceedings before the District Judge. The petitioners, as such, took their chance before the District Judge by filing the written statement as well as by engaging a counsel to represent their case and having lost before the District Judge, they cannot be permitted, in equitable jurisdiction under Article 226 of the Constitution to agitate that the description of parties is incorrect.

9. It is admitted on behalf of the petitioners that there is no dispute about the title of the claimants. In view of the same, the order of the District Judge awarding the compensation to the claimants cannot be faulted with.

10. Now, the only issue which requires to be considered, is the amount of compensation to be paid for felling of the mango trees of the claimants. From the order of the District Judge, it is apparent that 40 trees of mangoes of the claimants had been felled or partially cut. Amount of compensation determined by the Additional District Judge is a sum of Rs. 2,500 along with interest @ 6% only.

11. There is no material on record on the basis whereof can it be said that the amount of compensation so awarded by the District Judge is exorbitant. The amount of compensation, in the circumstances of the case, requires no interference in this writ proceedings.

12. In view of the above, this petition is dismissed. Interim order, if any, stands vacated.